

# Operation Prospect

Volume 6

Chapters 20-22

Access to and disclosure of  
confidential records

Report of the Acting NSW Ombudsman

A special report to Parliament under s. 31 of the  
*Ombudsman Act 1974* and s. 161 of the *Police Act 1990*

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# Abbreviations

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
AHU	Armed Hold Up Unit or Squad
ASIO	Australian Security Intelligence Organisation
CAR	Contact Advice Report
CIS	Complaints Information System
CMT	Complaints Management Team
COP	Commissioner of Police
COPS	Computerised Operational Policing System
COU	Covert Operations Unit
DEA	Drug Enforcement Agency
DPC	Department of Premier and Cabinet
DPP	Director of Public Prosecutions
DTC	Davidson Trahaire Corpsych
ERISP	Electronic Recorded Interview of Suspected Person
HOD	hurt on duty
IA	Internal Affairs
ICAC	Independent Commission Against Corruption
IPC	internal police complainant
IR	Information Report
ITTU	Information Technology and Telecommunications Unit
ITU	Integrity Testing Unit
IU	Investigations Unit
IWI	Interception Warrant Information
LAC	Local Area Command
LECC	Law Enforcement Conduct Commission
LD	listening device
LII	lawfully intercepted information
LRO	Legal Representation Office
MCSN	Major Crime Squad North
MCSS	Major Crime Squad South
MOU	Memorandum of Understanding
MSO	Mascot Subject Officer
NCA	National Crime Authority
NSW	New South Wales
NSWCC	NSW Crime Commission
NSWPD	NSW Parliamentary Debates
NSWPF	NSW Police Force
NSWPS	NSW Police Service
OAG	Operational Advisory Group
OCC	Operations Coordination Committee
ODPP	Office of the Director of Public Prosecutions
OIC	officer in charge

PCB	Police and Compliance Branch, NSW Ombudsman
PIC	Police Integrity Commission
PID	public interest disclosure
PODS	Police Oversight Data Store
POI	person of interest
PSC	Professional Standards Command
RMS	Roads and Maritime Services
R/N	Registered Number
SAP	Product name for the human resources information system of the NSWPF
SASC	Strategic Assessments and Security Centre
SCIA	Special Crime and Internal Affairs Command
SCU	Special Crime Unit
SPU	Special Projects Unit
SOD	Schedule of Debrief
SOP	Standard Operating Procedure
STIB	Special Technical Investigation Branch
TI	telephone interception
TIB	Telephone Interception Branch
UB	Undercover Branch
UCO	undercover operative

## Common abbreviations of legislation

CAR Act	<i>Criminal Assets Recovery Act 1990</i> (NSW)
CO Act	<i>Law Enforcement (Controlled Operations) Act 1997</i> (NSW)
CO Regulation	Law Enforcement (Controlled Operations) Regulation 1998 (NSW)
Crime Commission Act	<i>Crime Commission Act 2012</i> (NSW)
Crimes Act	<i>Crimes Act 1900</i> (NSW)
Criminal Procedure Act	<i>Criminal Procedure Act 1986</i> (NSW)
LD Act	<i>Listening Devices Act 1984</i> (NSW) (Repealed)
LECC Act	<i>Law Enforcement Conduct Commission Act 2016</i> (NSW)
NSWCC Act	<i>NSW Crime Commission Act 1985</i> (NSW) (Repealed)
Ombudsman Act	<i>Ombudsman Act 1974</i> (NSW)
PIC Act	<i>Police Integrity Commission Act 1996</i> (NSW)
PID Act	<i>Public Interest Disclosures Act 1994</i> (NSW)
Police Act	<i>Police Act 1990</i> (NSW). This Act was previously called the - <i>Police Service Act 1990</i> (NSW)
Royal Commissions Act	<i>Royal Commissions Act 1923</i> (NSW)
SD Act	<i>Surveillance Devices Act 2007</i> (NSW)
TI Act	<i>Telecommunications (Interception and Access) Act 1979</i> (Cth). This Act was previously called the <i>Telecommunications (Interception) Act 1979</i> (Cth).
TI (NSW) Act	<i>Telecommunications (Interception and Access) (New South Wales) Act 1987</i>

# Glossary

The terms listed below describe those used in this report and are included to assist the reader.

affidavit	A sworn statement that can be used to support an application, in particular for a listening device or telecommunication intercept warrant.
Armed Hold Up Unit	The Armed Hold Up Unit (AHU) was attached to the Major Crime Squad North of the NSWPF. Between approximately 1987 and 1997 the AHU consisted of two teams of approximately four officers each. Evidence was given in Operation Florida that the division into teams was based largely on the geographic location of officers' residences. Officers who lived on or near the central coast formed one team and officers from the Northern Beaches area of Sydney (including Sea) formed the other. The teams were only loosely defined and it was common for officers from different teams to assist each other.
Contact Advice Report	A report that is an account of any contact with an informant to be completed by the case officer.
controlled operation	A police operation conducted for the purpose of obtaining evidence and/or arresting any person that involves activity that, but for section 16 of the <i>Law Enforcement (Controlled Operations) Act 1997</i> would be considered unlawful.
covert operation	An operation where the role of the police is concealed from the targets of the operation and that utilises investigative methods such as undercover operatives, listening devices and telephone intercepts.
deployment	Tasking an informant or undercover operative to undertake a particular activity to assist an investigation.
deponent	A person who swears (or deposes) that the contents of an affidavit are true and correct to the best of their knowledge.
Duty Book	Duty Books may be issued to NSW police officers on criminal investigation or specialist duties. Officers are required to record the following in pen: <ul style="list-style-type: none"> <li>time commencing and completing each duty</li> <li>places visited, people spoken to and actions taken</li> <li>start, finish and meal times and rest days.</li> </ul> Entries are required to be signed by the officer and checked regularly by supervisors.
c@ts.i	The complaints management system of the NSWPF. It is used to record, manage and report on complaints about police officers and local management issues.
exculpatory evidence	Evidence that suggests or points towards the innocence of a person.
e@gle.i	The investigation management system of the NSWPF that allows police officers to capture and report information gathered during the investigation of a crime.
green-lighting	When police permit people to undertake criminal activities such as robberies or drug dealing, in return for money and/or information. That is, it is not a controlled operation and is unlawful.
Gynea reference	In 1996 the Gynea reference was referred by the NSWCC Management Committee to the NSWCC to investigate organised crime (including drug trafficking and money laundering), and the associated involvement of corrupt police. The Gynea reference was reissued on a number of occasions between 1996 and 2003. It was initially staffed by NSWCC officers but expanded in 1997 to involve the Special Projects Unit of the NSWPF Internal Affairs Command.
handler	Officer assigned as the main contact point for a registered police or NSWCC informant.
hot spot	Location where a check conducted by a handheld battery operated device indicates a listening device may be installed.
inculpatory evidence	Evidence that suggests or points towards the guilt of a person.
[Ind]	Indistinct or indecipherable audio that is unable to be transcribed.
indemnity	Under section 32 of the <i>Criminal Procedure Act 1986</i> , police may apply to the Attorney General via the Director of Public Prosecutions for an indemnity from prosecution to be granted to a person for a specific offence or in respect of specified acts or omissions. The indemnity formally protects the person against prosecution for specified matters in exchange for assistance provided to investigators.
induced statement	An 'induced statement', or one taken following 'an inducement', is a formal statement taken from a person on the basis that the information provided will not be used against the person making the statement in any criminal proceedings.
Information Report	A written report completed by Mascot officers as a formal record of actions that occurred.
integrity test	Part 10A of the <i>Police Act 1990</i> empowers the NSWPF to conduct integrity testing of its own officers. Under section 207A a designated person may offer a police officer the opportunity to engage in certain behaviour to test the officer's integrity. The behaviour of the officer being tested is assessed against NSWPF policy and legislative requirements. The objectives of integrity testing are to test for corrupt conduct, deter corrupt behaviour and analyse NSWPF systems, processes and procedures to reduce potential corrupt activity.

Internal Affairs	The investigations unit within Special Crime and Internal Affairs, established in 1999.
letter of assistance	A letter provided by the NSWPF or the NSWCC to a sentencing judge that details assistance given by an offender to police with a view to seeking a sentence reduction for that offender. This practice is enshrined in section 23 of the Crimes (Sentencing Procedure) Act 1999.
listening device	Any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with its taking place (LD Act, s.3). The device could either be body worn or installed on premises, vehicles or an item such as a briefcase.
load/loading	To plant false evidence on a person suspected of criminal activity. Also, to 'load up', or 'load'.
Major Crime Squad North	The Major Crime Squad North (MCSN) of the NSWPF was located in Chatswood, Sydney from approximately 1985. There were a number of Units attached to the MCSN in this period including an Armed Hold Up Unit, a Homicide Unit, a Child Mistreatment Unit and an Arson Unit.
Major Crime Squad South	The Major Crime Squad South (MCSS) of the NSWPF was located at the Sydney Police Centre, Surry Hills. As with the Major Crime Squad North, there were a number of units attached to it including an Armed Hold up unit and a Homicide Unit. The MCSS is occasionally referred to as the "South Region" squad in this report.
Mascot reference	On 9 February 1999 the NSWCC Management Committee referred the Mascot reference to the NSWCC to investigate drug offences, money laundering and conspiracies to pervert the course of justice by a number of people including serving and retired police officers. The allegations under investigation initiated from the disclosures by a serving police officer code-named Sea regarding his involvement in corrupt and criminal activities and that of his colleagues. NSWCC staff and members of the Special Crime Unit of the NSWPF were utilised for this investigation.
Mascot Subject Officer	A person who was a serving police officer when named in Mascot's Schedule of Debrief as being involved in corrupt or criminal conduct and who was subsequently investigated by Mascot investigators.
Mascot target	A person who was investigated by Mascot investigators.
Mascot II reference	On 9 November 2000 the NSWCC Management Committee referred Mascot II to the NSWCC. This reference was broader than Mascot. It expanded the list of potential people to be investigated to include all former and serving police officers and the scope of the reference was extended to include the investigation of larceny and corruption offences. NSWCC staff and members of the Special Crime Unit of the NSWPF were utilised for this investigation.
NSWCC Management Committee	The NSWCC Management Committee is constituted under Part 3 of the New South Wales Crime Commission Act 1985 (NSWCC Act). During the Mascot references the Management Committee was made up of the Minister for Police, the NSWCC Commissioner, the Commissioner of Police, the Commissioner of the Australian Federal Police and the chairman or another nominated member of the then National Crime Authority, or from June 2003, the chair of the Board of the Australian Crime Commission. The principal functions of the Management Committee are set out in section 25 of the NSWCC Act and include referral by written notice matters relating to relevant criminal activities to the NSWCC for investigation.
Oberon and Oberon II references	The Oberon reference was granted in 1999 requiring the NSWCC to investigate a number of murders committed between 1970 and 1999. Also in 1999, the Oberon II reference was granted requiring the NSWCC to investigate the murder and conspiracy to murder a number of specified people.
Operation Boat	Operation Boat was a subsidiary of the Mascot investigations that used Sea to investigate allegations that officers had fabricated evidence.
Operation Boulder	Operation Boulder was established by the PIC in 2006 following an allegation by a target of Operation Orwell/Jetz, that Special Crime and Internal Affairs investigators had used false or misleading information to obtain telephone intercept warrants, and misused the information obtained by telephone interception. The PIC found there was no evidence to support the allegation and no further action was taken.
Operation Florida	In October 2001 the PIC commenced a public hearing program named Operation Florida based on the evidence collected by Mascot investigators. Operation Florida is also referred to as being the overt phase of Mascot. The PIC reported to Parliament in June 2004.
Operation Jade	In March 1997 the NSWCC notified the PIC of their suspicion that a former Task Force Box investigator had disseminated confidential police information to a convicted criminal in the course of Task Force Box. The NSWCC and PIC jointly established Operation Jade and held public hearings from November 1997. The PIC reported to Parliament in October 1998.
Operation Naman	In 2001 Operation Orwell was established by the NSWPF and located in SCIA to investigate allegations that police officers were involved in the corrupt manipulation of the NSWPF promotion system. Assistance was sought from PIC and in June 2001 the PIC established Operation Jetz. A taskforce of SCIA and PIC officers was set up and a report to Parliament was presented by the PIC in 2003.
	Operation Naman was established in 1999 by the NSWPF to investigate police misconduct in the 1994 arrest of Mr O, Mr M, and Paddle for the attempted armed robbery of a club in Coffs Harbour in 1994. Operation Naman was located in Internal Affairs.
Operation Orwell/Jetz	In 2001 Operation Orwell was established by the NSWPF and located in SCIA to investigate allegations that police officers were involved in the corrupt manipulation of the NSWPF promotion system. Assistance was sought from PIC and in June 2001 the PIC established Operation Jetz. A taskforce of SCIA and PIC officers was set up and PIC reported to Parliament in 2003.

Operation Pelican	In 2000 the PIC commenced an investigation into the police investigations of the death of Phillip Dilworth at Petersham in 1986, the shooting and wounding of Gary Mitchell at Concord in 1988, and the subsequent murder of Mitchell at Armidale in 1996. The PIC reported to Parliament in 2001. Operation Pelican was a joint investigation between PIC, SCIA and the NSWCC.
plant/planting	Police corruptly placing evidence of wrongdoing in a person's house, possession or vehicle, so they can then claim the evidence belongs to that person and arrest them. Examples include placing illicit drugs or guns in a person's home.
Professional Standards Command	The NSWPF established the Professional Standards Command (PSC) in 2003. It amalgamated three commands, including Special Crime and Internal Affairs. The PSC has responsibility for setting standards for performance, conduct and integrity within the NSWPF and is responsible for investigating serious criminal allegations and corrupt conduct by NSW police officers. It is the main point of contact for external agencies such as the NSW Ombudsman, the PIC, the NSW Coroner and the ICAC.
registered informant	A person formally registered with the NSWCC or the NSWPF who supplies information to assist investigations.
rollover warrants, applications or affidavits	A 'rollover' warrant is a colloquialism that means a warrant that effectively repeats or extends an earlier warrant. Affidavits supporting the extension of previous warrants were also known as 'rollover affidavits' or 'rollover applications'.
the Royal Commission	Royal Commission into the NSW Police Service was established by Letters Patent dated 13 May 1994. The Hon Justice James Wood was appointed as Commissioner. The terms of reference of the Royal Commission authorised and required it to investigate the existence and extent of systemic or entrenched corruption in the NSW Police Service as it was known then. The Royal Commission delivered its final reports in 1997.
Schedule of Debrief	The schedule that details the allegations made by Sea in his initial debrief about police corruption including details of offences, dates of offences, and the identities of individuals involved. The first Schedule of Debrief was handwritten and was completed on 13 January 1999, using information from the original debrief interviews with Sea between 7 and 11 January 1999. It was then converted into an electronic document in late January 1999 and was added to and altered throughout the Mascot investigations. Each allegation was allocated a number, referred to as 'SOD' by Mascot investigators.
Special Crime and Internal Affairs	In 1999 Special Crime and Internal Affairs (SCIA) replaced the Internal Affairs Command of the NSWPF in a restructure. The primary focus of SCIA was to investigate organised crime groups and any links with corrupt police. SCIA was divided into two divisions – Command and Operations – each made up of smaller units. The Command division included units responsible for liaising with the PIC and providing legal, advisory and support services. The Operations division contained five units – the Investigations Unit (known colloquially as Internal Affairs), the Integrity Testing Unit, the Special Crime Unit, the Strategic Assessment and Security Centre, and the System and Process Inspection Unit.
Special Crime Unit	In 1999 the NSWPF replaced the Special Projects Unit with the Special Crime Unit (SCU) in a restructure. The Special Crime Unit was located within SCIA.
Special Projects Unit	The Special Projects Unit (SPU) was established within the Internal Affairs Command of the NSWPF in 1997. Its role was to investigate organised crime groups that may have been assisted by corrupt police as part of the NSWCC GyMEA reference.
Strategic Assessments and Security Centre	The Strategic Assessments and Security Centre of the NSWPF was located within SCIA and undertook a range of intelligence based work, such as compiling profiles of people of interest to investigations and risk assessments.
Strike Force Banks	Strike Force Banks was established by the NSWPF in 1997 to investigate complaints received about the activities of SCIA that were not related to Mascot.
Strike Force Emblems	In July 2003 the NSWPF established Strike Force Emblems to investigate a range of matters relating to the investigations conducted under the NSWCC Mascot and Mascot II references. Strike Force Emblems advised that it was unable to make a finding on many of the matters that fell within the investigation as it had been denied access to relevant source material by the NSWCC. The final report of Strike Force Emblems was never made public.
Strike Force Jooriland	Strike Force Jooriland was established in 2012 by the NSWPF within the Professional Standards Command to investigate a number of complaints received by the NSWPF regarding the Mascot investigations and the dissemination of confidential NSWCC and NSWPF records. The Professional Standards Command did not complete Strike Force Jooriland as it was taken over by Operation Prospect in 2012.
Strike Force Sibutu/ Operation Ivory	Strike Force Sibutu was established by the NSWPF in 2001 to investigate allegations by a former Integrity Testing Unit officer, that false and misleading information had been used by officers of that unit in LD and TI affidavits, and search warrant applications. Management and cultural issues within the Integrity Testing Unit were also investigated. The PIC's Operation Ivory concurrently investigated the allegation that false and misleading information had been used in LD and TI affidavits. The work of Strike Force Sibutu was included in the matters referred to the Ombudsman by the PIC Inspector in 2012.
Strike Force Tumen	Strike Force Tumen was established in 2002 by the NSWPF to investigate a series of complaints made by two former undercover police officers about the failure in duty of care and mismanagement by the Covert Operations Unit of the NSWPF. The work of Strike Force Tumen was included in the matters referred to the Ombudsman by the PIC Inspector in 2012.
supporting affidavit	An affidavit sworn in support of an application for a LD or TI warrant.

sweep	A check for the presence of any listening devices, using a handheld battery operated device. Also known as a 'scan'.
tasking	A piece of work assigned to a person.
Task Force Ancrum	Task Force Ancrum was established by the NSWPF in 1997 to investigate the conduct of Task Force Magnum investigators following allegations made by police officers during the Royal Commission. It was located in Internal Affairs.
Task Force Bax	Task Force Bax was established by the NSWPF in 1996 to investigate criminal activity in Kings Cross, Sydney following the emergence of evidence during the Royal Commission of corrupt relationships between police and organised crime in that area.
Task Force Borlu	Task Force Borlu was established by the NSWPF in 1997 to investigate the importation and distribution of cannabis by two individuals. Task Force Borlu was commanded by a Mascot Subject Officer.
Task Force Magnum	Task Force Magnum was established by the NSWPF in 1991 to investigate a series of armed robberies of armoured vehicles and other robberies. The Task Force Magnum team included police officers who later became targets of the Mascot investigations and of Operation Florida.
Task Force Volta	Task Force Volta was established in 2002 by the NSWPF to investigate 199 medium to low risk allegations that were not resolved by the Mascot investigations. It was located within Special Crime and Internal Affairs.
undercover operative	A person whose real identity is confidential and who is covertly deployed by a law enforcement agency to gain evidence of criminal activities as part of an investigation.
verbal/verballing	False evidence given by police that a suspect had confessed or made inculpatory remarks at the time of arrest or during an interview.





## Chapter 20. Access to and disclosure of confidential records – legal and policy considerations

### 20.1 Introduction

Operation Prospect has investigated two failings in the way that confidential material relating to the Mascot era was accessed and disseminated between 2010 and 2012. The first concerns requests that were made internally in the NSW Police Force (NSWPF) in 2010 by a Deputy Commissioner, for information relating to NSWPF investigations into activities at the Special Crime and Internal Affairs command (SCIA). The second concerns the unauthorised and improper dissemination in 2012 of confidential material about Mascot that was held by the NSWPF, the NSW Crime Commission (NSWCC) and the Police Integrity Commission (PIC).

Those access and dissemination failings can both be traced, in a broad sense, to Listening Device (LD) warrant 266/2000 becoming public a decade earlier, in April 2002. It is probable that the warrant became public after being accidentally served in a prosecution brief that arose from the Mascot investigations. A number of people named in the warrant raised concerns and made complaints about being improperly targeted by Mascot and named in a warrant that also named officers suspected of corruption. There were also complaints at the time about the actions of SCIA, including complaints about officers who had worked on the Mascot Task Force.

Those questions and complaints led to inquiries being conducted into the Mascot investigations and, more broadly, the actions of SCIA. The inquiries included NSWPF Strike Forces Emblems, Sibutu and Tumen (see Chapter 1), and inquiries by the PIC Inspector in 2002 (see Chapter 13) and in 2012 (discussed below).

The reports and outcomes of those inquiries were never made public. This apparently exacerbated the concerns of people targeted by the Mascot investigations, and strengthened their resolve to ensure their concerns were addressed. It is fair to surmise that there is a connection between those tensions and the internal requests in 2010 for access to restricted information, as well as the unauthorised dissemination in 2012 of thousands of pages of confidential material. Allegations that confidential material had been unlawfully or improperly disseminated were first made to the NSWPF in 2012.

### 20.2 Operation Prospect's investigation of the access to and disclosure of confidential records

Operation Prospect's examination of the access and dissemination issues has focused on three distinct periods.

The first period relates to the disclosure of LD warrant 266/2000 in April 2002 (discussed in Chapters 9 and 13 of Volume 3 of this report). The warrant named 113 current and former police officers and one journalist as persons whose private conversations could lawfully be recorded or listened to by the use of a listening device.

The second period is from August to October 2010 (discussed in Chapter 21). It followed a short feature article by former *Sun Herald* journalist Les Kennedy. Deputy Commissioner Catherine Burn proposed internally that the *Sun Herald* be contacted to correct a statement in Kennedy's article about an "unlawful" NSWPF operation, which appeared to be a reference to the Mascot operation. Deputy Commissioner Nick Kaldas expressed his reservation internally about responding to the article, and he later requested assistance from NSWPF officers under his direction in seeking various reports and information (including the Emblems report). A number of NSWPF officers responded to that request and accessed and made some restricted material available to Kaldas.

The third period is from June to September 2012 (discussed in Chapter 22). There were two significant events in that period. One was a number of feature articles by *Sydney Morning Herald* journalist, Neil Mercer, that were based on access to specific confidential Mascot documents. The second, according to evidence given to Operation Prospect, is that a number of journalists and serving and former NSWPF officers received anonymous packages during this period that included confidential NSWCC, NSWPF and PIC records from both the Mascot investigations and NSWPF inquiries into the activities of SCIA. More than 20,000 pages of confidential hardcopy and digital material were released into the public domain in 2012.

The remainder of this chapter considers, first, the events that led to these matters being referred to Operation Prospect; and second, the legal and policy framework at the time in the NSWCC and NSWPF for access to and disclosure of confidential information.

### 20.2.1 PIC Inspector's review of the Strike Force Emblems report

On 11 May 2012 the Minister for Police wrote to the Inspector of the Police Integrity Commission (PIC Inspector) under section 217 of the *Police Act 1990* (Police Act), asking the PIC Inspector to conduct a review into the confidential final report of Strike Force Emblems (which is discussed in Chapters 1 and 18). Emblems was an investigation conducted by the NSWPF into allegations concerning the conduct of police officers who worked on the Mascot investigations. The Minister asked the PIC Inspector to review the Emblems recommendations to ensure they had been "properly dealt with",<sup>1</sup> and to advise if their release would be in the public interest, would prejudice any legal action or investigation by the PIC or the PIC Inspector, or would unreasonably reflect upon individuals without them being afforded natural justice.<sup>2</sup>

The Premier (as the Minister responsible for PIC) also wrote to the PIC Inspector on 25 May 2012 seeking his advice as to "whether the Emblems Report could be publicly released in its entirety".<sup>3</sup>

### 20.2.2 Complaints of unauthorised dissemination

Prior to the PIC Inspector reporting, on 31 August 2012 a NSW police officer formerly attached to Emblems reported internally that he had received an anonymous package of documents that contained various documents relevant to matters investigated by Emblems, including the supporting affidavit for LD warrant 266/2000, a memorandum by Burn dated 13 April 2002 (the Burn memo), the annexure to the Burn memo, a letter from Burn to a former PIC Inspector dated 22 April 2002 regarding that warrant, a NSWCC file note regarding the same warrant, and a copy of the signed affidavit for NSWCC LD warrants 262-268/2000.<sup>4</sup> The preparation of the Burn memo and annexure is discussed in Chapter 13.

Articles by Mercer published in early September 2012 in the *Sun Herald* and *Sydney Morning Herald* reported that he had been given copies of the NSWPF internal reports relating to Emblems, Sibutu and Tumen, as well as the Burn memo and annexure and the formal record of interview between Burn and Emblems investigators.<sup>5</sup>

On 16 September 2012 an article in *The Sunday Telegraph* reported that a police officer had lodged an internal complaint "over the emergence of the classified documents" and that the NSWPF had commenced an inquiry into these allegations.<sup>6</sup>

These events prompted allegations being made to the NSWPF of unlawful dissemination of confidential documents, and also of criminal and wrong conduct by police officers attached to SCIA for the Mascot investigations. On 21 September 2012 the NSWPF formed Strike Force Jooriland within the Professional

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1 Letter from Michael Gallacher, Minister for Police and Emergency Services, NSW Government, to the Hon David Levine, Inspector of the Police Integrity Commission, 11 May 2012, p. 1.

2 Letter from Michael Gallacher, Minister for Police and Emergency Services, NSW Government, to the Hon David Levine, Inspector of the Police Integrity Commission, 11 May 2012, p. 1.

3 Letter from Barry O'Farrell, Premier, NSW Government to the Hon David Levine, Inspector of the Police Integrity Commission, 25 May 2012.

4 NSWPF internal memorandum from Detective Inspector Mark Galletta to Acting Deputy Commissioner David Hudson, 31 August 2012.

5 Mercer, Neil. 'Some burning questions for the deputy', *Sydney Morning Herald*, 9 September 2012; Mercer, Neil. 'Bugging bombshell as secret files revealed', *Sun Herald*, 9 September 2012.

6 Bashan, Yoni. 'Confidential Police papers leak examined in internal inquiry', *The Sunday Telegraph*, 16 September 2012.

Standards Command (PSC) to investigate these allegations, including that confidential documents had been supplied to journalists contrary to the *New South Wales Crime Commission Act 1985* and the Police Regulation 2008 (see section 20.4.4).<sup>7</sup>

On 11 October 2012 the PIC Inspector, the Hon David Levine AO RFD QC, referred to the Ombudsman under sections 90(1)(f) and 125 of the *Police Integrity Commission Act 1996* (PIC Act), all complaints made to him regarding the Mascot/Florida investigations and the unlawful dissemination of confidential documents.<sup>8</sup>

The Ombudsman advised the NSWPF on 18 October 2012 that under section 156(1) of the Police Act, the Ombudsman would take over the investigation of complaints which were then under investigation by Jooriland relating to the conduct of officers of the NSWPF in Operations Mascot, Florida and Emblems and associated matters.<sup>9</sup> The Ombudsman has also independently received complaints relating both to the unlawful dissemination and to the conduct of persons involved in the Mascot investigations.

## 20.3 Importance of restrictions on access to and dissemination of law enforcement information

Law enforcement bodies such as the NSWCC, the NSWPF and the PIC hold sensitive information relating to their investigations. This can include information obtained from informants, confidential sources, and through electronic and physical surveillance.

There are many reasons for safeguarding the confidentiality and proper handling of this information: broadly they fall into four categories. The first has to do with protecting the privacy of personal information. Modern surveillance and investigation techniques used by law enforcement bodies can intrude greatly on the privacy of investigation targets. The information that is collected will often contain sensitive and personal details about the targets, and also their family and associates. The information may reveal their conversations, family and business planning, social activities, health and finance, and that they have been identified in a police investigation. The information will have been collected for a specific law enforcement purpose, and not for internal circulation or public dissemination. It may be acutely distressing and embarrassing for a person if the personal details enter the public domain.

The second broad justification for protecting confidential law enforcement information has to do with safeguarding the efficacy of law enforcement techniques and investigations. Unregulated or unauthorised release or sharing of information may reveal secret investigative methodologies about matters such as the use of undercover informants and covert surveillance. Disclosure may completely undermine an investigation, as well as creating risks for the physical safety of investigators and informants. Informants and sources will also be less likely to assist investigators and to provide information if they are not confident that they can do so on a confidential basis. The informant may fear adverse consequences if it is known they have assisted a law enforcement investigation, or they may face legal consequences for having released confidential information without permission. A law enforcement body's reputation and ability to obtain useful intelligence from individuals or other enforcement agencies may also be compromised if it cannot be trusted to protect confidential information.

The third broad justification is that unauthorised release of information can present a partial and misleading picture of the facts. The release may be selective and designed to advance a one-sided agenda of those involved in the unauthorised release (or 'leaking'). The agency that held the records may be inhibited, for legal and operational reasons, from commenting publicly on the matter or correcting any inaccuracies or distortions that have gained traction in the media. The reputation of the agency may be unfairly maligned. Reputational injury can also be suffered by individuals named in law enforcement records if they are unable to properly respond to allegations of wrongdoing or impropriety that are made following the unauthorised release.

7 NSWPF *Strike Force Jooriland: Terms of Reference* from Commander Paul Carey to Detective Inspector Thomas Barnes, 8 October 2012.

8 Letter from the Hon David Levine, Inspector of the Police Integrity Commission, to Bruce Barbour, Ombudsman, NSW Ombudsman, 11 October 2012.

9 Letter from Bruce Barbour, Ombudsman, NSW Ombudsman to Andrew Scipione APM, Commissioner of Police, NSWPF, 18 October 2012.

Law enforcement officers who participated in operations that are revealed by the records may also be unable for legal and practical reasons to comment publicly about the disseminated information.

The fourth broad justification is that public confidence in the integrity of law enforcement agencies rests on their ability and commitment to safeguarding confidential and personal information. Public support for the exercise of intrusive and coercive policing powers will be undermined if there is doubt about the ability of law enforcement bodies to safeguard confidential and personal information which they have gathered or that has been entrusted to them. The community must have confidence that information held by agencies is not only protected against unauthorised access and dissemination, but also that it is used only for genuine law enforcement purposes and not for extraneous or personal purposes.

For those and related reasons, law enforcement agencies have strict internal controls on access to and use of official information. The controls come in many forms. Information is stored securely so that it is not generally accessible by all employees within the agency. There are rigid and clearly defined controls on who can access internal information, the purpose for doing so, how internal information can be used, and the records and audit logs that must be kept of all internal access actions. Access to and use of official information is a topic that is dealt with directly in Codes of Conduct and Conflict of Interests policies that apply to all staff. These are given prominent attention in staff induction, training and supervision. It is assumed that all staff make themselves aware of and abide by the agency's ethical policies and procedures. It is usual too that agencies have detailed internal handbooks that prescribe information use and access procedures.

Strict legal controls are commonly applied to the collection, use and dissemination of law enforcement information. The unauthorised public dissemination of such information can be a criminal offence, even for disseminating material that was obtained lawfully by the person. An example is that the unauthorised release of NSWCC documents is punishable by a substantial fine and/or imprisonment for up to 12 months.<sup>10</sup> Identical penalties apply to the unauthorised release of PIC documents.<sup>11</sup> The unauthorised release of NSWPF documents is not itself a criminal offence but is a breach of clause 75 of the Police Regulation 2008; NSWPF officers who breach the regulation may face disciplinary consequences. Misuse of official information may also meet the elements of the common law criminal offence of misconduct in public office, as discussed in section 20.4.5.

Similarly, State and Commonwealth laws apply criminal penalties to the unauthorised handling or dissemination of information relating to or obtained by electronic surveillance, telecommunications interception and the use of LDs. The unauthorised communication of information either relating to a telecommunications interception warrant, or lawfully obtained pursuant to a warrant, is an offence punishable by imprisonment for up to two years.<sup>12</sup> In New South Wales, information obtained by the use of surveillance devices (including LDs) can only be lawfully published or communicated for specific purposes.<sup>13</sup> However, at the time of Mascot, the restrictions on publication or use of LD product imposed by the *Listening Devices Act 1984* (LD Act) (now repealed) were not as extensive as those which now apply. The restrictions on the collection, use and communication of such materials are addressed more fully in Chapter 5 and Appendix 3 (Volume 1) to this report.

Former NSWCC Commissioner Phillip Bradley gave evidence to Operation Prospect on the importance of protecting NSWCC information against improper dissemination. He expressed concern that there had been unauthorised disclosures of sensitive information and materials held by the NSWCC. He considered that such disclosures were illegal, and could lead to the agency gaining a reputation for being unable to protect materials provided in confidence. This could affect the NSWCC's ability to obtain such information in the future. Bradley was aware that documents from Operation Mascot had been disclosed without authorisation some years after that operation had concluded, but the fact that the investigation had concluded did not justify unauthorised disclosure.<sup>14</sup> Bradley explained his reasons for concern:

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10 *Crime Commission Act 2012*, s. 80(2). The *New South Wales Crime Commission Act 1985* (repealed) included a similar provision with identical penalties at s. 29(2).

11 *Police Integrity Commission Act 1996*, s. 56(2).

12 *Telecommunications (Interception and Access) Act 1979* (Cth) (TI Act), ss. 6EA, 63 and 105.

13 *Surveillance Devices Act 2007*, Part 5, Division 1.

14 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3086.

*Firstly, because it's illegal. Secondly, because the integrity of the investigations and the success of the Crime Commission depends on me being able to assert with some confidence about [sic] contradiction that secrets won't be shared with people they shouldn't be shared with, and that particularly arises in the context of hearings, as you would know. There are people there telling me things that are highly confidential, or people that are reporting to human resource managers things that are extremely confidential and impacting on their security, and there's a whole range of other things, including telephone interception, listening devices, covert operations, things involving risks to people's lives. So that if we're seen as a sieve, then people just won't cooperate and they'll be able to point to the reasons for not cooperating and it will be very hard to argue that they should cooperate against a background of leaking. It's been the case often that people come along and say, "Oh well, I was in gaol for five years and I saw transcripts of my hearing," and, "Oh, did you really," and we'd investigate that and find out that that was tendered in a criminal prosecution and fell into the hands of lawyers who, made copies for the benefit of their clients, have then distributed it amongst the criminal milieu and in an environment where you're trying to persuade someone to cooperate on the basis that what you're being told is completely in confidence, such a piece of history is not helpful. So, yes, I could go on and on and on about the importance of confidentiality and not leaking ...<sup>15</sup>*

Operation Prospect asked Bradley whether he believed that the unauthorised dissemination of information could sometimes be justified. He responded that the reasons motivating an unauthorised dissemination did not alter the risks to the NSWCC caused by such disclosures:

*Q: And do you believe in the notion that leaking of that kind can be justified if it is viewed by the person involved in it to be for a particular purpose, in other words noble cause type leaking?*

*A: That's a much more complicated question, with respect. If we were up to no good, acting corruptly, maliciously persecuting people because of personal prejudice, and the leaking demonstrated that to be the case, then it would be hard to argue that the leaking wasn't justified with the same logic that is behind the whistleblower's legislation.*

*Q: But the whistleblower's legislation has quite specific parameters around - - -?*

*A: I understand that. I'm just (indistinct)*

*Q: - - - what's lawful and what's not lawful. Yes. All right. But the fact that there might be a purpose involved in the leaking that might to all intents and purposes be a reasonable one, doesn't change the fact that it's a criminal offence?*

*A: No, that's true.*

*Q: And it doesn't change the factors that you've indicated that would be a risk to the Commission and its operations?*

*A: Yes. Well, in many cases.*

*Q: And that's partly because the leaking of information is selective and it doesn't necessarily show a complete picture?*

*A: That's another thing that I didn't mention, but yes. We've been the subject of a lot of defamatory assertions, mainly in the media, partly as a consequence of people telling fibs to the media, or selectively giving them information about us. When I say "us", the Crime Commission. And that does affect our reputation, and the Crime Commission suffered greatly as a consequence of that ...<sup>16</sup>*

The unfairness associated with unauthorised dissemination of confidential documents was also addressed briefly by the PIC Inspector in his report on Emblems. He advised that the Emblems report should not be released, in part to protect the privacy of people named in LD warrant 266/2000 and the supporting affidavit "unless and until there is good reason for their deserved protection and privacy to be foregone".<sup>17</sup>

<sup>15</sup> Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3086.

<sup>16</sup> Ombudsman Transcript, Phillip Bradley, 24 November 2014, pp. 3086-3087.

<sup>17</sup> The Hon Levine, D., *Review & Report to the Minister of Police "Strike Force Emblems"*, Inspector of the Police Integrity Commission, 23 November 2012, p. 18.

The PIC Inspector's view was that a thorough investigation and report by the Ombudsman was the proper course for deciding whether information about the Mascot investigations and the controversies to which it had given rise should be placed on the public record.<sup>18</sup>

## 20.4 Relevant laws and policies applying to the NSWCC and NSWPF

The NSWCC and NSWPF both have a range of policies and procedures that explain and reinforce the legislative restrictions on the dissemination of confidential information held by those agencies. This section considers the primary policies and guidelines of both agencies on access to and dissemination of confidential information, relevant to the events considered in this volume of the report. Where possible, reference is made to the version of the policy or guideline that was available to staff during the currency of the Mascot investigations. Many of these documents are 'living' documents that are revised and republished from time to time, and for some only a later edition is now available. An appropriate qualification is made in the relevant segment of this report if a person's conduct is to be assessed against wording in the document that may have altered over time.

### 20.4.1 NSWCC administrative guidance

At the time of Mascot, the NSWCC had manuals, policies and other documents to govern the conduct of its officers and employees (see Chapter 16). One such document was an induction form for new staff, including NSWPF members working with the NSWCC. This form included the full text of the secrecy provisions in the NSWCC's governing statute.<sup>19</sup> The form also required an inductee to undertake to familiarise themselves with a list of specific NSWCC policy documents within one month of commencing work at the NSWCC. This included the NSWCC Code of Conduct and the NSWCC Investigation Manual. Both documents contained instructions about non-disclosure of information obtained in the course of a person's work at the NSWCC.<sup>20</sup>

In relation to discussing NSWCC information with other NSWCC staff, the July 1999 version of the NSWCC Code of Conduct stated:

*Caution and sound judgement should be exercised in discussing sensitive information with other Commission officers. Such discussions should be normally confined to those who require access to the information in order to conduct their duties or for the purpose of obtaining assistance.*<sup>21</sup>

Chapter 8 of the NSWCC Investigation Manual dealt extensively with the restrictions on and procedures for the lawful dissemination of NSWCC materials. The introductory paragraphs of Chapter 8 outlined the secrecy provisions in the NSWCC Act, as well as the penalties for offences under section 29 of that Act, and added: "The Telecommunications (Interception) Act and the Listening Devices Act also contain prohibitions on disclosure which are dealt with under those headings".<sup>22</sup>

Chapter 8 of the NSWCC Investigation Manual contained instructions on dealing with information obtained from telecommunications interceptions or that related to TI warrants. With regard to "lawfully obtained information"<sup>23</sup> and "designated warrant information"<sup>24</sup> (collectively, TI material), the December 1999 version of the Manual stated:

18 The Hon Levine, D., *Review & Report to the Minister of Police "Strike Force Emblems"*, Inspector of the Police Integrity Commission, 23 November 2012, p. 19.

19 NSWCC, *Induction for task force police and other officers*, July 1999.

20 NSWCC, *Code of Conduct*, July 1999, pp. 9-10; NSWCC, *Investigation Manual*, December 1999, Chapter 8.

21 NSWCC, *Code of Conduct*, July 1999, p. 9.

22 NSWCC, *Investigation Manual*, December 1999, p. 8.2.

23 Relevantly defined in the TI Act, s. 6E (historical version as at 12 December 1995 to 13 June 2006) as information obtained by the lawful interception of a communication passing over a telecommunications system. Please refer to Appendix 3 (Volume 1) for further details.

24 Relevantly defined in the TI Act, s. 6EA (historical version as at 12 December 1995 to 13 June 2006) as information about an application for a TI warrant, the issue, existence (or non-existence) or expiry of a TI warrant, as well as any other information likely to enable the identification of either the telecommunications service to which a TI warrant relates or a person specified in a TI warrant as being likely to use the telecommunications service to which the TI warrant relates. Please refer to Appendix 3 (Volume 1) for further details.

*Note that dissemination of telephone interception material, even to other staff within the Commission, is subject to special rules under the Telecommunications (Interception) Act 1979. (For further details see the Telecommunications Interception User Manual on the Intranet).<sup>25</sup>*

The June 2001 version of the NSWCC Telephone Interception Manual (TI Manual) set out the restrictions on using TI material, including information about TI warrant applications and the issue or existence of TI warrants.<sup>26</sup> The TI Manual stated that dealing with TI material (including providing it to another person, making use of it or making a record of it) is prohibited unless one or more of the exceptions set out in the relevant legislation applied to that dealing.<sup>27</sup> The relevant exception applying to the communication of designated warrant information is section 67 of the TI Act, which permits such communication if, and only if, it is for a permitted purpose under the Act.<sup>28</sup>

## 20.4.2 Secrecy requirements in the NSWCC Act

Section 29 of the now-repealed NSWCC Act imposed strict secrecy obligations on current and former members and staff of the NSWCC, and members of police task forces assisting the NSWCC. The obligations applied as well to any person who lawfully received confidential information from the NSWCC or from a police task force assisting the NSWCC.

Section 29(2) of the Act made it an offence for a person to make a record of, divulge, or communicate any information which they acquired, directly or indirectly, in the course of their duties at the NSWCC (hereafter referred to as NSWCC information). An express exception applied if this was done for the purposes of that Act or in connection with a person's functions under it:

### 29 Secrecy

- (1) *This section applies to:*
  - (a) *a member of the Commission, and*
  - (b) *a member of the staff of the Commission, and*
  - (c) *a member of a police task force assisting the Commission in accordance with an arrangement under section 27A, and*
  - (d) *a person to whom information is given either by the Commission or by a person referred to in paragraph (a), (b) or (c) on the understanding that the information is confidential.*
- (2) *A person to whom this section applies who, either directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act, and either while the person is or after the person ceases to be a person to whom this section applies:*
  - (a) *makes a record of any information, or*
  - (b) *divulges or communicates to any person any information,*  
*being information acquired by the person by reason of, or in the course of, the exercise of functions under this Act, is guilty of an offence punishable, on conviction, by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding one year, or both.*
- (3) *A person to whom this section applies shall not be required to produce in any court any document that has come into the person's custody or control in the course of, or by reason of, the exercise of functions under this Act, or to divulge or communicate to a court a matter or thing that has come to the person's notice in the exercise of functions under this Act, except where the Commission, or a member in the member's official capacity, is a party to the relevant proceedings or it is necessary to do so:*

<sup>25</sup> NSWCC, *Investigation Manual*, December 1999, p. 8.4.

<sup>26</sup> NSWCC, *Telephone Interception Manual*, June 2001.

<sup>27</sup> NSWCC, *Telephone Interception Manual*, June 2001, p. 13.

<sup>28</sup> Please refer to Appendix 3 (Volume 1) for more detailed discussion of the "permitted purpose" exception to the general prohibition on dealing with TI materials.

- (a) for the purpose of carrying into effect the provisions of this Act, or
- (b) for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission in the exercise of its functions.
- (4) In this section:
- court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.
- produce** includes permit access to.<sup>29</sup>

An object of section 29 was to restrict the unauthorised disclosure of materials and information obtained by NSWCC staff in the course of their work. The breadth of the restrictions would provide reassurance to informers, Commission staff and other agencies and persons. The offence provision in section 29(2) supplemented confidentiality and information management requirements in other Acts, such as the LD Act and the TI Act.

When the Bill to establish the NSWCC was being considered by Parliament, it was noted that the improper dissemination of information held by the NSWCC could undermine or frustrate investigations, endanger NSWCC informants and covert operatives, disclose NSWCC operations and methodologies, alert targets that they were under investigation, and enable recipients to defeat NSWCC investigative strategies, manipulate or destroy evidence, or avoid detection and scrutiny.<sup>30</sup> Section 29(3), which limited the production of information to courts and tribunals, was an essential part of this scheme to reduce the risk of sensitive information and documents being made public and reassuring people that they could provide confidential information to the NSWCC.

### 20.4.3 Authorised dissemination in the NSWCC Act

Section 7 of the NSWCC Act authorised the NSWCC to release information in the course of liaising with other bodies and organisations:

*The Commission may, with the approval of the Management Committee:*

- (a) disseminate intelligence and information to such persons or bodies as the Commission thinks appropriate, and
- (b) co-operate and consult with such persons or bodies as the Management Committee thinks appropriate.<sup>31</sup>

The functions of the Commission could be delegated to the Commissioner, an Assistant Commissioner or a member of staff of the Commission.<sup>32</sup> The commissioner could further delegate to an Assistant Commissioner or member of staff. A number of delegations were made on occasions by Bradley to NSWCC staff, including the position held by John Giorgiutti, who was Director and Solicitor to the NSWCC.<sup>33</sup> The delegations were expressed to apply to the following functions:

- to furnish “evidence, information and recommendations” and “disseminate investigatory, technological and analytical expertise” pursuant to section 6 of the Act<sup>34</sup>
- to disseminate “intelligence and information” pursuant to section 7 of the Act<sup>35</sup>

<sup>29</sup> NSWCC Act, s. 29 as in force from 6 December 1996 until repealed (historical version as at 3 April 2000 to 29 June 2003).

<sup>30</sup> The Hon. John Dowd AO QC MP, New South Wales Parliamentary Debates, (NSWPD), (Hansard), Legislative Assembly, 15 October 1985, p. 7845; The Hon. Gerry Peacocke MP, (NSWPD), (Hansard), Legislative Assembly, 15 October 1985, p. 7851.

<sup>31</sup> NSWCC Act, s. 7.

<sup>32</sup> NSWCC Act, s. 9(1).

<sup>33</sup> NSWCC, Instruments of Delegation and Authorisation for John Giorgiutti, Mark Standen and Tim O’Connor since 1999.

<sup>34</sup> NSWCC, Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 8 March 1999; NSWCC, Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 10 December 2001; NSWCC, Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 26 August 2004.

<sup>35</sup> NSWCC, Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 8 March 1999; NSWCC, Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 10 December 2001; NSWCC Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 19 September 2002. NSWCC, Delegation: Dissemination New South Wales Crime Commission Act 1985, pursuant to section 9, 26 August 2004.



- to communicate information obtained pursuant to section 68 of the TI Act,<sup>36</sup>
- all functions under the Government Information (Public Access) Act 2009,<sup>37</sup> and
- in 2012, pursuant to section 15(1) of the Crime Commission Act 2012 – the functions contained in section 13(a),<sup>38</sup> which are to “disseminate intelligence and information to such persons or bodies of the Commonwealth, the State or another State or Territory or country (including any task force and any member of a task force) as the Commission thinks appropriate”.<sup>39</sup>

It appears that delegations were renewed on roughly an annual basis.

When Peter Singleton replaced Bradley as Acting Commissioner of the NSWCC, he delegated powers pursuant to section 68 of the TI Act to a number of positions within the NSWCC, including the position then held by Giorgiutti.<sup>40</sup> This delegation was dated 2 February 2012.

#### 20.4.4 NSWPF policies and procedures on handling confidential information

The NSWPF Statement of Values<sup>41</sup> advises employees of the NSWPF as to what is expected of them. This includes adhering to section 7 of the Police Act, which states:

##### **7 Statement of values of members of NSW Police Force**

*Each member of the NSW Police Force is to act in a manner which:*

- (a) places integrity above all,*
- (b) upholds the rule of law,*
- (c) preserves the rights and freedoms of individuals,*
- (d) seeks to improve the quality of life by community involvement in policing,*
- (e) strives for citizen and police personal satisfaction,*
- (f) capitalises on the wealth of human resources,*
- (g) makes efficient and economical use of public resources, and*
- (h) ensures that authority is exercised responsibly.<sup>42</sup>*

The NSWPF Code of Conduct and Ethics provides that NSWPF employees must:

- 1. behave honestly and in a way that upholds the values and the good reputation of NSW Police whether on or off duty*
- 2. act with care and diligence when on duty*
- 3. know and comply with all policies, procedures and guidelines that relate to their duties*
- 4. treat everyone with respect, courtesy and fairness*

<sup>36</sup> NSWCC, *Authorisation to communicate information obtained pursuant to section 68 of the Telecommunications (Interception and Access) Act 1979*, 26 August 2004; NSWCC, *Authorisation to communicate information obtained pursuant to section 68 of the Telecommunications (Interception and Access) Act 1979*, 4 July 2006; NSWCC, *Authorisation to communicate information obtained pursuant to section 68 of the Telecommunications (Interception and Access) Act 1979*, 12 October 2007; NSWCC, *Authorisation to communicate information obtained pursuant to section 68 of the Telecommunications (Interception and Access) Act 1979*, 29 September 2009; NSWCC, *Authorisation to communicate information pursuant to section 68 of the Telecommunications (Interception and Access) Act 1979*, 2 February 2012.

<sup>37</sup> NSWCC, *Delegation: Government Information (Public access) Act 2009 pursuant to New South Wales Crime Commission Act 1985 pursuant to section 9*, 19 July 2010. Note this delegation was to Giorgiutti only.

<sup>38</sup> NSWCC, *Delegation: Crime Commission Act 2012, pursuant to section 15(1)*, 9 October 2012.

<sup>39</sup> *Crime Commission Act 2012*, s. 15(1).

<sup>40</sup> NSWCC, *Authorisation to communicate information Pursuant to section 68 of the Telecommunications (Interception and Access) Act 1979*, 2 February 2012.

<sup>41</sup> Professional Standards Command, 'Statement of Values,' *Police Weekly*, 2006, vol 18, issue 40, p. 3.

<sup>42</sup> *Police Act 1990*, s. 7.

5. *comply with any lawful and reasonable direction given by someone in NSW Police who has authority to give the direction*
6. *comply with the law whether on or off duty*
7. *take reasonable steps to avoid conflicts of interest, report those that cannot be avoided, and co-operate in their management*
8. *only access, use and/or disclose confidential information if required by their duties and allowed by NSW Police policy*
9. *not make improper use of their position or NSW Police information or resources*
10. *report misconduct of other NSW Police employees.*<sup>43</sup>

Item 10 in the NSWPF Code of Conduct and Ethics was codified in clause 49 of the Police Regulation 2008. That clause provided:

**49 Police officer to report misconduct**

- (1) *If:*
- (a) *an allegation is made to a police officer that another police officer has engaged in conduct which, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct, or*
  - (b) *a police officer sincerely believes that another police officer has engaged in any conduct of that kind,*

*the officer is required to report the conduct or alleged conduct by the other officer to a senior police officer (being a police officer who is more senior in rank than the officer making the report).*

- (2) *This clause does not apply to conduct or alleged conduct:*
- (a) *that has been made the subject of a complaint under Part 8A of the Act, or*
  - (b) *that has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or*
  - (c) *that has already been reported under this clause to a senior police officer.*
- (3) *A senior police officer to whom conduct (or alleged conduct) by a police officer is reported is required to report it promptly to the Commissioner or a police officer nominated by the Commissioner if the senior police officer believes that the conduct (or alleged conduct):*
- (a) *constitutes (or would constitute) a criminal offence, or*
  - (b) *could provide sufficient grounds:*
    - (i) *for taking section 80 dismissal action, or*
    - (ii) *for making a reviewable section 173 order or a section 181D order.*<sup>44</sup>

Clause 75 of the Police Regulation 2008 prescribed how confidential information is to be treated:

**75 Confidential information**

- (1) *A member of the NSW Police Force or a student of policing must treat all information which comes to his or her knowledge in his or her official capacity as strictly confidential, and on no account without proper authority divulge it to anyone.*

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<sup>43</sup> Professional Standards Command, 'Code of Conduct & Ethics', *Police Weekly*, 2006, vol 18, issue 40, p. 5.

<sup>44</sup> Police Regulation 2008 (repealed), clause 49. The current law is the Police Regulation 2015.

- (2) *In particular, a member of the NSW Police Force or a student of policing must observe the strictest secrecy in regard to NSW Police Force business, and is forbidden to communicate without proper authority in any way to any person outside the NSW Police Force any information in regard to police or other official business connected with his or her duties, or which may come to his or her knowledge in the performance of them.*
- (3) *Nothing in this clause operates so as to impede the due performance of operational police duties or to prevent the giving of information if it is reasonable to do so for the purpose of dealing with an emergency when life or property is at risk.*<sup>45</sup>

The NSWPF also offers guidance on identifying and dealing with conflicts of interest in the NSWPF Conflicts of Interest: Policy and Guidelines.<sup>46</sup> This Policy is discussed in more detail in the next chapter, and only a couple of features of the Policy will be mentioned at this stage, in relation to records management. The first is the definition of conflict of interests in the Policy:

*A conflict of interest occurs when the private interests of a NSW Police Force employee interferes with or influences, or appears to interfere with or influence their official duties and responsibilities or where an employee uses their official status to influence private interests.*<sup>47</sup>

A section of the Policy titled “High risk situations which may result in conflicts of interest” included the following item:

- *collecting, retaining, accessing and using confidential information on COPS, c@ts.i and other police systems (eg. using police information for personal reasons such as finding out personal details of a victim to pursue a relationship or use information inappropriately without authority).*<sup>48</sup>

Another important feature of the Policy is the obligation it places on all NSWPF employees to take reasonable steps to identify and avoid conflicts of interest’s, whether actual, potential or perceived. An essential step in managing a conflict of interest’s is to ensure that it is reported in writing to the officer’s supervisor.<sup>49</sup>

The submissions to Operation Prospect drew attention to other elements of the NSWPF legal and ethical framework that can make it challenging for an officer to decide on the appropriate course of action. A strong theme in submissions was the obligation upon NSWPF employees, and police officers in particular, to comply with lawful and reasonable directions given by more senior officers. This was raised especially in relation to the issue discussed in the next chapter, about whether it was proper for officers to access information at the request of a Deputy Commissioner. The obligation to carry out lawful directions is rooted in the following instruments:

- NSW Police Force Code of Conduct and Ethics, clause 5: “An employee of the NSW Police Force must ... comply with any lawful and reasonable direction given by someone in NSW Police who has authority to give the direction”.
- Police Act, section 201: “A police officer who neglects or refuses to obey any lawful order or carry out any lawful duty as a police officer is guilty of an offence”.
- Police Regulation 2008, clause 8: “Police officers are to ... promptly comply with all lawful orders from those in authority over them”.

One submission pointed as well to the following observation of (then) Deputy Commissioner Scipione in an article in *Police Weekly*:

<sup>45</sup> Police Regulation 2008 (repealed), regulation 75. The current law is the Police Regulation 2015.

<sup>46</sup> NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009.

<sup>47</sup> NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 3.

<sup>48</sup> NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 16.

<sup>49</sup> NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 3.

*You should remember that employees in positions of authority have access to information unavailable to you, for example, at critical incidents, emergency situations or in your daily work. Without their knowledge, directions you receive may not always make sense to you. However, as long as a direction is lawful, you must comply with it.*<sup>50</sup>

A final element of the NSWPF policy framework to be noted is the *NSW Police Force Handbook* (2010) that contained guidance for the discharge of official duties. A guideline relevant to the discussion in the next chapter is that NSWPF employees must “record access to the NSWPF computer system (not able to be justified by other means)” in a Police Notebook.<sup>51</sup>

## 20.5 Common law offences – misconduct in public office

The common law criminal offence of misconduct in public office has been used on occasion to prosecute law enforcement officials who have misused official information for private or personal purposes. It is for a court to decide the appropriate penalty to apply.<sup>52</sup>

The scope of the common law offence was defined by the Victorian Court of Appeal in *R v Quach* as follows:

[T]he elements of the offence are:

- (1) a public official;
- (2) in the course of or connected to his public office;
- (3) wilfully misconduct himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (4) without reasonable excuse or justification; and
- (5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.<sup>53</sup>

The generality of the offence is apparent from the elements – ‘wilfully misconduct’, ‘without reasonable excuse or justification’, and ‘serious and meriting criminal punishment’. Courts have observed that the offence is ‘necessarily cast in general terms’ as it is designed to cover many forms of misconduct,<sup>54</sup> and there is a ‘strong disinclination’ to delineate its scope.<sup>55</sup> It is important, in considering whether an offence has been committed, to undertake a qualitative assessment,<sup>56</sup> having regard to the form of misconduct alleged,<sup>57</sup> the nature of the office held<sup>58</sup> and the peculiar circumstances of the case.<sup>59</sup>

Of particular importance is the fifth element of the offence, requiring that the actions of the public official are serious and warrant criminal punishment. The Victorian Court of Appeal in *Quach* observed that “the conduct must be so far below acceptable standards as to amount to an abuse of the public’s trust in the office holder”.<sup>60</sup>

<sup>50</sup> *Police Weekly*, 2006, vol. 18, No 40, p. 12.

<sup>51</sup> *NSW Police Force Handbook* (2010), p. 456.

<sup>52</sup> *Blackstock v R* [2013] NSWCCA 172 at [8].

<sup>53</sup> *R v Quach* [2010] VSCA 106 at [46] per Redlich JA (Ashley JA and Hansen AJA concurring), drawing on the judgment of Sir Anthony Mason NPJ (sitting as a judge of the Hong Kong Court of Final Appeal) in *Sin Kam Wah v HKSAR* (2005) 8 HKCFAR 192. This formulation was endorsed by the NSW Court of Criminal Appeal in *Obeid v R* [2015] NSWCCA 309 at [133].

<sup>54</sup> *Shum Kwok Sher v HKSAR* [2002] 5 HKCSAR 381 at [91] per Mason NPF, where it was noted that to replace the common law offence with a statutory provision would be to run the risk that ‘the net would fail to catch some forms of serious misconduct’.

<sup>55</sup> *Obeid v R* [2015] NSWCCA 309 at [69].

<sup>56</sup> *Obeid v R* [2015] NSWCCA 309 at [141].

<sup>57</sup> *Shum Kwok Sher v HKSAR* [2002] 5 HKCSAR 381 at [88].

<sup>58</sup> Including the likely consequences of the breach: *AG’s reference* [2003] [2004] EWCA Crim 868 at [58].

<sup>59</sup> See generally the discussion of ‘reasonable excuse’ in *Taikato v The Queen* (1996) 186 CLR 454 at 464-466.

<sup>60</sup> *R v Quach* [2010] VSCA 106 at [47].

The offence has been applied to a broad range of misconduct by public officials. One situation in which it has been applied a number of times is in relation to misuse of official information.<sup>61</sup> This was explained by the Court in *Quach*:

*[U]se of knowledge or information acquired by the office holder in the course of his or her duties for a private or other impermissible purpose may be inconsistent with the responsibilities of the office and calculated to injure the public interest. If the misuse of the information is of a serious nature and is likely to be viewed as a breach of the trust reposed in the office so as to bring the office into disrepute, the conduct will fall within the ambit of the offence whether or not it occurs in the course of public office.*<sup>62</sup>

An example of the offence being applied was in *Jansen v R* to conduct of a police officer described as “three incidents of accessing, printing out, and disseminating highly confidential and sensitive criminal intelligence histories”.<sup>63</sup> The NSW Court of Criminal Appeal observed in that case: “Offences like this have a real potential to undermine public confidence in the police’s ability to maintain confidentiality in relation to information supplied by members of the public.”<sup>64</sup>

Consideration was given in preparing the following two chapters of this report as to whether the conduct of some NSWCC and NSWPF officers that is criticised in those chapters may have fallen within the boundaries of the common law offence of misconduct in public office. Having regard to the elements set out in *Quach* and the circumstances in which the conduct occurred, no such findings have been made. An important consideration in coming to this conclusion is that other findings were available that suitably addressed the conduct that is criticised.

As to some conduct discussed in Chapter 21, a finding is made that the actions of officials in accessing and communicating information was in contravention of the requirements of the NSWPF Code of Conduct and Conflict of Interests Policy. The discussion notes the explanation given by the officers for the actions they took and that, in their view, their conduct was not concealed. On the other hand, the officers held senior positions and shared a special responsibility to ensure that the Code of Conduct and Conflict of Interests Policy was adhered to. The findings against the officers draw attention to that.

As to some conduct discussed in Chapter 22, a finding is made that the actions of officials may have been contrary to law by contravening a statutory offence provision. The specific offence provisions are noted in the chapter. Those findings address adequately and more directly the actions that are criticised than would a broader finding of misconduct in public office.

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61 See also *Hughes v R* [2014] NSWCCA 15, and *Question of Law Reserved (No 2 of 1996)* [1996] SASC 6202; (1996) 62 SASR 63.

62 *R v Quach* [2010] VSCA 106 at [40].

63 [2013] NSWCCA 201 at [9] per Campbell J (Basten JA and Price J concurring).

64 [2013] NSWCCA 201 at [26] per Campbell J (Basten JA and Price J concurring).

# Chapter 21. Internal access to and circulation of confidential documents – events in 2010

## 21.1 Media article in August 2010 alluding to Mascot investigations

On 29 August 2010 a small article written by Les Kennedy appeared in the *Sun Herald's* 'Law and Order' section. The article referred to a book by former NSWPF Assistant Commissioner Clive Small entitled *Betrayed: The Shocking Story of Two Undercover Cops*, which was to be released the following day. The article stated that the book did not include any information on:

*"an unlawful operation by Special Crime and Internal Affairs (SCIA) and the Crime Commission in 2000 in which 114 detectives, including now Deputy Commissioner Nick Kaldas, were bugged".*<sup>65</sup>

This appeared to be a reference to the Mascot operation and to LD warrant 266/2000.

This chapter considers the actions taken in 2010 by a number of officers in response to the publication of that article. Two prominent themes are:

- an attempt by Burn to seek correction of a statement in the article
- the steps initiated by Kaldas to access material about inquiries undertaken by the NSWPF into the operations of SCIA – as referred to in the article.

Operation Prospect decided to examine the grounds upon which Kaldas sought or was given access to material on three occasions:

- on 29 September – in an email request to the Commander of the PSC
- on 1 October – in a request made to an officer who had worked on some relevant Strike Force investigations
- on 5 October – when he was given a briefing note prepared by a PSC officer.

The particular focus of this examination was whether Kaldas's requests related to the proper discharge of his functions as Deputy Commissioner, or whether his requests were in pursuit of a personal grievance that he was improperly targeted by the Mascot investigations. He had previously made his grievance known to Emblems and was referred to as 'an aggrieved officer' in its report.<sup>66</sup> A key issue for Operation Prospect was whether Kaldas's actions raised a conflict of interests issue that was not properly addressed, and whether other officers who acted on his request for information should have raised a conflict of interests concern or taken different action.

### 21.1.1 Burn seeks a correction to the article

After the publication of the Kennedy article, Burn sought to have the statement about 'an unlawful operation by SCIA and the Crime Commission' corrected by the newspaper. Burn gave evidence to Operation Prospect that this was taken up with Kennedy by Strath Gordon, Director of the NSWPF Public Affairs Branch.<sup>67</sup> Efforts to have a retraction or correction published continued during September 2010.<sup>68</sup> The matter was listed as an item for discussion at a regular scheduled meeting between Burn and Commissioner of Police Andrew Scipione that took place on 22 September 2010.<sup>69</sup> It was agreed at the meeting that Burn would write to the editor of the *Sun Herald* seeking publication of a retraction or correction of the comment in Kennedy's article, and this would be done in Burn's personal capacity rather than as a representative of the NSWPF's position.

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<sup>65</sup> Kennedy, Les, 'Law and Order', *Sun Herald*, 29 August 2010, p. 16.

<sup>66</sup> NSWPF, *Report of Strike Force Emblems*, 22 March 2004, p. 18.

<sup>67</sup> Statement of Information (Written), Catherine Burn, 1 August 2014, pp. 3-4.

<sup>68</sup> Statement of Information (Written), Catherine Burn, 1 August 2014, p. 3.

<sup>69</sup> Statement of Information (Written), Catherine Burn, 1 August 2014, p. 2; Statement of Information (Written), Andrew Scipione, 23 July 2014, pp. 2 and 5.

On 25 September 2010 Kaldas sent an email about the matter to Scipione and Burn, with copies sent to Gordon, David Owens (Deputy Commissioner Field Operations), and Paul Carey (Assistant Commissioner and Commander of Professional Standards). Kaldas's email stated that he had been contacted by the *Sun Herald* to comment on the requested retraction or correction to the comment in the Kennedy article, that "the LD warrant for 114 people some years ago was not quite kosher".<sup>70</sup> Kaldas's email stated that neither he nor Carey were aware of NSWPF correspondence on this matter, and in his view it was unacceptable for the NSWPF to be "apparently defending an era long gone" when neither Carey (as head of the PSC) nor himself (as Carey's superior) were aware of it.<sup>71</sup> At the time, PSC was under the command of Kaldas as Deputy Commissioner Specialist Operations.<sup>72</sup> Kaldas's email also:

- requested that all correspondence purporting to represent the NSWPF's views on this matter cease until the PSC was involved
- raised the possibility of a meeting "early next week" to discuss the matter
- noted that he (Kaldas) had told the *Sun Herald* that the NSWPF would not be commenting on the matter that day.<sup>73</sup>

Later the same day, Burn replied by email to Kaldas's email (copied to the other addressees). Her reply explained that the contact with the *Sun Herald* was for the purpose of correcting the 'unlawful operation' comment in Kennedy's article, and that steps taken to correct that comment were "consistent with other similar circumstances we face".<sup>74</sup>

This email exchange prompted the Director of the Office of the Commissioner of Police to email Scipione to seek direction. At 7:32 pm the same day, Scipione wrote back:

*Cb [Catherine Burn] has responded. They should both just let it go. If they can't sort it out I will sort it out for them first thing on Tuesday.*

*Nothing to be done at the moment.*<sup>75</sup>

## 21.1.2 Kaldas requests material about Strike Force reports (29 September 2010)

At 8:32 am on 29 September 2010 Kaldas sent an email to Carey (copied to Kaldas's staff officer, Darren Spooner) asking that the findings and recommendations from NSWPF Strike Forces Banks, Shillingstone,<sup>76</sup> Tumen, Sibutu and Emblems be provided to him.<sup>77</sup> Those strike forces had identified or investigated allegations of misconduct and unlawful activity by members of SCIA. Kaldas's email stated:

*Paul, (CC Darren)*

*As you're aware, some weeks ago there was an article written by Sun Herald reviewing the Clive Small book, "Betrayed", and in that article, the Sun Herald made a comment regarding the Brammer years, in an adverse way. That was objected to by some, and efforts were made through public affairs to have a retraction/ withdrawal of the allegation that anything untoward took place in the Brammer years. I think you were part of that email chain.*

<sup>70</sup> Email from Deputy Commissioner Nick Kaldas, NSWPF to Deputy Commissioner Catherine Burn, NSWPF and Commissioner Scipione, NSWPF, 25 September 2010.

<sup>71</sup> Email from Deputy Commissioner Nick Kaldas, NSWPF to Deputy Commissioner Catherine Burn, NSWPF and Commissioner Scipione, NSWPF, 25 September 2010.

<sup>72</sup> NSWPF *Annual Report 2010 - 2011*, p. 8.

<sup>73</sup> Email from Deputy Commissioner Nick Kaldas, NSWPF to Deputy Commissioner Catherine Burn, NSWPF and Commissioner Scipione, NSWPF, 25 September 2010.

<sup>74</sup> Email from Deputy Commissioner Catherine Burn, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 25 September 2010.

<sup>75</sup> Email from Commissioner Andrew Scipione, NSWPF to [Director of the Office of the Commissioner of Police], NSWPF, 25 September 2010.

<sup>76</sup> Strike Forces Banks and Shillingstone were reviews of SCIA activity but did not relate to Operation Mascot.

<sup>77</sup> Email from Deputy Commissioner Nick Kaldas, NSWPF to Assistant Commissioner Paul Carey, NSWPF and Superintendent Darren Spooner, NSWPF, 29 September 2010.

*There were a number of Task Forces set up to investigate a broad range of allegations against Brammer and his unit. I am broadly aware of most of them, but not the specific findings. Clive Small appears to have had full access to them, and actually lists the findings.*

*This matter may not go away, and I feel either internally or at a press conference, I may well be called on to comment. I will obviously be circumspect, and will not be volunteering anything, but particularly in internal discussions, I need to be better informed if my view is to prevail. I am at a distinct disadvantage at the moment.*

*So, with your concurrence, I will ask Darren to gather the below material for me, which I am happy to borrow and return intact, so that I am better informed. Happy to discuss further if you want to, and I hope its not onerous.*

*Regards*

*NK*

*The material which I think may be relevant, but not restricted to includes the FINDINGS\RECOMMENDATIONS only for the following task forces:*

- T/F Banks, where adverse findings were made against a number of officers, and recommendations regarding criminal charges, although not ultimately acted on.*
- T/F Shillingstone, regarding allegations of conflict of interest, breaches of the Protected Disclosures Act, pervert the course of justice, etc., [names]*
- T/F Tumen, involved 16 adverse findings against 5 officers*
- T/F Sibutu,*
- T /F Emblems*

The 'Brammer years' is a reference to the period in which Assistant Commissioner Malcolm Brammer was Commander of SCIA.

Kaldas's email was not sent to Scipione, Burn or Owens. It should be noted that neither Emblems nor matters directly related to it were referred to in *Betrayed*. Operation Prospect has been unable to identify any particular media attention regarding those matters in September 2010.

### **21.1.3 Burn's draft letter to the Sun Herald**

At 3:03 pm on 29 September 2010 Burn emailed Kaldas a draft letter to the editor of the *Sun Herald* in which she sought a correction to the August 2010 article on the basis that "at no point has there been any finding that the operation [Mascot] was unlawful".<sup>78</sup> Burn's email did not explicitly seek Kaldas's feedback or comments on the draft letter.<sup>79</sup>

At 5:05 pm Kaldas forwarded Burn's email to his staff officer Spooner and Spooner's executive officer stating: "Confidential FYI and for discussion tomorrow".<sup>80</sup> Operation Prospect has been unable to determine whether this discussion took place or what its contents may have been. Neither Spooner<sup>81</sup> nor Kaldas<sup>82</sup> had any recollection or written record of any such discussion. Spooner's executive officer provided a written statement to Operation Prospect that she has no recollection of any meeting taking place to discuss Burn's draft letter.<sup>83</sup>

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78 Email from Deputy Commissioner Catherine Burn, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 29 September 2010.

79 Email from Deputy Commissioner Catherine Burn, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 29 September 2010.

80 Email from Deputy Commissioner Nick Kaldas, NSWPF to Superintendent Darren Spooner, NSWPF and [Spooner's Executive Officer], NSWPF, 29 September 2010.

81 Ombudsman Transcript, Darren Spooner, 19 August 2014, p. 1805.

82 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2262.

83 Statement of Information (Written), [Spooner's Executive Officer], 12 March 2015, pp. 2-3.



At 5:20 pm Kaldas forwarded Burn's email to two of Scipione's staff (the Director of the Office of the Commissioner of Police, and the Manager, Executive Advisory for Police Executive Officers) stating:

*For your info regards*

*"Gary Giveup"!<sup>84</sup>*

When asked by Operation Prospect what he meant by this, Kaldas responded that he felt "I was giving her up, I guess, by sending this to the Commissioner" and that it would have been a joke on his part.<sup>85</sup>

At 5:25 pm Kaldas replied to Burn's email and draft letter:

*Thanks Cath, appreciate it.*

*We may need to talk about this, I'm not sure this is the corporate view, and I'm not sure this is a good thing to do right now dragging it all back up again when its [sic] dead. Is Andrew aware of this, and has he sanctioned it? Happy to discuss my concerns if you want.*

*Regards*

*NK<sup>86</sup>*

At 5:31 pm Burn replied to Kaldas's email:

*Nick,*

*Believe me, the last thing I want to do is drag this up but that is not something I can control as it has already happened through Kennedy's recent article. It is very distressing all round but it should not be allowed to stand.*

*The bottom line is that it has never been found to be unlawful. If there is a suggestion it is then I would be seeking a further investigation. I have no idea why Kennedy made the comment as it is not mentioned in Clive's book in anyway [sic]. That suggests to me it is not going away.*

*Re the Corporate view – there is nothing corporately that states it is an unlawful operation so the record should be corrected.*

*The Commissioner is aware as I briefed him last week.<sup>87</sup>*

A chain of emails between Burn and the Director of the Office of the Commissioner of Police on the same day indicates that Burn did not send her letter to the editor of the *Sun Herald*, as it was to be discussed at a meeting between her and the Commissioner the following week. At 7:07 pm the Director sent an email to Kaldas to advise him of this fact:

*I confirmed that this hasn't been sent NK. CB will discuss with the CoP on Friday [1 October 2010] when he gets back.<sup>88</sup>*

At 9:07 pm Scipione sent an email to the Director about Burn's proposed letter:

*Spoke to CB. Nothing is going to be sent until we discuss.*

*I have asked that she bring the letter and supporting papers into our next meeting on Tuesday [5 October 2010].*

*We will sort this out then.<sup>89</sup>*

84 Email from Deputy Commissioner Nick Kaldas, NSWPF to [Manager, Executive Advisory for Police Executive Officers], NSWPF and [Director of the Office of the Commissioner of Police], NSWPF, 29 September 2010.

85 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2262.

86 Email from Deputy Commissioner Nick Kaldas, NSWPF to Deputy Commissioner Catherine Burn, NSWPF, 29 September 2010.

87 Email from Deputy Commissioner Catherine Burn, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 29 September 2010.

88 Email from [Director of the Office of the Commissioner of Police], NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 29 September 2010.

89 Email from Commissioner Andrew Scipione, NSWPF to [Director of the Office of the Commissioner of Police], NSWPF, 29 September 2010.

The following morning, 30 September 2010 at 8:19 am Kaldas replied to the email from the Director the previous evening:

*Thanks [Name],*

*Appreciate it*

*I have slept on it, and what will be will be.*<sup>90</sup>

The Director told Operation Prospect that she took this to mean that Kaldas was no longer going to pursue the matter – that is, Kaldas was saying in effect: “I don’t need you to continue this with the Commissioner”.<sup>91</sup>

At 8:19 am Kaldas sent Burn an email about her earlier justification for seeking a correction. His email stated:

*Thanks Cath, what will be will be, I guess*

*NK*<sup>92</sup>

There was no indication in any of these emails that Kaldas had in fact sought material drawn from the Strike Force reports the previous day – namely, in his email sent at 8:32 am to Carey. Kaldas told Operation Prospect that his statements that “what will be will be” did not indicate that he was simply going to drop the matter, but that “it’s more an acceptance by me that I can’t stop her from doing what she wants to do”.<sup>93</sup>

#### 21.1.4 Actions of other officers on 29 September in response to Kaldas’s request

At 11:33 am on 29 September 2010 an officer within the PSC emailed Carey brief details about the identified strike forces from the NSWPF complaint management system c@ts.i.<sup>94</sup> The officer’s diary for 29 September 2010 records that she “[searched] T/F names referred to in Small Book (Sibu2 [sic], Banks, Shillington, Tuman [sic] + Emblems). Email Mr Carey with the brief details obtained from c@tsi/CIS”.<sup>95</sup> The officer’s email to Carey noted that the investigations looked to “have been run within Eaglei [sic]” – a system to which she did not have access – and that only limited details were available on c@ts.i and CIS (a NSWPF complaint information system).<sup>96</sup>

At 5:29 pm, Spooner forwarded Kaldas’s email to Carey from earlier that day requesting information about the Strike Forces to Detective Inspector Matthew Craft with the following additional text – “As discussed with Deputy today”.<sup>97</sup> At the time, Craft was the Professional Standards Manager for Specialist Operations. He was working within the Police Executive Offices and came under Kaldas’s command. Kaldas did not recall the contents of the discussion referred to in Spooner’s email.<sup>98</sup>

At 5:44 pm, Carey forwarded Kaldas’s email to him on to Detective Sergeant Paul Dunstan (Carey’s staff officer) and Detective Superintendent Mark Walton (senior PSC Officer) stating:

*Chaps*

*This is hotting up considerably tomorrow we need to place our hands on as much as possible and hand over to Nick some is [sic] eaglei safes and boxes.*<sup>99</sup>

Operation Prospect asked Carey about the actions he took in response to Kaldas’s email.<sup>100</sup> Carey was unable to complete his evidence to Operation Prospect however he provided written submissions which are discussed at section 21.3.6.

90 Email from Deputy Commissioner Nick Kaldas, NSWPF to [Director of the Office of the Commissioner of Police], NSWPF, 30 September 2010.

91 Ombudsman Transcript, [Director of the Office of the Commissioner of Police], 22 July 2014, p. 84.

92 Email from Deputy Commissioner Nick Kaldas, NSWPF to Deputy Commissioner Catherine Burn, NSWPF, 30 September 2010.

93 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2269.

94 Email from [Professional Standards Command officer], NSWPF, to Assistant Commissioner Paul Carey, NSWPF, 29 September 2010.

95 NSWPF Duty Book, D077034, [Professional Standards Command Officer], Professional Standards Command, 29 September 2010, p.16.

96 Email from [Professional Standards Command Officer], NSWPF, to Assistant Commissioner Paul Carey, NSWPF, 29 September 2010.

97 Email from Superintendent Darren Spooner, NSWPF to Detective Inspector Matthew Craft, NSWPF, 29 September 2010.

98 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2264-2265.

99 Email from Assistant Commissioner Paul Carey, NSWPF to Detective Superintendent Mark Walton, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 29 September 2014.

100 Ombudsman Transcript, Paul Carey, 3 September 2014, pp. 2148 -2154.

Operation Prospect showed Dunstan a copy of the Kaldas email that Carey had sent to Dunstan at 5:44 pm on 29 September 2010. Dunstan did not recall the email, but added: “They have clearly been sent to me, but it doesn’t prompt any great recollection of what has occurred”.<sup>101</sup>

At 5:44 pm that day, Walton (the other recipient of Carey’s email) was about to start relieving in Carey’s position as Commander PSC for a short period. Walton told Operation Prospect that he assumed Carey sent the email to him and Dunstan to action, or possibly that Carey was just letting him know about it.<sup>102</sup> Walton did not recall “whether [he] actively did anything in relation to this request”.<sup>103</sup> In reference to the words “this is hotting up considerably”, Walton stated that he inferred from the email and from “having a look at the Internet” that it had something to do with Small’s book outlining allegations about the conduct of one or more SCIA investigations.<sup>104</sup> Walton interpreted the phrase ‘hotting up considerably’ to mean that there was increased interest in the issue. He commented that “my inference is that there’s an increased level of interest as a result of that publication”, but that he did not know whether this was media interest or internal to the NSWPF.<sup>105</sup> Walton said that he thought “one element of the executive has tried to get it retracted and Mr Kaldas is of a different view”.<sup>106</sup> Walton did not recall discussing these issues with Kaldas.<sup>107</sup>

### 21.1.5 Emblems report accessed by Cook and given to Dunstan and Craft (30 September 2010)

On 30 September 2010 Dunstan contacted Detective Acting Superintendent Michael Cook, Officer in Charge of the Investigations Unit of the PSC, to ask Cook to provide him with a copy of the Emblems report at the request of Carey. Shortly after, at 12:02 pm, Cook accessed the Emblems report via the NSWPF e@gle.i system,<sup>108</sup> and at 12:11 pm emailed it to Dunstan.<sup>109</sup> Cook did not make any record of his access to e@gle.i or of providing the report to Dunstan.<sup>110</sup>

In his evidence to Operation Prospect, Cook could not recall his exact conversation with Dunstan – but assumed that Carey had instructed Dunstan to obtain the document.<sup>111</sup> Cook gave evidence that, at that time, he knew the Emblems report involved an allegation that an affidavit relating to applications for “some surveillance device warrants” had been “asserted to be unlawful” and that Kaldas was aggrieved about being named on a related warrant.<sup>112</sup>

Dunstan stated that he had no recollection of seeking or obtaining the Emblems report from Cook. He assumed he would have been asking for it on Carey’s behalf. Dunstan had no relevant records relating to this matter.<sup>113</sup> The information before Operation Prospect suggests that Dunstan may have chosen to approach Cook because Cook had ‘super user access’ to e@gle.i. Some years before, Cook was involved in developing the e@gle.i information system and needed that level of access for those activities.<sup>114</sup> Cook’s level of access in 2010 was not linked to his position at that time, and appears to have been an overlooked legacy from his earlier role.<sup>115</sup> Cook gave evidence that he had a reputation as the ‘go-to person’ if someone wanted to access any e@gle.i investigations.<sup>116</sup> Walton also gave evidence that Cook would be the go-to person to access historical e@gle.i material.<sup>117</sup>

101 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p. 1915.

102 Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1744-1745.

103 Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1746-1747.

104 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1747.

105 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1747.

106 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1743.

107 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1744.

108 NSWPF, e@gle.i Audit Report of Emblems Access by Detective Inspector Michael Cook, 1 September 2010 to 1 December 2011, 1 August 2014.

109 Email from Detective Acting Superintendent Michael Cook, NSWPF to Detective Sergeant Paul Dunstan, NSWPF, 30 September 2010.

110 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1680.

111 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1710-1711.

112 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1697-1699.

113 Ombudsman Transcript, Paul Dunstan, 21 August 2014, pp. 1918-1919.

114 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1690-1691.

115 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1690-1691.

116 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1707.

117 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1769.

At 3:38 pm, Cook sent Craft a copy of the Emblems report via email.<sup>118</sup> Cook could not explain why he sent the Emblems report to Craft, but conjectured that

*... we had a conversation that I have provided a copy of that document to Mr Carey earlier in the day, and there may have been a request or an offer to provide a copy of that document so that he could read it.*<sup>119</sup>

Cook conceded that providing the Emblems report to Craft was not appropriate in hindsight, but that he “[didn’t] think there was any mischief involved in it”.<sup>120</sup>

### 21.1.6 Craft – access to materials and discussion with Kaldas

Craft’s evidence to Operation Prospect was that he did not recall Kaldas asking him to access Emblems material on c@ts.i or e@gle.i, and that it would have been improper for Kaldas to have tried to access that material.<sup>121</sup> An access audit conducted by the NSWPF and provided to Operation Prospect reveals that between 8:29 am and 8:40 am on 30 September 2010 Craft accessed four complaints on the c@ts.i database which related to the actions of former SCIA Officers.<sup>122</sup> Two of these complaints related to Operation Mascot and subsequently formed part of the Emblems report.<sup>123</sup> This indicates that Craft did in fact access that material, seemingly in response to Kaldas’s requests for it as set out in the email forwarded by Spooner to Craft. The audit also identified that Craft accessed and printed a number of documents from within these complaints, but does not identify which documents were accessed or printed. In his evidence to Operation Prospect, Craft stated that he did not recall why he had accessed those four complaints on c@ts.i.<sup>124</sup>

At 8:54 am Craft emailed a request to the NSWPF e@gle.i support section asking to be granted read-only access to Banks, Shillingstone, Sibutu, Tumen and Emblems “at the request of Deputy Commissioner KALDAS”.<sup>125</sup> When asked in evidence about this email request, Craft did not recall seeking access and stated he was “confused” because he did not understand why he would have sought it.<sup>126</sup> Operation Prospect accepts that this email constituted a written record of Craft’s reasons for seeking access to those strike forces on e@gle.i.

An audit of Craft’s official NSWPF ‘on-line chat’ function revealed that between 11:54 am and 1:44 pm on the same day he engaged in on-line chat with an officer from the NSWPF e@gle.i support section. During this time, the e@gle.i support officer apparently provided instructions about how to access the investigations. The e@gle.i support officer gave evidence to Operation Prospect that he did not recall this interaction with Craft.<sup>127</sup> When presented with the on-line chat records, the e@gle.i support officer stated that it appeared to him that he was assisting Craft to fully utilise the level of access that Craft already had.<sup>128</sup> The e@gle.i support officer noted that normal course of practice would be for the ‘requesting officer’ to first approach the Officer in Charge of the investigation to gain access – as that officer was readily able to grant e@gle.i access.<sup>129</sup> Records before Operation Prospect indicate that in September 2010 Craft already had access to materials relating to Sibutu, Tumen and Shillingstone.

An audit of the e@gle.i system undertaken by the Ombudsman reveals that – between 12:47 pm and 2:51pm on the same day – Craft accessed extensive investigative information, including the final reports for Sibutu, Tumen and Emblems.<sup>130</sup> This included records of interview, information on complaints about Mascot (some of which were subsequently referred to Operation Prospect), briefing notes to the Minister for Police, and internal memoranda and records of meetings. In his evidence, Craft could not recall why he had undertaken such actions and stated that he did not believe he had printed any material.<sup>131</sup>

118 Email from Detective Acting Superintendent Michael Cook, NSWPF to Detective Inspector Matthew Craft, NSWPF, 30 September 2010.

119 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1725-1726.

120 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1721 and 1723.

121 Ombudsman Transcript, Matthew Craft, 21 August 2014, p. 1952.

122 c@ts.i audit on Inspector Matthew Craft for 30 September 2010, complaint IDs [number], [number], [number], [number].

123 NSWPF, c@ts.i [number], [number], [number], [number], [number], [number], Investigator’s Report by Detective Inspector Mark Galletta, Strike Force Emblems, 22 March 2004.

124 Ombudsman Transcript, Matthew Craft, 21 August 2014, pp. 1957-1958.

125 Email from Detective Inspector Matthew Craft, NSWPF to e@gle.i Support, NSWPF, 30 September 2010.

126 Ombudsman Transcript, Matthew Craft, 21 August 2014, pp. 1975-1976.

127 Statement of Information (Interview), [e@gle.i Support Officer], 18 March 2015, p. 21.

128 Statement of Information (Interview), [e@gle.i Support Officer], 18 March 2015, pp. 21-22.

129 Statement of Information, (Interview), [e@gle.i Support Officer], 18 March 2015, p. 13.

130 e@gle.i audit of Matthew Craft on Strike Forces Sibutu, Tumen and Emblems, 30 September 2010 (created 1 August 2014).

131 Ombudsman Transcript, Matthew Craft, 21 August 2014, p. 1976.

At 5:42 pm on 30 September 2010 Craft sent the following email to Kaldas:

Sir,

*having returned to my office I have given your situation some further thought and here are a few suggestions I have.*

*There is no doubt the Deputy Commissioner Specialist Operations needs to be across this issue and is well informed. If there was another officer sitting in your chair we would not be having this conversation. However what makes this situation unique and problematic is that you are also an aggrieved officer. I feel there is a need to protect you from any unfounded allegations that you have a vested interest in pursuing [sic] this matter as a personal crusade. I understand this is not the case.*

*I believe there is a possibility that the laudable motives you have in taking an interest in this issue, that being the betterment of the corporate image of the NSW Police and the protection of the Commission maybe adversely lost by scuttlebutt and innuendo.*

*Having said that if we roughly follow the following points we will be well positioned to refute any future allegations that your motives for becoming involved and offering an opinion were anything less than altruistic.*

- (1) You comprehensively document how this issue came to light to demonstrate that it was not an issue highlighted by yourself but rather the Clive SMALL publication and the actions of DCoP BURN. That is, it was the interest of others not your own that precipitated your response / action.*
- (2) A comprehensive summary of the nature of any complaint issues along with the findings is prepared. This process should only be concerned with issues where sustained finding have been recorded against Mr BRAMMER.*
- (3) That any individual involved in the preparation of this summary document could not be seen as having a vested interest in the outcome.*
- (4) Any analysis of the corporate records in relation to the complaints against Mr BRAMMER is completed externally to the Office of the Deputy Commissioner Specialist Operations.*
- (5) As the records are corporately held by the Professional Standards Command, any advice is prepared by that command and you are briefed accordingly. This prevents any allegations that you have flavoured or influenced the information provided to the CoP.*
- (6) Any information provided to the CoP is vetted to remove opinion and is based on empirical evidence supported by the relevant corporate documents.*
- (7) That the document is disseminated to the other DCoP's to demonstrate transparency and a willingness to share the FACTS about the matters involving Mr BRAMMER. That way the most senior officers have all of the necessary information to make an informed judgement.*
- (8) That the corporate line should be on the preliminary analysis completed that the less said about this matter the better.*

*These are my thoughts.*

*There is no way we can completely protect you from allegations of bias, however if we follow these points we can limit the damage and demonstrate a transparent methodology on how we arrived at our conclusions and opinions.*

*Kind regards  
Matt<sup>132</sup>*

It is important to note that this email was sent after action had been taken to obtain the requested documents, despite the advice in Craft's email.

---

132 Email from Detective Inspector Matthew Craft, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 30 September 2010.

Craft could not recall typing or sending this email. He stated that he believed its contents to be “reasonable”. Craft disagreed with the suggestion that his email was “manufacturing a cover” for Kaldas to seek documents for an illegitimate purpose. In evidence Craft said:

*I don't believe I have assisted him to actually get the information. I don't recall giving him that information. What I believe this email represents is me, having read the email from Mr Spooner, having read the material, realising the potential that this has to compromise him as the Deputy Commissioner, and suggesting a different way forward.*

...

*I don't believe I actually give him reasons, or giving him excuses, or information to actually cover up, me providing that information. To me this email indicates that I've obviously felt uncomfortable having read it all, and suggesting that he doesn't get it holus-bolus as per his email, and that we do it in a different way. I don't even recall whether this email was followed, or my advice was followed. ...*

....

*... These are corporate records. Let's give them to everybody. If he's concerned he's talking - if questions are asked about - in the media, they're going to be asked not only by Mr Kaldas but Deputy Commissioner Burn and Owens at the time. Let's give it to everybody. Let's make the COP the ultimate decision-maker as to what information goes out.<sup>133</sup>*

Kaldas also could not recall Craft's email. When given a copy during evidence, Kaldas stated that he thought it was “sensible advice”.<sup>134</sup> He could not recall if he followed the advice and seemed to think that he had not, stating that he “probably didn't see any point” in ensuring that any document prepared in accordance with numbered paragraph 7 of Craft's email was provided to the other Deputy Commissioners.<sup>135</sup>

The evidence before Operation Prospect suggests that the advice in Craft's email of 30 September 2010 was not followed. There is no evidence that Owens, Burn<sup>136</sup> or Scipione<sup>137</sup> were given a copy of any analysis document (the preparation of which is discussed at 21.1.9), or informed of Kaldas's request for the material identified in his email to Carey on 29 September 2010.

### 21.1.7 Galletta provides Strike Force Tumen report to Kaldas (1 October 2010)

On 1 October 2010 Kaldas contacted Detective Inspector Mark Galletta – who had earlier been on the investigating teams for Sibutu and Tumen, and was the lead investigator and author of the Emblems report. At that time, Galletta was assigned to Strike Force Void (which investigated armed robberies) and was working at the NSWPF Metropolitan Robbery Unit. He recorded notes from this conversation with Kaldas on e@gle.i and in a private diary.<sup>138</sup>

In his evidence to Operation Prospect, Galletta stated that Kaldas had told him he already had the Emblems report but needed the Tumen report for a meeting with Burn about “issues pertaining to former A/C [Assistant Commissioner] Malcolm Brammer”.<sup>139</sup> According to Galletta, Kaldas directed him to forward the Tumen executive report and summary to Kaldas's private email address.<sup>140</sup> Galletta attached those documents to an email sent from his private email address to Kaldas's private email address at 10:07 am the same day, to which Kaldas replied at 6:05 pm.<sup>141</sup> Galletta accessed the Tumen report from floppy discs that he had at home.<sup>142</sup>

<sup>133</sup> Ombudsman Transcript, Matthew Craft, 21 August 2014, p. 1987.

<sup>134</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2276.

<sup>135</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2277.

<sup>136</sup> Statement of Information (Written), Catherine Burn, 1 August 2014, pp. 1-2.

<sup>137</sup> Statement of Information (Written), Andrew Scipione, 23 July 2014, pp. 2-3.

<sup>138</sup> Diary, Mark Galletta, 1 October 2010; NSWPF, e@gle.i Investigation Log Entry, Mark Galletta, 1 October 2010; Ombudsman Transcript, Mark Galletta, 20 August 2014, pp. 1838-1841.

<sup>139</sup> Diary, Mark Galletta, 1 October 2010.

<sup>140</sup> Ombudsman Transcript, Mark Galletta, 20 August 2014, p. 1838-1839.

<sup>141</sup> Email from Deputy Commissioner Nick Kaldas, NSWPF to Inspector Mark Galletta, NSWPF, 1 October 2010.

<sup>142</sup> Ombudsman Transcript, Mark Galletta, 20 August 2014, p. 1837.

When questioned about these events, Galletta said that he “didn’t think it was untoward” that Kaldas had asked him to send electronic copies of the Tumen report and summary to Kaldas’s private email address.<sup>143</sup> Nor did Galletta consider it inappropriate to provide the Tumen report to Kaldas,<sup>144</sup> as this was a direction from a Deputy Commissioner who said he needed the report for a meeting.<sup>145</sup> This account is consistent with the entry that Galletta made on e@gle.i, which refers to Kaldas’s request, the reason for the request and the use of private email addresses.<sup>146</sup>

Galletta agreed in evidence to Operation Prospect that a request from Kaldas for the Emblems report “would be a completely different thing ... the whole context of Emblems and who it involved”.<sup>147</sup> Galletta would have been aware that the Emblems report summarised Kaldas’s complaint, named many senior NSWCC and NSWPF officers (including Brammer and Dolan), and that the Strike Force met with Kaldas when undertaking its investigation. The Tumen Report named Brammer and Dolan as target officers.<sup>148</sup>

Kaldas gave the following evidence when questioned about this interaction with Galletta. He said that:

- He did not recall having any contact with Galletta in the last few years, other than possibly at one retirement dinner.<sup>149</sup>
- He did not remember telling Galletta that he had a copy of the Emblems report.<sup>150</sup>
- If he did email Galletta and ask him to provide a copy of the Tumen report, “it was probably tongue in cheek, because I don’t think he would have”.<sup>151</sup>
- He could not recall why he would have asked Galletta for a copy of the Tumen report, “but it may have been something that has come up at that time” in respect of other NSWPF officers aggrieved about matters investigated by Tumen.<sup>152</sup>

## 21.1.8 Discussion of proposed correction of Kennedy article

At 5:28 pm on 1 October 2010 Walton (who had by then assumed duty as Acting Commander PSC as Carey was on leave) sent an email to Carey and Dunstan stating:

*Just to keep you in the loop I just spoke to DCOP Kaldas and he indicated that the proposed meeting between the COP and DCOP Burn did not eventuate today and it was now set for a meeting on Tuesday afternoon. DCOP Kaldas indicated that he understands DCOP Burn intends to press her intention to petition the Herald for a retraction and is not bending in relation to this view. Mr. Kaldas indicated that despite appreciating the difficult position we are in to provide a complete briefing to him on this matter given the untidy nature of the holdings, he needs to be briefed to assist his intent to indicate to the Commissioner that the comment should not be made on this issue and the proposed petition by DCOP Burn is in fact not sound given the findings of the matters? I indicated that we would provide him the best briefing possible by midday Tuesday to assist him. The challenge given [Ms D] was off today is to generate a product in a few hours on Tuesday morning.*

*Paul Dunstan - For your information and attention Tuesday Morning. We will need to support [Ms D] to provide this briefing, we might need to buy some Nicorette to keep her at the desk.*

*Regards*

*Mark Walton*<sup>153</sup>

143 Ombudsman Transcript, Mark Galletta, 20 August 2014, p. 1839.

144 Ombudsman Transcript, Mark Galletta, 20 August 2014, pp. 1833-1834.

145 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 47.

146 NSWPF, e@gle.i Investigation Log entry, Mark Galletta, 1 October 2010.

147 Ombudsman Transcript, Mark Galletta, 20 August 2014, p. 1834.

148 NSWPF, Investigator’s Report, Strike Force Tumen, 18 September 2002, p. 2.

149 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2212.

150 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2212.

151 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2212.

152 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2212.

153 Email from Detective Superintendent Mark Walton, NSWPF to Assistant Commissioner Paul Carey, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 1 October 2010.

When questioned by Operation Prospect, Walton did not recall any of these events or his associated actions.<sup>154</sup>

At 6:05 pm the same evening Kaldas emailed Galletta informing him “looks like a meeting will now be held [sic] on Tuesday [sic]”.<sup>155</sup> Operation Prospect asked both Scipione and Burn to inspect their diaries and other relevant records for evidence of a meeting being scheduled or taking place on Tuesday 5 October 2010. Scipione provided information that such a meeting or discussion (as suggested by Kaldas’s email to Galletta) was never scheduled and never took place.<sup>156</sup> Burn told Operation Prospect:

*I do not recall meeting or intending to meet with Commissioner Andrew Scipione and/or Nick Kaldas regarding Former Assistant Commissioner Malcolm Brammer, a book titled “Betrayed” by Clive Small and Tom Gilling, or any of the Strike Forces [Emblems, Sibutu, Tumen, Shillingstone or Banks] mentioned.<sup>157</sup>*

Burn’s request for a correction of Kennedy’s article was never sent. Burn advised Operation Prospect that:

*In subsequent conversations with the Commissioner he advised me to “let it ride” and my understanding is that the letter was never sent to the Editor.<sup>158</sup>*

### 21.1.9 Briefing note prepared (5 October 2010)

In October 2010 Ms D was a Senior Project Officer within the PSC. Her duties consisted of providing advice to the PSC executive on a range of matters, producing policy documents, and liaising with external bodies.<sup>159</sup> Ms D gave evidence to Operation Prospect that on 30 September 2010 Carey directed her (most likely through Carey’s staff officer, Dunstan) to produce a briefing document containing information about the strike forces.<sup>160</sup> It is not clear why Carey’s original suggestion (in his email to Dunstan and Walton at 5.44 pm on 29 September) to make all material available to Kaldas became an instruction to prepare a briefing note.

At the time Ms D had hard copies of relevant material about the strike forces in her possession. Her evidence to Operation Prospect was that she did not hand this material over to any other person.<sup>161</sup> While Ms D believed that Kaldas’s request was appropriate, she had some concerns about this task:

Q: *Now look I’ll – I’ll just get to the crux of it, do you think, or did you feel that what Mr Kaldas was asking was inappropriate?*

A: *Not for a DCOP, no.*

Q: *Okay.*

A: *Was it something that, um, he – was ill advised by him that he was always going to look bad doing, um, yes, he should have protected himself by not doing it at all and just, if you – if you’ve got a problem with it, tell someone else but you can’t – you can’t be angry and – and lose sight of the fact that someone will look at what you do in the future and it will look bad but that wasn’t my call to make. From my perspective he’s a DCOP, the file’s dead, it’s not under investigation, it’s all over the media, everybody knows about it, um, I mean how do you say no to your DCOP or to your Commissioner?<sup>162</sup>*

Ms D also recounted a conversation she had with Dunstan at the time:

A: *Said, “No, you don’t need to do this but – it will look bad but, um, if you want to do it, that’s up to you.”*

Q: *Oh, so you actually said - - -*

<sup>154</sup> Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1767-1768.

<sup>155</sup> Email from Deputy Commissioner Nick Kaldas, NSWPF to Inspector Mark Galletta, NSWPF, 1 October 2010.

<sup>156</sup> Statement of Information (Written), Andrew Scipione, 23 July 2014, pp. 1-2.

<sup>157</sup> Statement of Information (Written), Catherine Burn, 1 August 2014, p. 1.

<sup>158</sup> Statement of Information (Written), Catherine Burn, 1 August 2014, p. 2.

<sup>159</sup> Statement of Information (Interview), [Ms D], 21 July 2014, p. 7.

<sup>160</sup> Statement of Information (Interview), [Ms D], 21 July 2014, pp. 25-26.

<sup>161</sup> Statement of Information, (Interview), [Ms D], 21 July 2014, pp. 26 and 54.

<sup>162</sup> Statement of Information, (Interview), [Ms D], 21 July 2014, pp. 33-34.



- A: *I said it to Paul Dunstan, yes, I thought it looked bad.*
- Q: *What did you say?*
- A: *I can't remember the exact words, it was four years ago but- - -*
- Q: *But words to the effect of.*
- A: *- - - I remember – words to the effect of that, um, I think you need to reconsider. I think it will look bad.*<sup>163</sup>

Records before Operation Prospect suggest Kaldas received Ms D's 5 October 2010 briefing note. Entries in Ms D's diary for that day state she was "advised" that Kaldas required the briefing urgently by "midday".<sup>164</sup> A note in Walton's diary indicates that Kaldas received it at or shortly after 1:10 pm.<sup>165</sup> The briefing note was six pages and contained information relating to Sibutu, Tumen, Emblems, Shillingstone and Banks – including the allegations and a summary of the investigations, findings and recommendations.<sup>166</sup>

Operation Prospect has been unable to determine whether this briefing note was used for any official or other purpose after its creation. Ms D stated that she had not placed the briefing note in the NSWPF's electronic document management system but saved it in her 'work' drive.<sup>167</sup> In his evidence, Kaldas stated that he recalled neither the briefing note nor making the request for Strike Force material.<sup>168</sup> As discussed above, Kaldas gave evidence that his email request to Carey on 29 September 2010 for documents was "not a serious request"<sup>169</sup> and he did not expect he would receive them.<sup>170</sup>

The evidence before Operation Prospect suggests that the 5 October 2010 briefing note was not provided to Scipione or to the other Deputy Commissioners.

The 'urgency' surrounding the request has not been established by the information available to Operation Prospect. As noted above at 21.1.8, it seems that there was no meeting between Burn, Kaldas and Scipione to discuss the proposed retraction of the comment in the Kennedy article scheduled for 5 October 2010.

However, Kaldas's electronic diary records that he had two meetings that afternoon. The first was a regular meeting with his Executive Officer, and the second was with Sergeant Scott Weber – President of the Police Association of NSW – and others at 2:00 pm.<sup>171</sup> In a statement to Operation Prospect Weber confirmed that the 2:00 pm meeting took place but he had no independent recollection of what was discussed. Weber referred to notes made of the meeting that he provided to Operation Prospect. The notes do not contain any reference to Emblems, Sibutu, Tumen, Shillingstone, Banks or any matters relating to Brammer or to Small's book.<sup>172</sup>

## 21.2 Consideration of ethical responsibilities and potential conflicts of interests

The following section discusses the legal and policy framework that was in place at the time in the NSWPF regarding ethical responsibilities and managing conflicts of interests. This is relevant in considering Kaldas's request and the actions taken by NSWPF employees to access and provide materials and information to Kaldas in response to his request. The laws and policies referred to below are discussed in Chapter 20.

163 Statement of Information, (Interview), [Ms D], 21 July 2014, p. 47.

164 Diary, [Ms D], 5 October 2010.

165 Diary, Mark Walton, 5 October 2010.

166 NSWPF, Briefing Note prepared by [Ms D], 5 October 2002.

167 Statement of Information (Interview), [Ms D], 21 July 2014, pp. 46-47.

168 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2249 and 2282.

169 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2251.

170 Ombudsman Transcript Nick Kaldas, 5 September 2014, pp. 2204, 2212, 2249 and 2251.

171 Diary, Nick Kaldas, 5 October 2010.

172 Statement of Information (Written), Scott Weber, 21 October 2014, p. 2.

The Police Act and Police Regulation 2008 contained provisions requiring all NSWPF employees to act with integrity. Section 7 of the Police Act stated the values to be upheld by all NSWPF staff – including acting “in a manner which ... places integrity above all”.<sup>173</sup> Two relevant regulations are:

- Regulation 49 – which required a police officer to report to a more senior police officer any conduct of another officer that may constitute misconduct.
- Regulation 75 – which required all NSWPF employees to treat information coming to them in an official capacity as strictly confidential.

Two important policy documents were the NSWPF Code of Conduct and Ethics and the NSWPF Conflict of Interests Policy and Guidelines. The Conflict of Interests Policy states that it is an extension of the Code of Conduct, which is republished as a section within the Conflict of Interests Policy.<sup>174</sup> Both the Code of Conduct and the Conflict of Interests Policy applied to all NSWPF employees and contained provisions relating to ethics and conflicts of interests.<sup>175</sup>

Most of the 10 principles in the Code of Conduct are directly or indirectly relevant to the matters discussed in this chapter. Among them are requirements for all employees to “behave honestly and in a way that upholds the values ... of the NSW Police Force”, “act with care and diligence”, “know and comply with all policies, procedures and guidelines that relate to their duties”, “take reasonable steps to avoid conflicts of interests [and] report those that cannot be avoided”, “only access, use and/or disclose confidential information if required by their duties and allowed by NSW Police Force policy”, “not make improper use of their position” and “report misconduct of other NSWPF employees”.<sup>176</sup>

The Conflict of Interests Policy provided instruction and assistance to NSWPF employees on identifying, reporting and managing conflicts of interests that may arise in the course of their duties. Strictly speaking, the focus of the Conflict of Interests Policy was directed to how employees should manage conflicts that may arise in their own affairs. However, a strong theme in the Conflict of Interests Policy is that NSWPF employees have an individual and shared responsibility to uphold the integrity of the Police Force by ensuring that actual, perceived or potential conflicts of interests are properly managed. This is clearly stated in the opening paragraphs of the Conflict of Interests Policy, which republishes the Code of Conduct and repeats the requirement in the statement of values in section 7 of the Police Act that employees must act in a manner which “places integrity above all”.<sup>177</sup>

The foreword to the 2009 version of the Conflict of Interests Policy was by the Assistant Commissioner of Professional Standards, Paul Carey. It stated that:

*Conflicts of interest are a major risk to the NSW Police Force. You are expected to report all conflicts of interests and participate in their resolution or management.*<sup>178</sup>

The foreword also reminded NSWPF employees that “the community ... are entitled to trust your integrity”, and that all employees are expected to know what a conflict of interests is.

The Conflict of Interests Policy (as with the Code of Conduct)<sup>179</sup> stressed the personal responsibility of all employees to ensure the Policy was observed:

*It is the responsibility of all NSW Police Force employees to take reasonable steps to identify and avoid conflicts of interests, report those which cannot be avoided and to cooperate in their management. ...*

<sup>173</sup> Police Act, s. 7.

<sup>174</sup> NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 2. The 2006 version of the NSWPF Code of Conduct and Ethics was also published in *Police Weekly*, Professional Conduct Edition Professional Standards Command, ‘Code of Conduct & Ethics’, 2006, vol 18, issue 40, p. 5.

<sup>175</sup> NSWPF, *Code of Conduct and Ethics*, 2006; NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 2. An earlier 2006 version of this policy document was shown to witnesses during examination in Operation Prospect: NSWPF, *Conflicts of Interest Policy and Guidelines*, October 2006, p. 3. The updated 2009 version was the applicable policy during 2010 when the events examined in this chapter occurred. The provisions relating to the obligation of NSWPF officers to identify and report any actual, perceived or potential conflict of interest were unchanged.

<sup>176</sup> NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 2.

<sup>177</sup> Police Act, s. 7.

<sup>178</sup> NSWPF, *Conflict of Interest Policy and Guidelines*, September 2009, p. 1.

<sup>179</sup> NSWPF, *Conflict of Interest Policy and Guidelines*, September 2009, p. 1.

*It is the responsibility of NSW Police Force employees to identify actual, potential and perceived conflicts of interest and to remember that private interests and work obligations should never stay in conflict.*<sup>180</sup> ...

The Conflict of Interests Policy defined a conflict of interests as follows:

*A conflict of interest occurs when the private interests of a NSW Police Force employee interferes with or influences, or appears to interfere with or influence their official duties and responsibilities or where an employee uses their official status to influence private interests.*<sup>181</sup>

A section of the Conflict of Interests Policy titled 'High risk situations which may result in conflicts of interest' included the following item:

*collecting, retaining, accessing and using confidential information on COPS, c@ts.i and other police systems (eg. using police information for personal reasons such as finding out personal details of a victim to pursue a relationship or use information inappropriately without authority)*<sup>182</sup>

The Conflicts of Interest Policy contains guidance on the steps that should be taken to deal effectively with conflicts of interests. An important step is that conflicts of interests must be reported in writing to the officer's supervisor.<sup>183</sup> Further, "[a]ll conflicts of interests must be resolved in the public interest".<sup>184</sup>

The Conflict of Interests Policy stated that non-compliance with the Policy may be a breach of the Code of Conduct. NSWPF officers may be subject to management action if they fail to satisfy the requirements of the Conflict of Interests Policy.<sup>185</sup>

## 21.3 Evidence, submissions and analysis

Operation Prospect examined whether Kaldas or other NSWPF officers – particularly staff in the PSC – acted wrongly in the actions they took between 29 September and 5 October 2010. Many officers involved gave evidence and made written submissions to Operation Prospect about their individual actions and intentions – and their lack of recall. Some witnesses were questioned at length about their understanding of the Conflict of Interests Policy and its bearing on their actions in gathering information in response to Kaldas's email request to Carey.

The following section examines the evidence and submissions of many witnesses, and concludes with adverse comments or findings about the actions of some NSWPF officers. The matters that are examined are Kaldas's actions, recurring themes in the evidence of other NSWPF witnesses, and the actions specifically taken by Dunstan, Craft, Cook, Carey and Walton.

### 21.3.1 Kaldas's actions, evidence and submissions

#### 21.3.1.1 Material provided to Kaldas

The specific request that Kaldas made to Carey in an email on 29 September 2010 was framed as follows: "material which I think may be relevant, but not restricted to includes the FINDINGS/RECOMMENDATIONS only for the following task forces".<sup>186</sup>

The evidence before Operation Prospect indicates that information meeting that description was provided to Kaldas on two occasions. On 1 October 2010, Galletta (a NSWPF officer, but not in PSC) recorded that Kaldas said he had the Emblems report and requested that Galletta forward the Tumen report to his (Kaldas's) private email address. Galletta did so – but Kaldas does not recall those events.

180 NSWPF, *Conflict of Interest Policy and Guidelines*, September 2009, p. 3.

181 NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 3.

182 NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 16.

183 NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 4.

184 NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 4.

185 NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 5.

186 Email from Deputy Commissioner Nick Kaldas, NSWPF to Assistant Commissioner Paul Carey, NSWPF, 29 September 2010.

Second, on 5 October 2010, Kaldas was given a six-page briefing note that was prepared by Ms D in the PSC in response to a direction from Carey on 4 October – most likely via Dunstan. Kaldas does not recall receiving the briefing note.

The briefing note summarised the findings and recommendations of the five task forces referred to in Kaldas's email to Carey. The information provided about Emblems was sparse, listing the allegations and complaints that were examined and the inconclusive result of the investigation. The briefing note contained more detail of the findings in the other task forces, though the detail may not have been directly relevant to the media and other developments that had prompted Kaldas's request for information. Although Kaldas may not have learnt a great deal from this briefing note – and some of it may have been relevant to his general responsibilities as a Deputy Commissioner – the briefing note contained information drawn from documents at least some of which (Emblems, Sibutu and Tumen) were classified as Highly Protected (the highest security classification) on the e@gle.i system. The access and unauthorised release of confidential documents represents a serious breach of the security that is intended to protect the relevant information systems.

There is evidence of considerable internal activity by staff in the PSC on 29 and 30 September 2010 to locate material that fell within the scope of Kaldas's email request to Carey on 29 September. Actions that are referred to earlier in this chapter include Carey instructing Dunstan and Walton by email to collate material to be handed to Kaldas, Cook accessing the Emblems report and emailing it separately to Dunstan and Craft, Craft accessing and printing documents relating to complaints about SCIA, Craft requesting the e@gle.i support section to provide him with read only access to the records of five strike forces "at the request of Kaldas"<sup>187</sup> and then accessing the records, and Craft sending an email to Kaldas with suggestions on how he might act to avoid any allegation that he (Kaldas) acted improperly in seeking access to material. There is, however, no direct evidence – apart from Galletta's email on 1 October 2010 containing the Tumen report and the briefing note prepared by Ms D – of any NSWPF officer providing documents or information to Kaldas in response to his email request to Carey on 29 September.

### 21.3.1.2 Kaldas – evidence

Kaldas was questioned about his 29 September email to Carey in his evidence to Operation Prospect. Kaldas did not initially recall the email when first asked by Counsel Assisting whether he had requested Carey to get the reports on SCIA activities for him.<sup>188</sup> Nor, when shown a copy of the email, could Kaldas recall sending it.<sup>189</sup> He stated a number of times in evidence that in making the request he did not expect that Carey was going to provide the documents to him and that it was not a serious request. For example:

*The reality is, Paul Carey was never going to give them to me. And I think I accepted that when I sent the email, but I did point out in the email that everybody else who is dealing with this issue is aware of what I'm not aware of. ... [W]hat I'm asking him for is the findings or recommendations. I didn't actually ask for the full report.*<sup>190</sup>

Other similar evidence given by Kaldas was that "sometimes you ask for something knowing that you're not going to get it, and you're relying on people making the right choices",<sup>191</sup> and;

*... with hindsight I should've, I probably shouldn't have said it in the format that I did. But it, we have checks and balances, and at the end of the day I was, I'm certain Paul Carey was never going to give me the reports.*<sup>192</sup>

Asked by Counsel Assisting whether it was 'a total conflict of interests' for him to seek material about the Strike Force investigations, Kaldas replied: "I don't accept it was a total conflict of interest. You know, with hindsight I probably shouldn't have, but that's what I did and I can't undo it".<sup>193</sup> He added: "I also depend on a lot of

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187 Email from Detective Inspector Matthew Craft, NSWPF to e@gle.i Support, NSWPF, 30 September 2010.

188 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2248.

189 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2249.

190 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2249.

191 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2214.

192 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2251.

193 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2250.

others around me to talk to me about issues, and sometimes I do go up the wrong tree, and they say ‘You need to think about this again’.<sup>194</sup>

Kaldas said he understood there may be a conflict of interests in requesting material drawn from the Emblems report, but that he had no involvement in the other investigations referred to in his email.<sup>195</sup> He agreed that it would be “an entirely improper request” if made with the expectation that Carey would give him the actual reports.<sup>196</sup>

Operation Prospect asked Kaldas whether he ever received the Emblems report or the Tumen report. He replied that he had not, but later clarified: “Well, if I had, I certainly didn’t get it from Paul Carey”.<sup>197</sup> When asked who may have provided those reports to him, Kaldas responded: “I don’t recall, but I do recall having possibly seen it at some stage”.<sup>198</sup>

Operation Prospect asked Kaldas whether he knew and understood that he was not authorised to have a copy of the Emblems report. He answered that the report had “never been communicated to me formally, no”<sup>199</sup> and that “strictly speaking” there was no operational need for him to see the Emblems report in 2010.<sup>200</sup>

Asked whether it would have been improper for him to have read the Emblems report, Kaldas did not accept that would be improper – stating it was a “moral issue” and “I’m a complainant and I haven’t had closure. I haven’t had any satisfaction in resolving any of these matters, up until then”.<sup>201</sup> Kaldas added that “my perception is I was probably justified in having access to it” and that:

*“It’s not improper for victims or people who have made complaints at some point in time to be given access to what has happened. So it’s not black and white”.*<sup>202</sup>

Kaldas was also asked questions specifically about the fact that he had been a complainant in relation to Emblems:

Q: *You know you were a complainant whose complaints were dealt with in Emblems, and it may not have been dealt with in the way you would have liked, or comprehensively or completely. But you were a complainant for the purposes of Emblems, weren’t you?*

A: Yes.

Q: *That means that before any underling of yours could decide whether you should have the Emblems report, would [sic] have to make a determination about whether giving it to you would place you in a conflict of interest?*

A: *Well it’s difficult to answer that without knowing what was in the report.*<sup>203</sup>

...

Q: *But the fact that you were a complainant to Emblems at all meant that providing you with a copy of the report was going to place you in a conflict of interest, no matter what was in the report. Do you agree with that?*

A: *Not all, not all complainants are excluded from seeing what the investigation achieved.*

Q: *That’s not my question. ... My question is a very carefully directed one. Those underlings, or any underling you asked to get a copy of the Emblems report, would know that it would be placing you in a conflict of interest to give you the report, regardless of ... what is in it, because you were a complainant. If you’re not dealt with in the report, it’s a problem; if you’re dealt with in the report, it’s a problem, because finding out that information puts you in a conflict of interest?*

<sup>194</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2251.

<sup>195</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2250.

<sup>196</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2251-2252.

<sup>197</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2252.

<sup>198</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2252.

<sup>199</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2205.

<sup>200</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2206.

<sup>201</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2255.

<sup>202</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2255.

<sup>203</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2190-2191.

- A: *Well, I, I, look, it's difficult for me to say, "Yeah, it would have definitely been a conflict of interest," because I felt it would have gone a long way towards exposing what had happened with that investigation and revealing the truth.*
- Q: *But that means you're mixing up a number of things. You wanted the truth revealed for your personal concerns, didn't you?*
- A: *No, it's, I felt that what happened, not just with me but a large number of people, was very unjust and unfair.*
- Q: *But, but you, you were included?*
- A: *Me included.*
- Q: *And it was personally of issue to you?*
- A: *Yes.*
- Q: *And you spoke long and loud about it?*
- A: *Yes.*
- Q: *I'm not being critical at all in- in saying that. But your views about it were well known, that it was inadequate and you didn't get the information you should have got?*
- A: *Yes.*
- Q: *And it would have been evident to any underling you asked to get a copy of the Emblems report for you, that giving it to you would put you in a conflict of interest. You won't accept that, or you do?*
- A: *I- I- it's difficult to say, "Yes, it definitely would have," because I don't know what was in the report. Certainly what was on my mind, if I had asked for it, would have been to try and find out the truth, and then once I found out the truth, then I could make a decision what I needed to do from there and whether it was a conflict of interest.<sup>204</sup>*

The NSWPF Conflict of Interests Policy was shown to Kaldas during his evidence to Operation Prospect.<sup>205</sup> His responses were consistent with his familiarity with the Policy as a senior NSWPF officer responsible for the PSC.

In explaining his actions, Kaldas said in evidence to Operation Prospect that he believed he had been unlawfully targeted for investigation by SCIA, he suspected "very strongly" that Dolan "had a big hand in it", and that SCIA investigators had committed various illegal acts in the course of targeting him – including swearing affidavits containing false information and perverting the course of justice.<sup>206</sup> Generally, he commented that "[t]he whole culture and behaviour of SCIA leads me to believe that everybody who was in there and was involved in the activities was probably up to no good. ... There was no moral compass".<sup>207</sup> He had complained about having been targeted by SCIA on various occasions between 2001 and 2012,<sup>208</sup> and his view that his complaints had not been adequately investigated was well known.<sup>209</sup>

Kaldas made the same point in an interview with Operation Prospect – that he had made "a series of complaints, probably stretching back as far as ten or eleven years, none of which have actually been addressed" about his targeting by Mascot.<sup>210</sup> He considered it to be "incredibly serious" and attributed it to conflict between him and Brammer, Dolan, Henry "and to a lesser extent Catherine Burn through them".<sup>211</sup> He "felt that Internal Affairs were doing things that were very harmful to individual officers and that they were

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204 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2191-2192.

205 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2183-2184. As noted earlier in this chapter, the Conflict of Interests Policy tendered in evidence was the 2006 policy that was published in a revised form in 2009. There were some textual changes but the substance of the Policy was the same.

206 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2239-2241.

207 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2308-2309.

208 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2189.

209 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2191-2192.

210 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 4.

211 Statement of Information (Interview), Nick Kaldas, 9 November 2012, pp. 4-5.

completely ignoring the rules simply because they were internal affairs".<sup>212</sup> He noted that complaints led to Emblems being formed "to investigate all these allegations about improper targeting, ignoring conflict of interests, possibly lies in affidavits and so on".<sup>213</sup> His abiding concerns were that "whatever it was that allegation that caused me to be investigated by Mascot/Florida, has never been put to me and I just can't see how that can be", and "I don't think the truth has ever been able to come out and that I think it's incredibly unfair".<sup>214</sup>

Kaldas repeated the point in evidence to Operation Prospect that he felt responsible for the "truth coming out".<sup>215</sup> In short, he felt he had a legitimate purpose in requesting information from Carey about the various investigations into complaints about SCIA.

Kaldas also gave evidence that he believed Burn and Scipione were familiar with the investigations into complaints about SCIA, and that "[e]verybody else knew what had happened except me, basically".<sup>216</sup> Kaldas told Operation Prospect that he assumed Burn had seen the strike force reports listed in his email to Carey, even though her conduct was the subject of investigation by Emblems.<sup>217</sup> Kaldas gave evidence that:

*... I thought if we were going to move forward, part of the process of closure, healing, is for people to be told the truth at some stage.*<sup>218</sup>

Kaldas was also asked about the reasons he gave in his email to Carey for requesting information. As to responding to the media, he acknowledged that he could simply have refused to comment on these matters if approached by the media.<sup>219</sup> As to the comment that the requested information was required "if my view is to prevail" in internal NSWPF discussions, he insisted he "wanted the truth to come out".<sup>220</sup> He believed that unlawful conduct had taken place at Mascot and that the NSWPF "should not come out and say yes, it was lawful".<sup>221</sup> His intention was not to obtain the information simply to prevail in an internal debate.<sup>222</sup>

### 21.3.1.3 Kaldas – submissions

Kaldas made written submissions to Operation Prospect that extensively canvassed both the manner in which he was required to give evidence and the provisional inferences and findings that were drawn from his evidence and notified to him for comment. The submissions of unfairness, denial of natural justice and procedural irregularity in the conduct of Operation Prospect have been addressed in Chapter 2 and in correspondence. Some of his submissions directed to the provisional inferences and findings have been accepted, and those inferences and findings are not repeated in this chapter. The following points from his submissions elaborate on points he had made in earlier evidence.

Kaldas submitted that his requests for information were to further his broad managerial role as a Deputy Commissioner, "to inform himself on matters relating to the general management of the Police Force" – including dealing with allegations and media inquiries about historical misconduct. It was submitted that, as part of his executive duties, Mr Kaldas "had an obligation to be properly informed so that he could contribute to the discussions".<sup>223</sup> The fact that he was a complainant did not require him "to refrain from being properly informed in order to discharge his general duties".<sup>224</sup>

212 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 5.

213 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 9.

214 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 18.

215 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2255-2256.

216 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2250.

217 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2250.

218 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2250.

219 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2244-2245.

220 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2255-2256.

221 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2256.

222 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2256-2257.

223 Kaldas, N, Submission in reply, 19 May 2016, p. 10.

224 Kaldas, N, Submission in reply, 19 May 2016, p. 13.

Kaldas rejected that he may have acted inappropriately or failed to deal with a conflict of interests. At the time, he could not decide whether there was a conflict of interests issue until he knew what was in the Emblems report. He faced a unique situation – in that allegations about the way the Mascot investigations had been conducted had been made against other senior officers, but not against him. It was therefore reasonable for him, he submitted, to seek information so that he could call for relevant external authorities to make appropriate inquiries. He said he:

*... wanted access to information relevant to making a call for a properly constituted inquiry into allegations of misconduct. That is entirely proper in itself, and was within the compass of his official duties.*<sup>225</sup>

These were entirely proper reasons for requesting information, he submitted, and his actions were not improper by reason that he “was a victim of, and complainant about, some of the alleged misconduct”.<sup>226</sup> To the extent that he was pursuing any private interest, it was merely to ensure “that a proper inquiry be held, and his only action was to call for one”.<sup>227</sup> Also, “Mr Scipione was aware at the material times that Mr Kaldas was calling for a proper inquiry into the Mascot/Florida investigations”.<sup>228</sup>

Kaldas submitted also that his request to Carey was made in an appropriate manner – in writing, using his police email account, to an appropriate officer (the head of PSC), and with a copy sent to Kaldas's staff officer.<sup>229</sup> His email to Carey was prefaced with the qualification, “with your concurrence”.<sup>230</sup>

#### **21.3.1.4 Scipione’s evidence about the email to Carey**

Scipione gave evidence to Operation Prospect and was asked to comment on Kaldas's request. Scipione said that he did not think that Kaldas's assertion that he needed the information in case he was called on to comment to the media was a justification for the request.<sup>231</sup> When Scipione was asked if he would expect Kaldas to speak with him directly if Kaldas legitimately believed he needed to know about the materials requested in the email to Carey, Scipione stated: “That would have been a better way. It would have been a preferred way rather than go direct”.<sup>232</sup> Scipione was also surprised that Carey did not raise this issue with him, as they had regular monthly meetings at the time. Scipione stated that he would not have authorised the release of such information to Kaldas.<sup>233</sup>

Kaldas's submission notes that, because Operation Prospect was a private inquiry, he did not have an opportunity to cross-examine Scipione about that evidence or indeed other witnesses.<sup>234</sup>

#### **21.3.1.5 Analysis**

The evidence and submissions before Operation Prospect draw attention to competing considerations that are relevant in assessing Kaldas's request for information.

On the one hand, it is apparent that Kaldas harboured a continuing grievance about the lack of information available to him about the Mascot investigations and the activities of SCIA. The grievance was unresolved some years after he became aware that he had been a target of the investigation. The continuing suppression of the Emblems report meant that no informed light was shed on the events or the resolution of the complainants' grievances. Kaldas and others felt there was much to be learnt, but no overt action was being taken by others to respond to what was a simmering controversy.

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225 Kaldas, N, Submission in reply, 19 May 2016, p. 11.

226 Kaldas, N, Submission in reply, 19 May 2016, p. 11.

227 Kaldas, N, Submission in reply, 19 May 2016, pp. 12-13.

228 Kaldas, N, Submission in reply, 19 May 2016, p. 21.

229 Kaldas, N, Submission in reply, 19 May 2016, p. 8.

230 Kaldas, N, Submission in reply, 19 May 2016, p. 13; Email from Deputy Commissioner Nick Kaldas, NSWPF to Assistant Commissioner Paul Carey, NSWPF, 29 September 2010.

231 Ombudsman Transcript, Andrew Scipione, 31 July 2014, p. 1035.

232 Ombudsman Transcript, Andrew Scipione, 31 July 2014, pp. 1035-1036.

233 Ombudsman Transcript, Andrew Scipione, 31 July 2014, p. 1037.

234 Kaldas, N, Submission in reply, 19 May 2016, pp. 20 and 22.



Kaldas's grievance, he submitted, transcended the personal realm and was a deep concern that the NSWPF may have engaged historically in inappropriate action. There was public awareness of this controversy, but no action was being taken to address the matter. It was appropriate, he felt, that as a Deputy Commissioner he could pursue the matter.

It is also relevant that Kaldas's request was a reaction to other developments – it was not initiated by him taking action to pursue his grievance. The trigger events were the Kennedy article in the *Sun Herald* and the proposal by Burn to seek a correction – a correction that Kaldas may have felt would further smother the truth as he saw it. Kaldas's first reaction to those events – on 25 September 2010 – was to send an email about the matter to Scipione, Burn, Carey and Owens. The email request to Carey that is the focus of this chapter occurred later on 29 September. At most, Kaldas conceded in evidence, that he “probably shouldn't” have done it that way and “with hindsight” he should not have sought the Emblems material in that manner.<sup>235</sup>

There are, on the other hand, countervailing considerations. As acknowledged by Kaldas, he had complained to Emblems about having been targeted by the Mascot Task Force. His grievance was inescapably directed towards at least some NSWPF and NSWCC officers who were associated with the work of that Task Force, and who he named in evidence to Operation Prospect. He accepted in evidence that he remained aggrieved in 2010 and this was a factor in him requesting information from Carey.

The information that he was seeking was highly protected information that was not routinely available to other officers, including Kaldas. The Emblems investigation was maintained on e@gle.i, to which Kaldas did not have access in September and October 2010. Indeed, Kaldas acknowledged a number of times in evidence that he did not expect to be given the information even though he had requested it – “tongue in cheek”, “wasn't a serious request”,<sup>236</sup> and relying on subordinates “making the right choices”,<sup>237</sup> were phrases that he used in evidence. In response to questions by Counsel Assisting he asserted that those requests could have been viewed as a “joke”.<sup>238</sup>

He would have been aware that the PSC, which was under his supervision, played a unique and special role in investigating and resolving complaints and allegations against police officers – including allegations made by officers against each other. This role was a key element of the framework to uphold standards and integrity in the NSWPF. An essential feature of this role was that the PSC practised independence from undue influence by all police officers, including senior officers. Confidentiality of PSC processes and records was, in turn, an essential component of its work.

Kaldas would also have been aware from his long career in policing – a profession modelled on strict organisational lines and respect for hierarchy – that subordinate officers may not question a request coming from a Deputy Commissioner and their instinct may be to comply with it. That is what occurred. The evidence given to Operation Prospect by NSWPF staff who received Kaldas's request indicated that they considered it to be a serious request that should be complied with. For instance, one officer said that his relationship to Kaldas when he worked at PSC was “best described as nothing more than a master, servant relationship”<sup>239</sup> – submitted that he felt “obliged to follow the chain of command” and not reflect on whether Kaldas was entitled to receive the documents he requested.<sup>240</sup>

235 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2250.

236 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2251.

237 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2214.

238 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2249, 2258, 2262.

239 [name], Submissions in reply, [date] August 2015, p. 7.

240 [name], Submissions in reply, [date] August 2015, p. 6.

The option open to Kaldas was to alert his senior colleagues, and at least the Commissioner, of his desire to pursue this grievance and the public controversy that surrounded it. The groundwork for that conversation was laid in the early exchange of emails between Kaldas, Burn and Scipione. Notably, in an email Kaldas sent to Burn at 5.25 pm on 29 September he commented: “We may need to talk about this”, “Is Andrew aware of this” and “Happy to discuss my concerns if you want”.<sup>241</sup> Burn replied at 5.28 pm that it was “very distressing” that a newspaper article had alleged an unlawful operation in 2000, adding: “The bottom line is that it has never been found to be unlawful. If there is a suggestion it is then I would be seeking a further investigation”.<sup>242</sup> This email exchange occurred after Kaldas’s email to Carey earlier that day, but did not preclude further disclosure or discussion initiated by Kaldas.

An option open to Kaldas was to have the matter listed for discussion at an executive meeting, or for agreement to be reached on a protocol for the findings of the strike force reports to be shared among executive officers. A proposal along those lines would have been the appropriate path to follow, given that part of Kaldas’s stated rationale was to respond knowledgeably to media enquiries and be better informed in internal discussions. It would also have provided an appropriate forum to test the soundness of some of Kaldas’s beliefs about the matter. For example, Operation Prospect has not received any evidence to support Kaldas’s belief that Burn and Scipione were aware of the contents of the Emblems or other reports, and indeed Burn later gave evidence to a Parliamentary Committee inquiring into Operation Prospect’s conduct and progress that she had not seen the Emblems Report.<sup>243</sup>

The evidence before Operation Prospect is that Kaldas did not inform his senior colleagues (in particular, Burn or Scipione) that he would be independently pursuing a request for access to relevant information – either before or after his email to Carey, the head of PSC. Before that email Kaldas made statements such as “slept on it” and “what will be will be”,<sup>244</sup> that were likely to be interpreted by his colleagues as a sign that he would not pursue the matter further.

At least one officer – Craft – identified that Kaldas’s request to Carey posed a conflict of interests problem and made suggestions to him in a lengthy email “to protect you from any unfounded allegations that you have a vested interest in pursing [sic] this matter as a personal crusade”.<sup>245</sup> There is no evidence before Operation Prospect that Kaldas took any action in response to Craft’s email.

Viewed objectively, Kaldas’s actions were open to the interpretation that he was using his senior position in the NSWPF to obtain privileged access to information in which he had a particular personal interest. The information that he requested was, in part at least, inescapably interwoven with a long-standing grievance that he had expressed about the actions of a task force that included other NSWPF officers. As noted above, Scipione’s view was that he would expect Kaldas to have raised with him directly his need for the information – but that he (Scipione) would not have authorised its release.

The Conflict of Interests Policy expressly applied to “actual, potential and perceived conflicts of interest”<sup>246</sup> that arise when a NSWPF employee allows their private interests to interfere with or influence, or appear to interfere with or influence, their official duties and responsibilities. Inappropriate access to official information is identified as a particular area of concern about which proper process must be followed. If there is or could be a conflict of interests, the Policy requires an employee to make a record of the facts and report the issue to a senior officer.

Kaldas did not comply with those requirements in his email request to Carey and therefore contravened the Conflict of Interests Policy and the Code of Conduct.

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241 Email from Deputy Commissioner Nick Kaldas, NSWPF to Deputy Commissioner Catherine Burn, NSWPF, 29 September 2010.

242 Email from Deputy Commissioner Catherine Burn, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 29 September 2010.

243 Catherine Burn, Legislative Council Select Committee on the conduct and progress of the Ombudsman’s inquiry ‘Operation Prospect’ (Select Committee), NSW, 9 January 2015, p. 2.

244 Email from Deputy Commissioner Nick Kaldas, NSWPF, to [Director of the Office of the Commissioner], NSWPF, 30 September 2010.

245 Email from Detective Inspector Matthew Craft, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 30 September 2010.

246 NSWPF, *Conflicts of Interest Policy and Guidelines*, September 2009, p. 3.

Similar reasoning applies to two other actions taken by Kaldas – his request to Galletta on 1 October 2010 for a copy of the Tumen report, and his receipt on 5 October 2010 of the briefing note prepared by Ms D. In both actions, Kaldas contravened the Conflict of Interests Policy and the Code of Conduct.

The explanation Kaldas gave to Galletta – that he had a scheduled meeting with Burn to discuss “issues pertaining to former A/C Brammer”<sup>247</sup> – did not disclose Kaldas’s personal interest in that report and its contents, given his stated personal conflicts with Brammer and Dolan (discussed at 21.3.1.2 above). There is no evidence before Operation Prospect that Kaldas reported or discussed this request with other senior colleagues. Nor is there evidence that Kaldas raised “the issues pertaining to Brammer” at a scheduled or subsequent meeting with Burn.

The briefing note prepared by Ms D contained information about the Strike Force reports that was not in general circulation and to which Kaldas had no right of access along the path he followed to access it. The information was once again relevant to the personal grievance that he harboured about the conduct of the Mascot investigations and the response of the NSWPF in the intervening years. There is no evidence before Operation Prospect that Kaldas reported or discussed with other senior colleagues that he had received this briefing note.

### 21.3.2 Other witnesses – recurring themes on conflicts of interests and ethical responsibilities

There were three recurring themes in the evidence and submissions of many other witnesses.

First, some officers sought to distance themselves from the problems that Kaldas’s request raised by observing that it did not squarely raise a conflict of interests issue about their own conduct. They were responding to a request for information from a senior officer, and they had no personal interest in or connection to the information that was requested.

The flaw in this contention is that all members of the NSWPF have a joint and shared responsibility to ensure that the integrity of the NSWPF is upheld, NSWPF policies are observed, conflicts of interests are properly addressed, and the public interest is maintained as the central consideration. Access to and use of confidential information is highlighted a number of times in the regulations and policy documents as a topic of special concern and sensitivity. It would be fatuous to suggest that a police officer could knowingly ignore a conflict of interests posed by another officer inappropriately using internal systems to obtain access to restricted information. The shared obligation to ensure that the Code of Conduct and the Conflict of Interests Policy are observed was particularly relevant to officers in the PSC, who managed confidential information that concerned the integrity of the NSWPF, the conduct of officers, and disagreements between officers.

It should have been apparent to a number of the officers who acted on Kaldas’s request that it potentially raised an integrity and conflict of interests problem. It was clear from the very nature and terms of Kaldas’s request to Carey that, at the very least, questions should be asked or a discussion should occur before the request was acted on. The background history – of internal controversy and discord between senior officers in the NSWPF – was known to many officers, and was also apparent from the events that prompted the request (namely, the Kennedy article and Burn’s proposed correction). At least one officer – Craft – squarely recognised the problem and set out his thoughts and suggestions in a lengthy email to Kaldas on 30 September 2010. The email refers to Kaldas as an ‘aggrieved officer’ and makes suggestions so that he will be “well positioned to refute any future allegations that your motives for becoming involved ... were anything less than altruistic”.<sup>248</sup> There is no evidence that the email arose from discussions that Craft and Kaldas held with other officers, though it would be surprising if others had not been involved.

247 Diary, Mark Galletta, 1 October 2010.

248 Email from Detective Inspector Matthew Craft, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 30 September 2010.

A second recurring contention was that the officers felt obliged to act or respond in the way they did because the information request came from a Deputy Commissioner.<sup>249</sup> This could be relevant in a number of ways. It could be assumed that the Deputy Commissioner had a legitimate need for wide-ranging information about NSWPF issues, especially on topics that are in the media. It could equally be assumed that the Deputy had given thought to the propriety of a request before making it. It can also be difficult for officers working in a hierarchical and command structure to raise concerns about orders received from superiors.

Some weight must be given to this consideration in assessing the conduct of officers. It would be routine and instinctive that information requests from a Deputy Commissioner would normally be acted on promptly by subordinate officers. Even if an officer has cause for concern, it is understandable they may feel inhibited about raising the issue directly with a Deputy Commissioner.

Making allowance for that institutional reality, it is nevertheless the case that all NSWPF employees (and particularly those in PSC) have a duty to be alert to conflict of interests problems in dealing with internal information requests. Neither the Code of Conduct nor the Conflict of Interests Policy made exception for ethical challenges that are thrown up by the conduct of more senior officers. Indeed, organisational history is full of examples to the contrary. The option that is always available – and recognised in both the Code and the Policy – is for an officer dealing with a difficult, awkward or delicate issue to document the problem that has arisen and seek advice from a supervisor or other senior officer.

The request that Kaldas made to Carey on 29 September 2010 hardly fell into a ‘routine business’ category. He was seeking access to information drawn from tightly protected NSWPF documents in connection with allegations of unlawful activity within SCIA. The nature of the request – and the background to the issues it raised – were enough to raise an alert flag for a diligent officer in PSC who received or was asked to act on such a request.

A third recurring contention was that officers did not recall receiving or seeing Kaldas’s request, or at least turning their mind at the time to whether it raised a conflict of interests problem. To the extent that they did recall the matter, they did not believe that the request or the information sought was significant. The inability to recall the events was suggested by one officer to confirm the lack of significance attached to the request at the time.

It has already been noted that the request hardly fell into a ‘routine business’ category. For example:

- It came from a Deputy Commissioner seeking information drawn from highly protected documents.
- It referred to other events on the radar of the NSWPF – such as the media article and Small book.
- It referred to the work of task forces in investigating a broad range of allegations.
- It cautioned that Kaldas “will obviously be circumspect”<sup>250</sup> in dealing with any information he was given.

The request generated a flurry of activity over the next two days to access the documents referred to in the request. Late on the first day, Carey wrote in an email to two other officers that “This is hotting up considerably tomorrow we need to place our hands on as much as possible and hand over to Nick”.<sup>251</sup>

Those circumstances make it difficult to understand why the officers directly responding to Kaldas’s request – made only four or so years before their evidence to Operation Prospect – did not have a clearer recall of the significance of the request and their actions at the time. Of equal concern is that the officers made only limited records of their search and disclosure actions.

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249 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1685 and 1708; Ombudsman Transcript, Paul Dunstan, 21 August 2014, pp. 1888-1889; Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1750-1752.

250 Email from Deputy Commissioner Nick Kaldas, NSWPF to Assistant Commissioner Paul Carey, NSWPF and Superintendent Darren Spooner, NSWPF, 29 September 2010.

251 Email from Assistant Commissioner Paul Carey, NSWPF to Detective Superintendent Mark Walton, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 29 September 2010.

### 21.3.3 Dunstan's actions, evidence and submissions

#### 21.3.3.1 Dunstan – actions

Dunstan, as Carey's Staff Officer, was involved in responding to Kaldas's request at a number of stages on 29 and 30 September and 1 October 2010 in the following order. Carey forwarded Kaldas's email to Dunstan and Walton with the direction "we need to place our hands on as much as possible and hand over to Nick".<sup>252</sup> Dunstan obtained the Emblems report from Cook, after a telephone call from Carey to Cook. Walton sent Dunstan and Carey an email stating that he (Walton) had spoken to Kaldas who needed "a complete briefing ... on this matter"<sup>253</sup> by 5 October for a meeting with Scipione and Burn. Dunstan had a conversation with Ms D about Carey's request that she prepare a briefing note, in which Ms D expressed her view to Dunstan that "I thought it looked bad".<sup>254</sup>

#### 21.3.3.2 Dunstan – evidence

Dunstan agreed that he was obliged as a member of the PSC to bear in mind carefully whether providing information to another NSWPF officer could create a conflict of interests for that officer, and Dunstan believed that he followed that practice every time.<sup>255</sup> He conceded, however, that his practice could depend on who requested the material,<sup>256</sup> because:

*... [t]here is a chain of command within our organisation ... if someone says, 'can you please give me that document,' you give – if it's ... across the hallway, or up the chain of command, 'Can you please provide me with a copy of a document,' you provide them with a copy of the document.*<sup>257</sup>

He later stated that "if a senior officer asks me to provide them ... I'll provide the document".<sup>258</sup> Dunstan emphasised that if he had been asked to do something by a Deputy Commissioner or an Assistant Commissioner, he would have done it and "may not have turned my mind to that policy".<sup>259</sup> He said that this was the case despite agreeing that it was mandatory that he turn his mind to the Conflict of Interests Policy and the Code of Conduct, elaborating that "[i]t's hard to get round the chain of command in this organisation",<sup>260</sup> and that "[i]f you're told to do something by your boss, you do it".<sup>261</sup>

Dunstan said that if his boss at the time, Carey, asked him to do something or obtain a document, he would usually do it without finding out why it was wanted – "I wouldn't question my boss".<sup>262</sup> He conceded that, hypothetically, he should comply with the Conflict of Interests Policy even if the person who had requested the document was an Assistant Commissioner, although this could put him in "a very awkward position".<sup>263</sup> He stated that the Conflict of Interests Policy would require him to report the matter to the person next in charge of the requesting officer.<sup>264</sup> Here it should be noted that if Dunstan had reported Carey's request, the report would have gone to Deputy Commissioner Kaldas.

252 Email from Assistant Commissioner Paul Carey, NSWPF to Detective Superintendent Mark Walton, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 29 September 2010.

253 Email from Detective Superintendent Mark Walton, NSWPF to Assistant Commissioner Paul Carey, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 1 October 2010.

254 Statement of Information (Interview), [Ms D], 21 July 2014, p. 50.

255 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1878.

256 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1879.

257 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1880.

258 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1878.

259 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1913.

260 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1881.

261 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1913.

262 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1884.

263 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1884.

264 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1884.

Dunstan agreed that if a senior officer had asked for a document that they ought not to have requested, it would be reasonable to communicate this to the officer and ask them to reflect on their request.<sup>265</sup> However, he said it would be “[e]xtremely difficult” to do this.<sup>266</sup> Dunstan agreed with the proposition that the senior officer requesting the documents could simply direct him to provide the document even if he took this course of action, “[a]nd then do terrible things to your career as well”.<sup>267</sup>

Dunstan was not sure if he had ever seen the Emblems report. He thought it could be a document that was kept in a safe at the PSC.<sup>268</sup> He thought he may have seen the report when organising documents to be moved when the PSC changed premises.<sup>269</sup> He said he did not recall knowing anything particular about the status of any confidentiality issues relating to the Emblems report.<sup>270</sup> Dunstan also said that as at September 2010 he did not know anything about the findings and recommendations of Task Forces Banks, Shillingstone, Tumen or Sibutu.<sup>271</sup> He did, however, acknowledge that he should have found out what each was about so he could satisfy himself – in accordance with the standards of professional conduct required – that it was appropriate that Kaldas had access to those documents.<sup>272</sup> He said that he had no recollection of providing those documents, but if he did he would have been following a direction.<sup>273</sup>

When questioned specifically about the propriety of providing those documents to Kaldas, Dunstan agreed that it was inappropriate for Kaldas to have the Emblems report.<sup>274</sup> He also agreed that if Sibutu and Tumen involved investigations into Burn’s conduct at the NSWPF Internal Affairs unit in the early 2000s, there would have been a conflict of interests in providing those to Kaldas as well.<sup>275</sup> Dunstan said he assumed he had discussions with Carey about Kaldas’s email and what Kaldas wanted, but he had no recollection of those discussions.<sup>276</sup>

Dunstan agreed that the first long paragraph in Kaldas’s 29 September 2010 email clearly indicated that the purpose for which the documents were being collected was for Kaldas to use them in an internal dispute with Burn, stating: “It’s clear and it’s none of my business, to be honest”.<sup>277</sup> When Dunstan was pressed on this answer, he said that it was his business given that he participated in collecting those documents and providing them to Kaldas and that, in hindsight, the intended purpose behind collecting the documents was inappropriate.<sup>278</sup> However, Dunstan reiterated that “you do what you’re told”,<sup>279</sup> and maintained that he had no particular interest in either Kaldas’s or Burn’s views prevailing.<sup>280</sup>

### 21.3.3.3 Dunstan – submissions

Dunstan’s submission to Operation Prospect reiterated many of the points that he made in his evidence summarised above. He submitted that his role involved being “merely the conduit ... and not the reviewer” of the information he accessed and collated for Carey.<sup>281</sup> Dunstan said he would receive daily requests for information on complaint matters from the Deputy Commissioner’s office by phone and email, as well as dealing with information requests of other kinds. Due to the volume of information he was asked to process, it was not possible for him to read all the documents that came through his office. Dunstan submitted that his role was merely to locate documents and provide them to Carey, and he was not required to question the propriety of the requests for information<sup>282</sup> – “I was not advisor to Assistant Commissioner Carey”.<sup>283</sup>

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265 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1889.

266 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1889.

267 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1889.

268 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1891.

269 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1891.

270 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1878.

271 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1894.

272 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1909.

273 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1909.

274 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1910.

275 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1910.

276 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1911.

277 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1920.

278 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1920.

279 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1920.

280 Ombudsman Transcript, Paul Dunstan, 21 August 2014, p 1920.

281 Dunstan, P, Submissions in reply, 10 August 2015, p. 3.

282 Dunstan, P, Submissions in reply, 10 August 2015, p. 3.

283 Dunstan, P, Submissions in reply, 10 August 2015, p. 4.

He considered that it was Carey's responsibility, as Commander of Professional Standards, to ensure that the release of documents was appropriate and in accordance with NSWPF policies.<sup>284</sup> He noted that "[t]here were countless checks and balances within PSC which was an extremely risk adverse environment", and he could assume that questions about the propriety of information requests were taken up and resolved by others.<sup>285</sup> Many of the requests that he dealt with on a daily basis concerned controversial matters.

Dunstan also submitted that the Conflict of Interests Policy only required him to consider conflicts relating to his own private interests, and not whether the actions of other officers raised actual or perceived conflict of interests issues. On that basis, Dunstan submitted that he had no interest in the Emblems report or the careers of Kaldas or Burn – so the Conflict of Interests Policy was therefore not directly relevant on this occasion to his actions in locating the documents in response to Carey's request. There was, in his view, nothing special about this information request from a Deputy Commissioner that should have drawn his attention to broader concerns:

*"I was acting on instruction from a senior officer and at no stage did I believe that request was inappropriate, improper or unfair. My actions were entirely reasonable for a Staff Officer working in a disciplined organisation following an urgent request from a senior officer".<sup>286</sup>*

### 21.3.3.4 Analysis

The points made by Dunstan have essentially been addressed in section 21.2. In summary, all NSWPF employees – and especially officers in the PSC – should consider the potential relevance of the Conflict of Interests Policy and the Code of Conduct in discharging all their duties. The Code of Conduct requires NSWPF employees to "act with care and due diligence".<sup>287</sup> An employee who observes or is asked to participate in conduct that may raise an actual, potential or perceived conflict by another officer should at least draw attention to the issue. More overt action may also be required. Those principles apply equally to questionable conduct by a supervisor or more senior officer.

It should have been clear to Dunstan from his interaction with Carey and the actions that Carey asked him to take, that there was a conflict of interests issue that required further discussion or recording before any further actions were taken. Ms D drew attention to this directly. Dunstan had 16 years' experience in the NSWPF. Prudence required that he address an issue thrown up by Kaldas's request.

The point is nevertheless acknowledged that Dunstan's role was to undertake duties as directed by Carey, and he might reasonably assume that Carey had given proper consideration to any tasks he was assigning to Dunstan. It is possible too, given the volume of information requests that Dunstan processed in his role of Staff Officer, that he may not have given a high level of attention to the propriety of each request. On balance – although Dunstan's actions in responding to Carey's directions and facilitating Kaldas's request warrant adverse comment – no formal finding will be made in relation to Dunstan's conduct.

## 21.3.4 Craft's actions, evidence and submissions

### 21.3.4.1 Craft – actions

Craft – as the Professional Standards Manager, Specialist Operations – was involved in responding to Kaldas's request at a number of stages on 29 and 30 September and 1 October 2010 in the following order. Spooner sent him a copy of Kaldas's email with the comment "As discussed with Deputy today".<sup>288</sup> Cook sent him a copy of the Emblems report. He accessed four complaints on the c@ts.i database relating to former SCIA officers and printed documents from within those complaints. He requested the e@gle.i support section to provide him with read-only access to five Strike Force reports, and discussed the request with that section. He accessed information relating to three of those reports on e@gle.i.

<sup>284</sup> Dunstan, P, Submissions in reply, 10 August 2015, p. 3.

<sup>285</sup> Dunstan, P, Submissions in reply, 10 August 2015, p. 3.

<sup>286</sup> Dunstan, P, Submissions in reply, 10 August 2015, p. 6.

<sup>287</sup> NSWPF, *Conflicts of Interest: Policy and Guidelines*, September 2009, p. 2.

<sup>288</sup> Email from Superintendent Darren Spooner, NSWPF to Detective Inspector Matthew Craft, NSWPF, 29 September 2010.

He met with Kaldas, and after that meeting he emailed Kaldas outlining his concerns about the request and steps Kaldas could take to resolve them. Walton sent him and Dunstan an email stating that he (Walton) had spoken to Kaldas who needed “a complete briefing on this matter” by 5 October for a meeting with Scipione and Burn.

#### **21.3.4.2 Craft – evidence and submissions**

Craft’s evidence to Operation Prospect is summarised in section 21.1.6.

Craft’s submission to Operation Prospect rejected any suggestion that he acted inappropriately. He explained that his role as Professional Standards Manager required him to respond to requests for information, by first accessing and reading that information to “determine whether it is appropriate to provide this information to the requesting party”.<sup>289</sup> He had authority to access the documents that he requested. He had:

*... no reason to doubt that [Kaldas’s] request was anything other than a legitimate request from the Deputy Commissioner and made in a similar fashion to numerous other requests for operational information by senior management.*<sup>290</sup>

He was not in a position, either from corporate knowledge or from the terms of Kaldas’s request, to see a conflict of interests problem or to assess the appropriateness of the request without first accessing the documents. His email correspondence created a record that was adequate for internal purposes and made his actions “transparent and traceable”.<sup>291</sup> The email that he sent to Kaldas advising on a potential conflict of interests showed his (Craft’s) “attempt to comply with ... his legislative and departmental policy obligations”, after having viewed the material and being alerted to a conflict of interests issue.<sup>292</sup> Craft did not provide Kaldas with a copy of the reports in that email or otherwise.

#### **21.3.4.3 Analysis**

Those submissions can be accepted as a fair description of Craft’s role and the timeline of events. However, his explanation poses unanswered questions and provides room for competing interpretations of his actions and communications with Kaldas. The evidence before Operation Prospect is that Craft was given a copy of the Emblems report on 30 September, Kaldas told Galletta on 1 October that he had a copy of the Emblems report, Craft and Kaldas met in between and – after that meeting – Craft provided advice to Kaldas on steps he should take to receive an independent briefing on the content of the corporate records referred to in Kaldas’s request to Carey.

There is no evidence that Kaldas followed any of the steps suggested by Craft, which included that the Commissioner of Police could be informed of Kaldas’s interest. Nor, it should be reiterated, is there any direct evidence that Carey provided any report or confidential information to Kaldas or that – before receiving the Emblems report – Craft was aware of the allegations and grievances examined in that and other reports.

The email sent by Craft to Kaldas following their meeting was a prudent step, but lacked the objective flavour that should typify a caution by one officer to another about a significant conflict of interests problem. Making due allowance both for email prose and the deferential tone a subordinate may adopt in writing to a Deputy Commissioner, Craft’s email could have been better phrased as an austere summary of the concerns that prompted him to write to Kaldas. The tone of reassurance in the email that Kaldas had a legitimate interest in being better informed about matters in which he was an ‘aggrieved officer’, and that “there is a need to protect you from any unfounded allegations” could have given way to a description of Kaldas’s conflict of interests problem and the necessity for other senior officers to be informed. Craft also did not adopt the prudent course of keeping some other record of his actions and meeting with Kaldas.

The point is nevertheless acknowledged that Craft’s actions were documented and that he (alone of all officers) adopted the prudent course of notifying his concerns in writing to Kaldas. On balance, although Craft’s actions in dealing with Kaldas’s request warrant adverse comment, no formal finding will be made in relation to Craft’s conduct.

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<sup>289</sup> Craft, M, Submission in reply, 2 November 2015, p. 1.

<sup>290</sup> Craft, M, Submission in reply, 2 November 2015, p. 6.

<sup>291</sup> Craft, M, Submission in reply, 2 November 2015, p. 10.

<sup>292</sup> Craft, M, Submission in reply, 2 November 2015, p. 12.



## 21.3.5 Cook's actions, evidence and submissions

### 21.3.5.1 Cook – actions

Cook, as the Officer in Charge of the Investigations Unit of the PSC, had access to the e@gle.i system. On 30 September 2010 he accessed the system and emailed a copy of the Emblems report on separate occasions that day to Dunstan and Craft. Cook appears not to have asked any questions about the request, other than to proceed on a loose understanding or assumption that Dunstan would provide the report to Carey who had requested it. Cook did not record his reasons for accessing and providing the report to Dunstan or Craft in e@gle.i or his official police notebook, Duty Book or personal work diary. The explanation for Cook's involvement seems to be that he was an expert user of the system with 'super user access'.

### 21.3.5.2 Cook – evidence and submissions

Cook gave evidence to Operation Prospect that he did not ask Dunstan why Carey wanted the Emblems report, as he believed that Carey's position as Commander at PSC meant that he could have lawful access to the document.<sup>293</sup> Cook stated that he "didn't feel it necessary" to consider or confirm whether Carey was entitled to the document.<sup>294</sup> Cook submitted that the credibility of the request would have been reinforced by Kaldas's high ranking position.<sup>295</sup>

As to providing a copy of the report to Craft, Cook could not explain why he did so – adding that he "just didn't think of it at the time" and could not explain why he had not turned his mind to the obligations imposed by the Conflict of Interests Policy.<sup>296</sup> Cook's submission drew attention to the fact (discussed in section 21.3.2) that Craft had been in contact with the e@gle.i support section on two occasions earlier that day to advise that he had authorised access to five of the Strike Force reports "at the request of Kaldas" and to discuss how to use that access. Craft later accessed three of the reports. Cook submitted that this may explain why he was brought in unnecessarily by the IT section to facilitate access and why he did not properly record his actions.

Cook gave evidence that he understood the requirement to perform his duties in compliance with the Conflict of Interests Policy and the Code of Conduct,<sup>297</sup> and that he was not obliged to comply with an unlawful direction from a superior officer.<sup>298</sup> However, Cook also gave evidence that he would not ask why an officer of the rank of Assistant Commissioner or above wanted access to a requested document, would not expect an explanation if one was sought, and had simply assumed (in the case of the request from Dunstan) that Carey had a lawful reason to have access to that document.<sup>299</sup>

Cook's evidence to Operation Prospect was that he did not attach any significance to the requests for the Emblems report – despite stating that he was aware of some animosity between Kaldas and Burn about an investigation by the Special Crime Unit (SCU) at the NSWCC that "involved a listening device used to record a large number of police officers at a social function".<sup>300</sup> Generally, Cook submitted that on the evidence available it could not be said that he acted unreasonably or had reason to suspect that others had an improper motive for access. The evidence, he submitted, is consistent with him responding properly to a request from more senior officers, and with his long and unblemished career in the NSWPF.

Cook also pointed to other contextual or mitigating circumstances. The chain of events in which he has been implicated were, he commented, entirely generated by Kaldas's failure to consider his own conflict of interests.<sup>301</sup> The strictly defined chain of command placed onerous and conflicting obligations on NSWPF officers in circumstances such as these. Cook's submission was also critical of the "potentially precarious and vulnerable position" that he was placed in by having an unrestricted 'legacy' access to e@gle.i that had not been withdrawn.<sup>302</sup>

293 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1685.

294 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1685.

295 Cook, M, Submission in reply, 18 November 2015, p. 3.

296 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1729-1730.

297 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1672 and 1683.

298 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1684.

299 Ombudsman Transcript, Michael Cook, 19 August 2014, pp. 1682-1685.

300 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1712.

301 Cook, M, Submissions in reply, 18 November 2015, p. 3.

302 Cook, M, Submissions in reply, 18 November 2015, pp. 5-6, 10 and 16.

### 21.3.5.3 Analysis

There is no clear evidence that Cook was complicit in the actions that were collectively taken by NSWPF officers to provide information to Kaldas that should have been requested by another route. There were nevertheless shortcomings in his conduct. He was aware of the highly protected nature of records in the e@gle.i system, and did not demonstrate at the time that he considered the appropriateness of providing electronic copies of the Emblems report to Craft and Dunstan and finding out their reasons for requesting the report. As long as Cook's access to the system remained at an unrestricted level, he had a responsibility (as he would have been aware) to use that level of access in accordance with NSWPF requirements – and to confront any misapprehension that could arise from having a reputation as “the go-to person to get access to any investigation” on e@gle.i.<sup>303</sup> The Code of Conduct is clear that NSWPF officers “must only access, use and/or disclose confidential information if required by their duties and allowed by NSW Police Force policy”.<sup>304</sup>

On balance, although Cook's conduct in providing electronic copies of the Emblems report to Dunstan and Craft warrants adverse comment, no formal finding will be made in relation to Cook's conduct.

## 21.3.6 Carey's actions, evidence and submissions

### 21.3.6.1 Carey – actions

Carey was an Assistant Commissioner and Commander of Professional Standards. He was a recipient (along with Scipione, Burn and others) of an email Kaldas sent on 25 September 2010 objecting to a reply being made to the Kennedy article without further discussion or PSC involvement. Four days later on 29 September Kaldas emailed Carey a request for information from five Strike Force reports. Two other events that day involved Carey before he went on leave – he was emailed the results of a record search that a PSC officer had done for the Strike Force reports referred to in Kaldas's request, and he forwarded Kaldas's request to Dunstan and Walton with the comment “This is hotting up considerably tomorrow we need to place our hands on as much as possible and hand over to Nick”.<sup>305</sup>

Carey is specifically mentioned in the evidence at three other points. First, Cook gave evidence that Dunstan contacted him by phone on Carey's behalf to request a copy of the Emblems report, and that he (Cook) emailed a copy to Dunstan. Second, Ms D gave evidence that Carey directed her (most likely through Dunstan) to prepare a briefing document on the strike forces. Third, Walton (while Acting Commander) emailed Carey and Dunstan – “Just to keep you in the loop” – to say that he had spoken to Kaldas and, at his request, Walton had arranged for Ms D to prepare “a complete briefing to him on this matter” in anticipation of a scheduled meeting with Scipione and Burn.

### 21.3.6.2 Carey – evidence and submissions

Carey was unable to give full evidence to Operation Prospect, but made a short written submission that he had done nothing wrong. His central point was that there was no evidence that Kaldas had any files, that he gave Kaldas any files, or that other officers did so at Carey's direction.<sup>306</sup> Carey acknowledged that files were gathered at his direction, but this was to enable him to assess Kaldas's request – which he presumably did and decided not to provide the files to Kaldas.

### 21.3.6.3 Analysis

Carey is correct in submitting that there is no evidence that files were given to Kaldas, either at all or subject to Carey's direction. However, some information from the Strike Force reports was provided in Ms D's briefing note, with Carey's apparent approval. It is clear too that there was significant officer activity instigated by Carey to assemble information with a view to providing a briefing of some kind to Kaldas. There was no express caveat that this would be analysed by Carey before anything would be given to Kaldas.

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303 Ombudsman Transcript, Michael Cook, 19 August 2014, p. 1707.

304 NSWPF, Conflicts of Interest Policy and Guidelines, September 2009, p. 2.

305 Email from Assistant Commissioner Paul Carey, NSWPF to Detective Superintendent Mark Walton, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 29 September 2010.

306 Carey, P, Submission in reply, 5 August 2015, p. 2.

Carey should have understood from the terms of Kaldas's request that it might raise a conflict of interests issue. At the least, he should have explicitly required that any information assembled by other officers be reviewed and cleared by him (or Walton) before being handed to Kaldas. Other options could also have been considered and recorded – including seeking clarification from Kaldas on the purpose for his request, or raising the request with the Commissioner. Instead, Carey urged other staff to act quickly to assemble the information Kaldas requested and give it to him. He was informed that a briefing on the strike forces was being prepared by Ms D for delivery to Kaldas.

An important consideration is that Carey was the author of the foreword to the Conflict of Interests Policy in 2009, which counselled other officers that conflicts of interests posed a risk to public confidence in the integrity of the NSWPF. Their responsibility, he advised all NSWPF employees, was to report and manage “actual, potential and perceived conflicts of interest”. Carey should have modelled the highest standards of ethical behaviour.

Carey's failure to demonstrate leadership on this issue and to follow the procedures of the Policy he had issued was a serious default that is the subject of a formal finding later in this chapter.

## 21.3.7 Walton's actions, evidence and submissions

### 21.3.7.1 Walton – actions

Walton was the senior PSC Officer and started in the role of Acting Commander Professional Standards late on 29 September 2010 when Carey went on leave. Walton was therefore in a supervisory position during the period that other officers responded (at Carey's instigation) to Kaldas's request. Walton's only recorded actions (in the Operation Prospect evidence) is that Carey forwarded Kaldas's email to Walton and Dunstan with the direction “we need to place our hands on as much as possible and hand over to Nick”,<sup>307</sup> and Walton sent Dunstan and Carey an email stating that he (Walton) had spoken to Kaldas who needed “a complete briefing on this matter” by 5 October for a meeting with Scipione and Burn. The outcome of that email was the briefing prepared by Ms D.

Although there is little direct evidence of Walton's knowledge or actions in this period, it is a reasonable inference that he was aware that officers under his supervision were responding to Kaldas's request between 29 September and 5 October. The two recorded actions in the previous paragraph, which occurred at either end of that period, confirm this.

### 21.3.7.2 Walton – evidence

Walton did not recall in evidence to Operation Prospect what actions he or others took in this period, but he did not deny possible involvement.<sup>308</sup> He could not exclude the possibility that he assisted or facilitated providing material to Kaldas. He could not recall his precise knowledge at the time about Kaldas's grievance or about discord between Kaldas and Burn, but acknowledged that he was aware of friction. He was aware in 2010 – from information in the public domain and from ‘water cooler gossip’ – that Kaldas felt aggrieved about having been named in a LD warrant that had become public, and that Burn had been a senior officer at SCIA when the warrant naming Kaldas was granted.<sup>309</sup> Walton gave evidence that he did not know, either in 2010 or when examined in 2014, how much involvement Kaldas had with Banks, Shillingstone, Sibutu, Tumen and/or Emblems.<sup>310</sup>

While unable to recall his reaction at the time upon seeing Kaldas's email request to Carey, Walton agreed that he should have considered the possible uses of the documents requested by Kaldas.<sup>311</sup> He agreed that he should have considered the issue given the gossip that was known “if I in fact actively did anything”.<sup>312</sup>

Walton agreed that an available inference that could be drawn from Kaldas's email to Carey was that Kaldas would use the requested material to argue against Burn's proposal to seek a correction to the Kennedy article.

307 Email from Assistant Commissioner Paul Carey, NSWPF to Detective Superintendent Mark Walton, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 29 September 2010.

308 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1751.

309 Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1742-1743.

310 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1745.

311 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1756.

312 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1761.

However, Walton said he had not interpreted Kaldas's email request that way and did not actually recall what he thought at the time.<sup>313</sup> When Walton was asked whether Kaldas's comment about needing to be better informed if his view was to prevail alerted him to "some sort of in-fighting aspect to [Kaldas's] concerns", Walton responded: "I don't know about in-fighting, but it infers there's not one view".<sup>314</sup> He was reluctant to describe such a use of these documents as being an 'in-fight', preferring instead a description of "two different views on some media – letter to the media".<sup>315</sup> However, after Walton was shown his email of 5:28 pm on 1 October 2010 (in which he asked for a briefing to be prepared to assist Kaldas), Walton commented that "I guess 'in-fight' is one way of describing" the different positions taken by Kaldas and Burn about the correction of the Kennedy article.<sup>316</sup>

Walton was not able to say whether he did anything in response to the email direction from Carey to "place our hands on as much as possible and hand it over to Nick".<sup>317</sup> Walton had no recollection of his email to Carey and Dunstan on 1 October 2010, which included a summary of a discussion between Walton and Kaldas and noted that Kaldas had requested a briefing by midday on the following Tuesday.<sup>318</sup> He could not recall if he actually provided any documents to Kaldas, but agreed that providing documents to Kaldas would have been improper.<sup>319</sup> He also agreed – in discussion of a hypothetical scenario – that if an officer considered a request for information to be improper, they were obliged to report the request up the chain of command and could seek guidance from their immediate supervisor.<sup>320</sup>

### 21.3.7.3 Walton – submissions

Walton's written submission took issue with the style of questions he was asked in his evidence to Operation Prospect and some of the inferences drawn from that evidence. Some of his submissions directed to the provisional inferences have been accepted and are not repeated in this chapter. The following points from his submissions elaborate on aspects of his evidence as summarised above.

Walton stressed that he had not provided the Emblems report or other reports to Kaldas, nor tasked anyone else to do so.<sup>321</sup> Nor, he stressed, was there any evidence that he had ever done so. He was responsible for Ms D's briefing note being prepared and provided to Kaldas, but he regarded its contents as "benign, given that it merely recounts the findings and recommendations of the reports and does not mention either Kaldas or Burn by name".<sup>322</sup>

He further submitted that the Conflict of Interests Policy did not require NSWPF officers to identify and take steps to manage or avoid conflicts of interests that may arise in respect of other NSWPF officers – to require that:

*... would be to impose an unfair burden and an unrealistic set of standards if officers were to be expected to not only abide by the [Conflict of Interests Policy] themselves, but also supervise the compliance with that policy by other officers.*<sup>323</sup>

Walton submitted that he was not to know exactly what Kaldas's private and professional interests were in relation to the matters that he made requests about:

*... Kaldas's email did not on its face bespeak the existence of a conflict of interest in seeking the documents on his part in seeking the documents the subject of the email.*<sup>324</sup>

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313 Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1754-1755.

314 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1754.

315 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1764.

316 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1765.

317 Ombudsman Transcript, Mark Walton, 19 August 2014, pp. 1745-1747.

318 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1763.

319 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1751.

320 Ombudsman Transcript, Mark Walton, 19 August 2014, p. 1762.

321 Walton, M, Submission in reply, 14 August 2015, p. 3.

322 Walton, M, Submission in reply, 14 August 2015, pp. 3-4.

323 Walton, M, Submission in reply, 14 August 2015, p. 6.

324 Walton, M, Submission in reply, 14 August 2015, p. 11.

A plausible interpretation of the steps he took on 1 October 2010 to progress Kaldas's email request was that it followed "a further conversation with Kaldas which might be assumed to have given [him] greater comfort as to the propriety of Kaldas's request".<sup>325</sup> This was consistent with the reasons stated in Kaldas's email – which referred to the newspaper article and the internal high level discussions in the NSWPF about which he (Kaldas) needed to be better informed.

Walton's submission also pointed out that the evidence establishes only that his knowledge in 2010 of friction between Kaldas and Burn was no more than "public domain and water cooler type gossip".<sup>326</sup> Any concessions he made in giving evidence in 2014 about the actions that could have been taken at the time of Kaldas's request were influenced by subsequent and not contemporaneous knowledge. In summary, the proper inference is that:

*"based upon the terms of the email and what he knew of the matters the subject of the email as at the date he received the email, he perceived no actual, potential or perceived conflict of interest in the request".<sup>327</sup>*

Another point in Walton's submission was that he acted in this matter at the direction of Kaldas and Carey, who were more senior officers. He was required under the Code of Conduct to comply with the lawful and reasonable directions of a NSWPF officer who had authority to give the direction.<sup>328</sup>

#### 21.3.7.4 Analysis

Some of the points in Walton's evidence and submissions were addressed earlier – specifically, that all NSWPF officers had a shared responsibility to ensure that other officers did not breach the Conflict of Interests Policy, this responsibility extended to directions from more senior officers that raised a conflict of interests problem, and the briefing note prepared by Ms D contained restricted information drawn from Highly Protected reports that Kaldas was not entitled to receive by the route that he chose.

The central flaw in Walton's submission is that he was Acting Commander of PSC at the time. He had a special responsibility to ensure that all activity occurring within the Command was consistent with the laws and policies applying to the NSWPF, particularly the Code of Conduct and the Conflict of Interests Policy. This responsibility required him to be alert to risks – that he made it his business to seek more information about activities that were ambiguous or questionable.

On the limited evidence available, Walton knew enough to act more astutely than he appears to have done. The request from Kaldas was not (as noted above) a routine business request, and nor did Carey treat it as such. A threshold issue that should have been addressed, apparent from the face of Kaldas's request, was whether Kaldas sought access to information for operational or personal reasons. This was strikingly apparent too from the next email that Carey sent to Walton and Dunstan: "Chaps. This is hotting up considerably tomorrow we need to place our hands on as much as possible and hand over to Nick some is eaglei safes and boxes".<sup>329</sup>

Another obvious warning sign was that Kaldas appeared to be acting independently of the knowledge of other members of the NSWPF executive. Walton apparently spoke about the request with Kaldas but not other senior executive officers. The lack of any record to shed further light on Walton's actions do not reflect favourably on his managerial actions at the time.

Walton failed to discharge properly the responsibilities of his role as Acting Commander of PSC and to follow the procedures of the Conflict of Interests Policy that he was responsible for administering. This default is the subject of a formal finding later in this chapter.

<sup>325</sup> Walton, M, Submission in reply, 14 August 2015, p. 11.

<sup>326</sup> Walton, M, Submission in reply, 14 August 2015, p. 8.

<sup>327</sup> Walton, M, Submission in reply, 14 August 2015, pp. 15-16.

<sup>328</sup> Walton, M, Submission in reply, 14 August 2015, p. 17.

<sup>329</sup> Email from Detective Superintendent Mark Walton, NSWPF to Assistant Commissioner Paul Carey, NSWPF and Detective Sergeant Paul Dunstan, NSWPF, 1 October 2010.

### 21.3.8 Role of other officers in acting on Kaldas's request

Three other officers took actions between 29 September and 5 October 2010 that are referred to in this chapter – Galletta, Ms D and Spooner. The evidence before Operation Prospect does not support a formal finding or specific adverse criticism about the conduct of any of them. Their involvement in responding to Kaldas's request will be considered briefly:

- **Galletta** was a member of the investigating teams for Sibutu, Tumen and Emblems. He provided a copy of the Tumen Executive Summary and report to Kaldas at his request. Galletta's actions were fully recorded at the time. Galletta was unwise to do so without further consideration or discussion of this request with others. He was aware of the link between the issues investigated in Tumen and Emblems – and specifically that Brammer (who was mentioned in Kaldas's request to Galletta) was named in both reports. Galletta was aware too that Kaldas was a complainant to Emblems. On the other hand, it is plausible that Galletta thought it appropriate to respond to this request from a Deputy Commissioner who said he needed the report for a meeting with another Deputy Commissioner.
- **Ms D** was a Senior Project Officer in the PSC who prepared a briefing note on the strike forces (including Emblems) that was given to Kaldas. She was aware of (but did not see the terms of) Kaldas's request, and expressed concerns about the task to Dunstan. She had no direct dealings with Kaldas and was carrying out an instruction issued by Walton.
- **Spooner** was Kaldas's staff officer at the time. He was copied into two of Kaldas's emails (including Kaldas's request to Carey), and also forwarded Kaldas's email to Craft. There is no evidence before Operation Prospect of Spooner playing any other part in facilitating Kaldas's request or receiving documents on his behalf.

## 21.4 Findings

### 83. Kaldas

Kaldas's conduct in requesting or receiving NSW Police Force information on three occasions – in an email to Carey on 29 September 2010, in a request to Galletta on 1 October 2010, and in receipt of a briefing note prepared by Ms D on 5 October 2010 – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As a Deputy Commissioner of Police, Kaldas should have recognised that his request and the receipt of information in the manner that occurred did not comply with the requirements of the NSW Police Force Code of Conduct and Conflict of Interests Policy.

### 84. Carey

Carey's conduct in response to a request for information in an email from Kaldas on 29 September 2010 was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As an Assistant Commissioner of Police and Commander of Professional Standards, Carey should have recognised that Kaldas's request raised a conflict of interests issue that Carey failed to address. Carey's conduct in facilitating other NSW Police Force staff to respond to Kaldas's request, and not raising the request with the Commissioner of Police, did not comply with the requirements of the NSW Police Force Conflict of Interests Policy.

### 85. Walton

Walton's conduct in responding on two occasions to requests for information that Kaldas made to Carey on 29 September 2010 and to Walton on 1 October 2010 was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As the Acting Commander of Professional Standards, Walton should have recognised that Kaldas's requests raised a conflict of interests issue that Walton failed to address. Walton's conduct in facilitating other NSW Police Force staff to respond to Kaldas's request on 1 October 2010 (when Walton was acting in Carey's role), and not raising the request with the Commissioner of Police, did not comply with the requirements of the NSW Police Force Conflict of Interests Policy.

## Chapter 22. Public dissemination of confidential documents – events in 2012

### 22.1 Confidential documents received anonymously by multiple parties

Between May and September 2012 a series of media articles were published that focused on allegations of misconduct at Mascot and at SCIA. The content of some of the articles clearly indicated that the authors had access to confidential NSWPF and NSWCC documents relating to Mascot and SCIA, including investigation reports and transcripts of interviews.

The unauthorised dissemination of confidential documents falls within the scope of Operation Prospect, following the referral of matters from the PIC Inspector and the decision of the Ombudsman to take over all complaints being investigated by Jooriland. This chapter details Operation Prospect's investigation into whether and how restricted documents were released and disseminated without authorisation during 2012.

Operation Prospect has identified (and been given) over 120 confidential NSWPF and NSWCC documents that were disseminated without authorisation to journalists, serving and former NSWPF officers, and a member of Parliament. These documents are listed in Appendix 4 to this report.

Operation Prospect gathered information about this unauthorised dissemination through a public call for information, complaints to the Ombudsman, and summonses requiring witnesses to produce relevant documents when examined in this investigation. The evidence shows that at least eight individuals received copies of both NSWCC and NSWPF documents. The documents included:

- NSWCC LD warrants and affidavits, including LD warrant 95/2000, LD warrant 266/2000 and the supporting affidavit for LD warrant 266/2000
- NSWPF investigation reports
- transcripts of interview between a range of individuals and NSWPF investigators
- NSWCC emails and file notes
- NSWPF internal memoranda
- NSWCC Information Reports and
- NSWCC, PIC Inspector and NSWPF correspondence and legal advices.

With the exception of LD warrants 95/2000 and 266/2000, these documents were not in the public domain before 2012.

The analysis in this chapter confirms that these documents could only have been in circulation in the way that occurred in 2012 as a result of improper access, copying and dissemination of documents from the computer and/or file systems of the NSWCC and/or the NSWPF. On the evidence before Operation Prospect, the PIC did not have access to the documents which were circulated in 2012. Access to the confidential and internal documents identified by Operation Prospect would ordinarily be limited to persons attached to the investigations from which the documents were sourced. This means that the disseminated documents could only have come initially from an officer who was attached to those investigations in the NSWCC and/or NSWPF, or from a person who was subsequently given authority to access these particular records on the agency computer systems. It follows that, the access and unauthorised release of so many confidential documents was a serious breach of the security systems intended to protect confidential information.

Evidence before Operation Prospect shows that the unauthorised dissemination of documents associated with Mascot and some internal NSWPF investigations increased markedly in 2012. From mid-2012, a number of people received anonymous packages of documents relating to the activities of SCIA, Operation Mascot and Tumen, Sibutu and Emblems. The recipients were two journalists, a member of Parliament, several former NSW police officers, a current NSW police officer and Kaldas. Some of the recipients later complained to Operation Prospect about matters that were revealed by the documents they had received.

The following section discusses the circumstances of eight people who received confidential documents.

### 22.1.1 Mr J

On 20 May 2012 the *Sydney Morning Herald* published an article by a journalist, Mr J, titled “Wired: my conversations were bugged”.<sup>330</sup> As discussed in Chapter 9 to this report, Mr J had been named in LD warrant 95/2000 and LD warrant 266/2000, that were obtained by Mascot in connection with the ‘King send-off’ in June 2000. In the article Mr J speculated that criminal offences may have been committed in the course of Operation Mascot investigations, and he suggested that the Emblems report should be released in full.

Mr J made a submission to Operation Prospect that included copies of various Mascot and Emblems, Tumen and Sibutu-related documents. He submitted that among the issues raised by these documents was his perceived targeting by Mascot and being named on LD warrant 266/2000.<sup>331</sup>

Mr J gave evidence to Operation Prospect that he received the documents in two or three envelopes, addressed to him and sent to his workplace in 2012.<sup>332</sup> When asked whether his receipt of documents coincided with an article he published in the *Sun-Herald* on 20 May 2012, Mr J stated that he could not be sure of the date but that “[i]t was around about that time”.<sup>333</sup> In relation to the first envelope containing these documents, Mr J told Operation Prospect:

*A lot of the documents I didn't understand. A lot of the documents were, in my view, some were from Crime Commission, some were like affidavits, some had judges' names, some had a lot of people's names on them. At the end of the day, I really didn't understand the documents. But I understood the gravity of the documents.*<sup>334</sup>

Mr J told Operation Prospect that he did not know who had sent these documents to him, and stated that he had not been given any of these documents by any NSWPF officers.<sup>335</sup> Although Mr J provided an index of the documents referred to in his submission to Operation Prospect (several of which were restricted documents), the index does not identify which of those documents were included in the envelopes sent to his workplace.

### 22.1.2 Mercer

Neil Mercer is a journalist who authored a series of articles regarding Mascot and Emblems related matters during September 2012, primarily for the *Sydney Morning Herald*. Mercer based the articles on documents he received from two sources: a former NSWPF officer, Mr K, and documents delivered to the *Sydney Morning Herald*.<sup>336</sup> The latter group of documents were addressed to one of the editors at the *Sydney Morning Herald*, rather than to Mercer.<sup>337</sup> Mercer provided Operation Prospect with a list of documents he had obtained from those two sources. He told Operation Prospect that he destroyed some of the documents and returned others to his source, Mr K.<sup>338</sup>

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330 [Mr J], Wired: my conversations were bugged, *Sydney Morning Herald*, 20 May 2012.

331 Letter from [Solicitor for Mr J], to Linda Waugh, Deputy Ombudsman, NSW Ombudsman, 29 May 2013.

332 Ombudsman Transcript, [Mr J], 12 August 2014, pp. 1455-1456.

333 Ombudsman Transcript, [Mr J], 12 August 2014, p. 1455.

334 Ombudsman Transcript, [Mr J], 12 August 2014, p. 1456.

335 Ombudsman Transcript, [Mr J], 12 August 2014, pp. 1456 and 1458.

336 Ombudsman Transcript, Neil Mercer, 14 August 2014, p. 1481; Ombudsman Transcript, [Mr K], 14 August 2014, pp. 1549-1550.

337 Ombudsman Transcript, Neil Mercer, 14 August 2014, pp. 1481-1482.

338 Ombudsman Transcript, Neil Mercer, 14 August 2014, p. 1483.



Mercer could not identify which documents in this list had been provided by Mr K and which had been received at the *Sydney Morning Herald*, but told Operation Prospect that “the bulk of the documents came via [Mr K].”<sup>339</sup> Mercer said that he received documents from Mr K “about two weeks before” the first of his articles was published by the *Sydney Morning Herald*, and he estimated that the bundles of documents provided to the *Sydney Morning Herald* arrived after Mr K provided Mercer with documents. Mercer told Operation Prospect that he did not know who had sent the documents that were delivered to the *Sydney Morning Herald*.<sup>340</sup> Mercer gave evidence that Mr K had said that he (Mr K) had received the documents “through the mail” and that Mercer had not made further enquiries about who may have sent those documents to Mr K.<sup>341</sup>

### 22.1.3 Mr L

Mr L, a member of the Legislative Council, contacted the Ombudsman on 21 September 2012, prior to the commencement of Operation Prospect. Mr L indicated that he was in possession of confidential documents relevant to the Emblems investigation which suggested that NSWPF officers involved in obtaining warrants for covert surveillance had acted inappropriately. These were matters he believed the Ombudsman should investigate.<sup>342</sup> At the time, Mr L’s offer to provide the documents was refused on the basis that the Ombudsman had no jurisdiction (at that time) to investigate the conduct of officers of the NSWCC.<sup>343</sup>

On 5 August 2013 following a call for information issued by Operation Prospect and further correspondence with this office, Mr L provided six documents relevant to Operation Prospect’s investigations. Those documents included reports from Sibutu and Emblems, a transcript of Burn’s interview by Emblems investigators on 30 June 2003, and the sworn version of NSWCC LD affidavit 262-268/2000.<sup>344</sup>

### 22.1.4 Mr K

Mr K is a former NSWPF Detective Superintendent who made a complaint to Operation Prospect.<sup>345</sup> Mr K’s complaint enclosed copies of LD warrant 266/2000, the supporting affidavit, and a memorandum by Burn dated 13 April 2002. In a further statement to Operation Prospect, Mr K commented that: “I was shocked and angered to see my name on the warrants as I had no connection either socially or operationally with [Sea].”<sup>346</sup> Mr K also provided a submission that included various confidential NSWCC and NSWPF documents.<sup>347</sup> The submission noted that in 2012 he had received documents “relevant to the activities of [Sea], Operations Mascot, Florida and Boat” from an anonymous source, and listed the relevant materials in his possession.

The material that Mr K had provided to Mercer was itself contained in packages delivered anonymously to Mr K’s residence. Mr K told Operation Prospect that he received the documents in two instalments, the first of which arrived in or around June 2012, and both of which were delivered “in plain white envelopes with no markings whatsoever”.<sup>348</sup> Mr K gave evidence that his residential address was not generally known and could not have been obtained by checking an electoral list or telephone book, and that “I think it was clear that [the supplier of the documents] was someone that knew me”.<sup>349</sup> Mr K told Operation Prospect that the delivery of the documents to his residential address “was obviously police-related”; on that basis he was not concerned about how someone had obtained his address.<sup>350</sup>

339 Ombudsman Transcript, Neil Mercer, 14 August 2014, p. 1481.

340 Ombudsman Transcript, Neil Mercer, 14 August 2014, p. 1482.

341 Ombudsman Transcript, Neil Mercer, 14 August 2014, pp. 1482-1483.

342 Bruce Barbour, File Note, *Conversation with [Mr L] and Bruce Barbour – 21 September 2012*, NSW Ombudsman, 24 September 2012; Letter from Director of Operation Prospect, NSW Ombudsman to [Mr L], 1 August 2013; Letter from [Mr L] to Director of Operation Prospect, NSW Ombudsman, 5 August 2013.

343 *Ombudsman Act 1974* (historical version as at 1 January 2012 to 4 October 2012), Schedule 1, cl. 19.

344 Letter from [Mr L] to Director of Operation Prospect, NSW Ombudsman, 5 August 2013.

345 Letter from [Solicitor for Mr J], to NSW Ombudsman, 24 September 2012.

346 Letter from [Solicitor for Mr J], to Linda Waugh, Deputy Ombudsman, NSW Ombudsman, 24 May 2013 – enclosure entitled ‘Document by [Mr K] dated 22 May 2013’, p. 3.

347 Letter from [Solicitor for Mr J], to Linda Waugh, Deputy Ombudsman, NSW Ombudsman, 24 May 2013 – enclosure entitled ‘Document by [Mr K] dated 22 May 2013’, p. 3.

348 Ombudsman Transcript, [Mr K], 14 August 2014, pp. 1547-1548.

349 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1548.

350 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1548.

The NSWPF conducted audits on behalf of Operation Prospect to determine if any person obtained Mr K's personal address in order to facilitate the delivery of the documents. The audit did not reveal any access that would suggest a person was seeking Mr K's residential address.<sup>351</sup> However, the Emblems brief and a number of e@gle.i records obtained by Operation Prospect (at section 22.6 and following) contained a list of persons named on LD warrant 266/2000 and a list of complainants to Emblems. Both lists included Mr K's residential address.<sup>352</sup>

Mr K told Operation Prospect that he showed the documents to Mr J and Mercer,<sup>353</sup> and left a bag containing the documents with Mercer.<sup>354</sup> Mr K agreed with the proposition that the matters relevant to him being named on LD warrant 266/2000 had not been properly investigated, although he had the impression that Emblems investigators "were doing their best".<sup>355</sup> Mr K stated that after speaking with Mr J and by the time he provided the documents to Mercer, he had formed the view that "there's only one way to get this on the agenda somewhere, and that's through the media".<sup>356</sup>

### 22.1.5 Small

Former NSWPF Assistant Commissioner Clive Small raised concerns with Operation Prospect about having been targeted by Mascot as well as broader issues regarding Mascot and the NSWCC.<sup>357</sup>

Small gave evidence to Operation Prospect that when media interest in "the Emblems matter or the false warrants matter" increased, he had been approached by "a whole variety of journalists", including Mercer and Mr J.<sup>358</sup> Small stated that in or around early 2013, Mercer provided him with material relating to NSWCC informant Paddle breaching bail conditions by approaching Mr A.<sup>359</sup> Small told Operation Prospect that he did not ask Mercer how he had obtained those documents because "I knew he wouldn't tell me" and that he (Small) was more concerned "about the allegations that were being made and covered up".<sup>360</sup>

In addition to receiving hard copy documents, Small stated that he received "disc copies of some material".<sup>361</sup> Small said that he received "a series of material and documents through the mail in roughly a couple of months", which were sent to Small's residential address in envelopes.<sup>362</sup> He did not know who had sent the documents and CDs and could not recall exactly when he began to receive them, but stated that it was around the time that Emblems began receiving media attention in 2012 and that "it would have been once the matter was well and truly on the agenda".<sup>363</sup> Small told Operation Prospect that he did not examine the handwriting on the front of the envelopes, he scanned and then shredded the documents he received, and he did not know and "wouldn't speculate" as to who may have sent the documents to him.<sup>364</sup> Small retained the electronic/CDs copies he received through the mail and stored them in two separate folders on his computer.<sup>365</sup> He told Operation Prospect that the naming of those separate folders "should not be interpreted to say they came in two separate batches".<sup>366</sup>

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351 Email from Detective Chief Superintendent Greg Rolph, NSWPF to [Operation Prospect Investigator], NSW Ombudsman, 24 September 2014 containing 10 enclosures.

352 NSWPF, e@gle.i entry, *Strike Force Emblems Indictable Brief*, 'Complainant contact details for debrief sessions,' file 1112, 22 June 2004, and attachment, p. 979; NSWPF, e@gle.i entry, *Strike Force Emblems Indictable Brief*, 'Persons named on LD Wrt 266 of 200 – Current Locations,' file 109, 18 July 2003, and attachment, p. 8188.

353 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1549.

354 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1550.

355 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1550.

356 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1550.

357 Email from Clive Small NSW Ombudsman, 12 October 2013 – enclosure entitled 'Submission to New South Wales Ombudsman's Office Operation Prospect'.

358 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 443-444.

359 Ombudsman Transcript, Clive Small, 14 July 2014, p. 449.

360 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 450-451.

361 Ombudsman Transcript, Clive Small, 14 July 2014, p. 460.

362 Ombudsman Transcript, Clive Small, 14 July 2014, p. 461.

363 Ombudsman Transcript, Clive Small, 14 July 2014, p. 446.

364 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 461-462.

365 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 456-457.

366 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 460-461.

Small also gave evidence that, prior to Emblems being established, a journalist had given him copies of three LD warrants obtained by Mascot. Small stated that these were the first LD warrants to be circulated, “[t]hey were widely circulated around town at the time”, but that “[t]hey meant nothing to me at the time”.<sup>367</sup> Small considered that the copies of those warrants could have been obtained by legitimate means and he did not inquire as to how journalists obtained those documents.<sup>368</sup>

### 22.1.6 Officer H

Officer H is a former NSWPF officer who complained to Operation Prospect in writing in December 2012 about the way he was investigated by Mascot.<sup>369</sup> Mascot’s targeting of Officer H is discussed in detail in Chapter 8.

Officer H told Operation Prospect that he had received two sets of documents through the post, which were delivered to his office.<sup>370</sup> The documents related to “Mascot in general” rather than to Officer H personally.<sup>371</sup> Officer H stated that he guessed that the first set of documents arrived in mid-2012, and that he received a second set of different documents “a couple of months after that”.<sup>372</sup> He said that he made electronic copies of the documents and then destroyed the original materials.<sup>373</sup>

Officer H provided copies of the documents he had received to Operation Prospect. Although it is not clear which documents were received in each group, the documents included copies of:

- transcripts of interviews conducted by Tumen investigators with seven former Mascot officers
- a transcript of Burn’s interview by Emblems investigators
- NSWCC LD warrants 95/2000 and 266/2000
- a letter dated 22 April 2002 from Burn to the PIC Inspector the Hon Mervyn Finlay QC concerning NSWCC LD warrant 266/2000, including the annexure to that letter, and
- the Burn memorandum dated 13 April 2002.<sup>374</sup>

### 22.1.7 Officer D

Officer D is a current NSWPF officer and was one of the lead investigators on Emblems. Officer D was one of two serving NSWPF officers to receive bundles of Mascot-related documents from an anonymous source. In his evidence to Operation Prospect, Officer D stated that on 31 August 2012 he received a stamped envelope at his office.<sup>375</sup> The envelope contained various documents relevant to matters investigated by Emblems, including the supporting affidavit for LD warrant 266/2000 and the Burn memorandum dated 13 April 2002.<sup>376</sup> Officer D told Operation Prospect that he did not know who had sent the documents or their purpose in sending them to him.<sup>377</sup> Upon receiving the documents, Officer D sought advice from Galletta (who had also worked as an investigator at Emblems). Officer D stated that he and Galletta discussed the documents, and agreed that the proper course would be to provide the material to the PSC.<sup>378</sup> Officer D told Operation Prospect that he did not make a copy of the documents, Galletta took the documents with him after he and Officer D discussed the matter, and he had not seen the documents since that time.<sup>379</sup>

<sup>367</sup> Ombudsman Transcript, Clive Small, 14 July 2014, p. 439.

<sup>368</sup> Ombudsman Transcript, Clive Small, 14 July 2014, pp. 442-443.

<sup>369</sup> Email from [Officer] to Operation Prospect, NSW Ombudsman, 13 December 2012.

<sup>370</sup> Ombudsman transcript, Informal Interview, [Officer H], 26 November 2013, p. 13.

<sup>371</sup> Ombudsman transcript, Informal Interview, [Officer H], 26 November 2013, p. 13.

<sup>372</sup> Ombudsman transcript, Informal Interview, [Officer H], 26 November 2013, p. 13.

<sup>373</sup> Ombudsman transcript, Informal Interview, [Officer H], 26 November 2013, pp. 12-14.

<sup>374</sup> Documents produced to Operation Prospect by [Officer H], 2 December 2013.

<sup>375</sup> Statement of Information (Interview), [Officer D], 5 June 2014, pp. 45-47.

<sup>376</sup> Statement of Information (Interview), [Officer D], 5 June 2014, pp. 47-48.

<sup>377</sup> Statement of Information (Interview), [Officer D], 5 June 2014, pp. 49-50.

<sup>378</sup> Statement of Information (Interview), [Officer D], 5 June 2014, pp. 50-52.

<sup>379</sup> Statement of Information (Interview), [Officer D], 5 June 2014, p. 52.

A report by Galletta dated 31 August 2012 verifies Officer D's account of receiving the documents.<sup>380</sup> Galletta's report records that Officer D received the NSWCC LD 262-268/2000 affidavit, the Burn memorandum dated 13 April 2002, a report dated 23 April 2000 prepared by Burn and addressed to Finlay, in response to Finlay's request for information about LD warrant 266/2000, and a report from the NSWCC regarding that warrant. Galletta made a diary entry recording that he contacted Assistant Commissioner Carey and Assistant Commissioner Hudson, and that he provided the documents to Hudson.<sup>381</sup> A diary note by Hudson<sup>382</sup> shows that he sought advice from the Commissioner of Police, who stated that the material should be provided to the PIC Inspector. Hudson then secured the documents in a safe in the Police Executive offices. A further diary note by Hudson indicates that he delivered the material to the PIC Inspector on Wednesday 5 September 2012.<sup>383</sup>

### 22.1.8 Kaldas

Kaldas was another serving NSWPF officer who gave evidence of receiving anonymous packages of documents. Kaldas drafted a complaint dated 13 September 2012 addressed to the Commissioner of Police,<sup>384</sup> which stated: "I have recently received material from an anonymous source".<sup>385</sup> This complaint is the earliest record viewed by Operation Prospect in which Kaldas mentions having received documents anonymously. Kaldas's complaint formed part of the terms of reference for Jooriland.<sup>386</sup>

When Kaldas was first interviewed by Operation Prospect in November 2012, he produced a number of NSWCC documents, including NSWCC LD affidavit 262 – 268/2000, NSWCC TI affidavit 403 – 406/2000 and other NSWCC documents authored by Burn. Kaldas told Operation Prospect that he received the documents anonymously,<sup>387</sup> and he:

*... had literally put all this behind me and just was looking ahead and getting on with life" when he received the documents.*<sup>388</sup>

Kaldas said he believed that the impetus for the dissemination of the documents was that "somebody who was in the inner sanctum, who had access to all these documents that we would be looking for, for ten years, has found God, or changed their mind, or felt threatened, or, or whatever".<sup>389</sup>

In September 2014 Kaldas gave additional evidence to Operation Prospect about the receipt of the packages: his recollection was that he received three unmarked envelopes at his work address on three separate days.<sup>390</sup> Kaldas believed that the envelopes arrived "around probably August or September, I think, 2012" over a period of "possibly five or six weeks", but that he was not certain about the specific months in which he received the documents.<sup>391</sup>

Kaldas was certain that he had received the documents at his workplace, although he could not recall whether the envelopes were sent to the office address or the mailing address.<sup>392</sup> Kaldas stated that his name was on the envelopes, which were marked as 'Confidential'<sup>393</sup> or 'Private' or similar.<sup>394</sup> Kaldas told Operation Prospect that he thought the packages had postage stamps on them, but he could not be certain of this.<sup>395</sup> Kaldas gave

380 NSWPF internal memorandum from Detective Inspector Mark Galletta to Acting Deputy Commissioner Dave Hudson, 31 August 2012.

381 Diary, Mark Galletta, 31 August 2012 and 11 September 2012.

382 Diary, David Hudson, 31 August 2012.

383 Diary, David Hudson, 5 September 2012.

384 Select Committee Report, *The conduct and progress of the Ombudsman's inquiry "Operation Prospect"*, 25 February 2015, p. 19.

385 NSWPF internal memorandum from Deputy Commissioner Nick Kaldas, NSWPF to Commissioner Andrew Scipione, NSWPF, 13 September 2012, p. 1.

386 NSWPF, *Strike Force Jooriland – Terms of Reference*, from Commander Paul Carey to Detective Inspector Thomas Barnes, 8 October 2012.

387 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 12.

388 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 12.

389 Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 12.

390 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2165.

391 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2166.

392 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2165.

393 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2175.

394 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2166.

395 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2174-2175.

evidence that he did not recall checking for post office stamps on the envelopes, and stated that there was no return address.<sup>396</sup>

The evidence before Operation Prospect indicates that Kaldas did not make any record or note of either the time or date he received any of the documents, or the identity and nature of the documents in each bundle. Kaldas acknowledged that, in hindsight, he “should have made much more careful notes about when they came in”.<sup>397</sup> When asked why he had not done so, Kaldas replied:

*I have to say I wasn't just surprised, I was sort of shocked. This was a matter that had had a great toll on me. I had truly put it behind me, I had sought counselling and, and all of that; and this just flared up again, something that I, I really didn't want to go back to again.*<sup>398</sup>

It was put to Kaldas that the significance of the documents he received would have given him greater cause to record the details of their arrival and contents. Kaldas told Operation Prospect that he did not recall making any such notes, but that he briefed the Commissioner of Police not long after receiving the documents, and subsequently made a formal complaint based on the information he had gleaned from the documents.<sup>399</sup>

Kaldas told Operation Prospect that he thought the first tranche of documents he received included “some reports from Catherine Burn, detailing the fact that everybody who was on the warrants was in fact a suspect in criminal activity”.<sup>400</sup> Kaldas stated that he could not differentiate between the contents of the first and second bundles, and initially could not remember what else had been in the first bundle of documents.<sup>401</sup> However, Kaldas later added that he thought that the affidavits supporting applications for TI and LD warrants were included in the first or second bundle of documents.<sup>402</sup> Kaldas recalled that the third bundle contained a list of Mascot codenames and material about Sea, including personal medical information.<sup>403</sup>

The evidence before Operation Prospect leaves open the question of whether Kaldas in fact obtained at least some of this material prior to receiving all three anonymous bundles of documents. His evidence was that the bundles arrived in August to September 2012, with the last bundle arriving in September. Giorgiutti gave evidence (discussed in section 22.4.2) that he provided documents to Kaldas in August 2012. Kaldas's complaint to the PIC Inspector on 16 August 2012 included multiple NSWCC affidavits and transcripts of interviews conducted by Tumen investigators.

### 22.1.9 Contradictory evidence concerning Kaldas's receipt of documents

Although Kaldas could not date his receipt of the documents, Hudson made a diary entry at the time that provides a specific timeframe. Hudson's diary entry at 8:20 am on 3 September 2012 records a discussion with Kaldas about the packages of documents that Kaldas had received.<sup>404</sup> Hudson's evidence to Operation Prospect (as he read from his diary entry) was as follows:

A: Yes. I've got a note, 3 September 2012, 8.20 am:

*'Speak to D. Com. Kaldas following morning meeting. Stated he had received a package delivered to him through the mail on Friday that appeared to contain targeting documents relating to him from SCU and the New South Wales Crime Commission. I inquired as to how it was received and he said it had been posted and - '*

*something -*

*'in his letterbox with a number of stamps on it.'*

396 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2174-2175.

397 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2166.

398 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2166.

399 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2166-2167.

400 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2168.

401 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2177.

402 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2177.

403 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2177.

404 Diary, David Hudson, 3 September 2012.

*I can't read my own writing there.*

*'He was unsure as to what he should do with the package, and furthermore the information contained within it, as it showed inappropriate targeting of him and others by Brammer, Dolan and Burn, as well as records of conversations by Bradley with others where Kaldas' career had been, in his words, "hijacked."'*

*Quotation marks around that.*

*'I informed him he needed to inform the COP and be guided by him. He stated he was meeting with COP on Wednesday where he would discuss, in private.'*

*That's it.<sup>405</sup>*

Hudson's evidence points to an inconsistency in Kaldas's accounts as to how and where he received these anonymous packages. Hudson's contemporaneous notes suggest that Kaldas stated he received the documents at his home, in contrast to Kaldas's evidence that the packages arrived at his workplace. This inconsistency is replicated in evidence from Assistant Commissioner Peter Gallagher, who gave the following account of a conversation he had with Kaldas regarding the receipt of the packages:

- Q: *Mhmm. And then the last question is about those brown envelopes that - - -*
- A: *Yeah.*
- Q: *---you're a little suspect of. Where did Nick Kaldas tell you that he got them delivered to? How did he receive them?*
- A: *At – at his office he told me.*
- Q: *At his office.*
- A: *Ah, I specifically remember that - - -*
- Q: *Mhmm.*
- A: *- - - because his PA – he told me his PA had been instructed not to open them.*
- Q: *Mhmm.*
- A: *To give them directly to him. So he – he told me he got them – that arrived at this office, yeah.*
- Q: *How did he instruct his PA not to open them before they arrived?*
- A: *No idea.*
- Q: *Was he expecting them?*
- A: *I'm sorry, I beg your pardon, that's why I think there was more than one.*
- Q: *Mhmm.*
- A: *Um, yes. Um, I think that's the way the conversation went but I could be wrong about that.*
- Q: *Mhmm.*
- A: *But that's why I've always thought there was more than one, because you're quite right, how could he tell his PA not to open them.<sup>406</sup>*

In his evidence to Operation Prospect, Craft stated that Kaldas told him that he received at least some of the documents at his home address:

- Q: *Alright. Do you know whether Deputy Commissioner Kaldas read the Emblems report?*
- A: *No, I don't.*
- Q: *Alright?*

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405 Ombudsman Transcript, David Hudson, 3 September 2014, pp. 2080-2081.

406 Statement of Information (Interview), Peter Gallagher, 12 December 2014, pp. 34-35.

- A: *But if I can say is [sic] he did receive a large bundle of documents at his home address.*
- Q: *How do you know that?*
- A: *Because he told me. He called me. I was spoken to about it and he called me round to his office.*
- Q: *When was that?*
- A: *I don't have a date. It would have been on a Monday, Wednesday or Friday, because it was after he had his morning meeting that all the Deputies attend, the morning operational briefing. He walked past my office and said, "Can I see you", so I walked round to his office and there was a pile of papers on his desk that would have been that high.*
- Q: *That high? You're indicating about two feet?*
- A: *Say 30 centimetres, 300 mil [sic].*
- Q: *Alright?*
- A: *It was quite a substantial bundle of documents.*
- Q: *And he told you that they came in an envelope?*
- A: *No, that they were delivered. When he came home last night they were at his home address.*
- Q: *A pile 30 centimetres high?*
- A: *That's right.*
- Q: *Where were they placed? Did he tell you?*
- A: *No, he didn't.*
- Q: *He didn't tell you where this massive bundle of - -?*
- A: *Sorry, at his front door, I would assume, but they were delivered - in his words they were delivered to his home address.*
- Q: *So that's what he told you?*
- A: *Yes.<sup>407</sup>*

Craft also gave evidence that Kaldas told him that he had alerted Scipione that he had received the packages of documents:

- Q: *But did he identify what documents he'd seen before and what he hadn't? Or there was just not that level of discussion?*
- A: *There wasn't that level of discussion, no. We didn't go through it.*
- Q: *But as Professional Standards Manager, don't you have some obligation in terms of integrity of police material, and to [sic] particularly given it was the Deputy Commissioner who had raised what was clearly some sort of very large leak of documents?*
- A: *I do. But at that time I also formed the view after talking to Mr Kaldas that he knew what he needed to do and he was going to do that. You know, he was going down to see the Commissioner. When I left the office, that's where he was going down to see the Commissioner.*
- Q: *He was taking them himself down to see the Commissioner?*
- A: *I don't know that he actually took them, but he was heading down towards the Commissioner's office, which is at the opposite end of his office. That was the end of my involvement. I - you know, other than a few days later he said, you know, it's - the boss has the documents. The boss is a referral to Mr Scipione, the Commissioner.<sup>408</sup>*

407 Ombudsman Transcript, Matthew Craft, 21 August 2014, pp. 1946-1947.

408 Ombudsman Transcript, Matthew Craft, 21 August 2014, p. 1951.

Craft's last answer in the transcript is important. Kaldas gave evidence to Operation Prospect that he handed the material over to his solicitors rather than to Scipione.<sup>409</sup> Scipione gave evidence that Kaldas had told him that he had seen documents as a result of information having been passed around. Scipione further commented that Kaldas had "never presented a document, never said, 'Here is a copy' or 'I've got a copy for you' or 'I can access a copy if you want it'".<sup>410</sup>

John Giorgiutti, who at the relevant time was Solicitor to the NSWCC, also gave an account of what Kaldas told him about having received packages of documents at his home:

Q: ... Did he tell you where he got the affidavit?

A: No, no, no. Look the other thing I gleaned was a lot of these people were lawyered up, so one of the big lawyers was [a solicitor] that had [a barrister], and I know Kaldas told me that he'd go home sometimes, there were brown envelopes in his letterbox. He doesn't know where stuff came from, it just came out. Right?

Q: Kaldas told you that?

A: Kaldas told me that. Right?<sup>411</sup>

## 22.2 Complaints by Kaldas (May to September 2012)

Between May and September 2012 Kaldas made separate written complaints about matters relating to Operation Mascot to both the PIC Inspector and to the Commissioner of Police of the NSWPF. The complaints included allegations about the conduct of persons involved in Mascot, as well as allegations that officers of the PIC had failed to investigate "serious and widespread systemic false swearing of affidavits" by SCIA officers and had subjected Kaldas and other NSWPF officers to reprisals for making complaints about practices at Mascot.

The evidence before Operation Prospect indicates that Kaldas met with Giorgiutti on 21 May 2012 about unknown matters.<sup>412</sup> On 23 May 2012 Kaldas contacted the PIC Inspector by email, requesting a brief meeting to discuss a possible formal complaint "about a number of matters, and current staff at the Police Integrity Commission".<sup>413</sup> Kaldas's email did not expand on this description of the matters he intended to bring to the PIC Inspector's attention, stating that "I will explain when we meet".<sup>414</sup> The PIC Inspector replied on 24 May 2012 requesting that Kaldas make a formal complaint in writing about the relevant matters and current staff of the PIC.<sup>415</sup>

Kaldas made a formal complaint to the PIC Inspector on 16 August 2012. This correspondence appears to be the formal written complaint requested in the PIC Inspector's letter of 24 May 2012. Copies of several documents were attached as annexures to Kaldas's complaint, including:

- the signed and sworn version of NSWCC LD affidavit 262-268/2000
- transcripts of interviews conducted by Emblems investigators with a number of former Mascot officers
- the signed and sworn version of NSWCC TI affidavit 403-406/2001
- excerpts from the book 'Betrayed' (co-authored by Small), and
- an undated NSWCC file note prepared by Bradley, concerning discussions about Kaldas's application for a role at the National Crime Authority in 2001.<sup>416</sup>

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409 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2183.

410 Ombudsman Transcript, Andrew Scipione, 31 July 2014, p. 1049.

411 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1382.

412 Statement of Information (Interview), [Staff Officer to Deputy Commissioner Specialist Operations], 12 February 2015, pp. 43-44

413 Email from Deputy Commissioner Nick Kaldas, NSWPF to the Hon David Levine, Inspector of the Police Integrity Commission, 23 May 2012.

414 Email from Deputy Commissioner Nick Kaldas, NSWPF to the Hon David Levine, Inspector of the Police Integrity Commission, 23 May 2012.

415 Letter from the Hon David Levine, Inspector of the Police Integrity Commission to Deputy Commissioner Nick Kaldas, NSWPF, 24 May 2012.

416 Letter from Deputy Commissioner Nick Kaldas, NSWPF to the Hon David Levine, Inspector of the Police Integrity Commission, 16 August 2012.



On 13 September 2012 Kaldas made a formal written complaint to the NSWPF Commissioner regarding what he described as “illegal actions by members of the former Special Crime and Internal Affairs (SCIA)”, and requesting an independent judicial inquiry.<sup>417</sup> In his complaint, Kaldas identified that he had “recently received material from an anonymous source<sup>418</sup> that proved certain matters conclusively. These included:

- the use of false information in sworn affidavits
- that a large number of SCIA officers felt that it was entirely inappropriate to target him
- the existence of clear conflicts of interest that were ignored, including conflicts relevant to the lead investigator targeting Kaldas
- lies being used to suppress the information required by Emblems investigators
- improper use by the NSWCC of secrecy provisions in its legislation, and
- the inappropriate use of electronic surveillance targeting Kaldas’s office, mobile phone and former matrimonial residence.

On page 2 of Kaldas’s complaint, he stated that he was aware that some senior officials had expressed a view to the Premier of NSW and the Minister for Police that Kaldas was to blame for information supplied to various media outlets “despite it being impossible for me to have had the sort of material disseminated (e.g. affidavits for warrants)”.<sup>419</sup>

## 22.3 NSWCC internal investigation into LD warrant 266/2000

Levine was asked to review the Emblems report in May 2012 (see Chapter 17). On 1 June 2012 in the course of conducting that review, Levine wrote to Peter Singleton, who was the Acting Commissioner of the NSWCC, requesting material relevant to NSWCC LD warrant 266/2000.<sup>420</sup> Giorgiutti was tasked to collate documents to meet this request. Giorgiutti gave evidence to Operation Prospect that, around this time in 2012:

- he formed the view that a comprehensive report on the warrant should be completed by the NSWCC, as concerns about Operation Mascot’s targeting of certain NSWPF officers (particularly Kaldas) would “never ever, ever, ever, ever go away”<sup>421</sup>
- he shared this view with Singleton, and
- Singleton agreed that such a report should be prepared.<sup>422</sup>

Following these discussions, Giorgiutti collected documents for the PIC Inspector and began his own investigation into Mascot. Giorgiutti gave evidence that he took documents necessary to complete his report regarding NSWCC LD warrants 95/2000 and 266/2000 to his residential address prior to going on annual leave in August 2012.<sup>423</sup> He intended to work on the report from home during his leave.<sup>424</sup>

Giorgiutti was assisted in preparing this report by a senior solicitor to the NSWCC. The solicitor gave evidence to Operation Prospect that he and Giorgiutti reached the stage of a draft report, dated 20 August 2012 and titled “The apparent circumstances leading to the applications for warrants numbered NSWCC LD No. 95 of 2000 and NSWCC LD No. 266 of 2000 and Strike Force Emblem”. The draft report outlined the nature of the task they undertook:

- compiling material sought by the PIC Inspector
- analysing material relating to Emblems, and
- analysing material sought by the PIC Inspector, in particular in relation to the circumstances leading to the applications for NSWCC LD warrants 95/2000 and 266/2000.<sup>425</sup>

417 NSWPF internal memorandum from Deputy Commissioner Nick Kaldas to Commissioner Andrew Scipione, 13 September 2012, p. 2.

418 NSWPF internal memorandum from Deputy Commissioner Nick Kaldas to Commissioner Andrew Scipione, 13 September 2012, p. 1.

419 NSWPF internal memorandum from Deputy Commissioner Nick Kaldas, NSWPF to Commissioner Andrew Scipione, NSWPF, 13 September 2012, p. 2.

420 Letter from the Hon David Levine, Inspector of the Police Integrity Commission to Assistant Commissioner Peter Singleton, NSWCC, 1 June 2012.

421 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1353.

422 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1353.

423 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1373; NSWCC, John Giorgiutti, Leave record for 2012.

424 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1373.

425 [NSWCC Senior Solicitor], *The apparent circumstances leading to applications for warrants number NSWCC LD No. 95 of 2000 and NSWCC LD No. 266 of 2000 and Strike Force Emblems* (Report), NSWCC, 20 August 2012, p. 2.

### 22.3.1 Locating NSWCC LD affidavit 262-268/2000

A NSWCC file note dated 19 June 2012, authored by the solicitor who assisted Giorgiutti, stated that they attended the chambers of the NSW Supreme Court duty Judge and obtained the affidavit supporting LD warrant 266/2000.<sup>426</sup> The reason they did so was that a signed copy of the affidavit could not be located within NSWCC records.<sup>427</sup> The NSWCC had earlier held a 'file copy' of the affidavit, which appears to have been sent to Finlay in April 2002 to assist with his review of LD warrant 266/2000.<sup>428</sup> Correspondence between the NSWCC and the PIC Inspector in 2012 suggests that the PIC Inspector either could not locate this copy of the affidavit or was unaware that it had been sent to his predecessor.<sup>429</sup>

After Giorgiutti and the NSWCC solicitor obtained the supporting affidavit from the NSW Supreme Court, a copy of that document was made and placed on NSWCC file no 091938/1 before the Court's copy of the affidavit was returned to the Supreme Court (see section 22.3.2). A file note by the NSWCC solicitor dated 20 June 2012 (that is, the following day) stated that she had returned the affidavit to the Court.<sup>430</sup>

On 22 June 2012 Singleton wrote a letter to Levine and informed him that the NSWCC had obtained NSWCC LD affidavit 262–268/2000 from the NSW Supreme Court. Singleton also advised Levine that on 20 June 2012 the NSWCC had obtained a copy of the affidavit from the Supreme Court because:

*It appears that what may have been the Commission's only file copy of the affidavit was enclosed with my predecessor's letter dated 16 April 2002 to your predecessor.*<sup>431</sup>

As discussed above in section 22.1, the submissions and evidence given to Operation Prospect by eight people who received 'anonymous' packages was that at least seven of them had a copy of the sworn version of NSWCC LD affidavit 262–268/2000, specifically:

- Mr L, Member of the Legislative Council
- Officer D
- Mr J, Journalist
- Mr K, former Superintendent NSWPF
- Kaldas, Deputy Commissioner NSWPF
- Mercer, Journalist, and
- Small, former Assistant Commissioner NSWPF.

With one exception, discussed in section 22.4.3, there is no evidence that Giorgiutti provided copies of the affidavit to any or all of those persons. However, it appears that the only three copies of the affidavit known to have existed at the time of its dissemination to those people in 2012 were the original document filed at the Supreme Court in 2002, a copy placed in a NSWCC file in June 2012 by either Giorgiutti or a NSWCC solicitor, and a copy provided to Levine by Singleton on 17 August 2012. As discussed further in section 22.3.2, Giorgiutti removed the NSWCC file containing the affidavit from the NSWCC's file registry on 21 June 2012, one day after the affidavit was returned to the Supreme Court. The evidence before Operation Prospect indicates that the affidavit had been disseminated at least once prior to being provided to Levine. The most likely explanation is that Giorgiutti had a copy of the affidavit and disseminated it to at least one of the persons identified above. However, that is conjecture and the exact circumstances of the dissemination cannot be positively determined on the evidence before Operation Prospect.

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426 [NSWCC Senior Solicitor], File note, *Strike Force Emblems*, 20 August 2012.

427 Letter from John Giorgiutti, Director, NSWCC to Linda Murphy, Chief Executive Officer, Supreme Court of New South Wales, 19 June 2012.

428 Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 16 April 2002.

429 Letter from the Hon David Levine, Inspector of the Police Integrity Commission to Peter Singleton, Commissioner, NSWCC, 1 June 2012; Letter from Peter Singleton, Commissioner, NSWCC to the Hon David Levine, Inspector of the Police Integrity Commission, 22 June 2012.

430 [NSWCC Senior Solicitor], File Note, *Strike Force Emblems*, NSWCC, 20 June 2012.

431 Letter from Peter Singleton, NSWCC to the Hon David Levine, Inspector of the Police Integrity Commission, 22 June 2012.

### 22.3.2 Relevant NSWCC files accessed by Giorgiutti

The evidence before Operation Prospect indicates that Giorgiutti removed two files from the NSWCC registry, one in February 2011 and the other in June 2012. Both were returned to the registry.

On 16 February 2011 Giorgiutti removed NSWCC file no 068578 from the NSWCC registry.<sup>432</sup> This file contained a large number of documents, including:

- correspondence and documents relating to Emblems
- correspondence from the NSWCC to Emblems investigators
- legal advice from a Queen's Counsel to Emblems dated 11 September 2003, and another legal advice from a Queen's Counsel and another barrister to the NSWPF dated 23 March 2003
- NSWCC file notes (a number of which were prepared by Bradley)
- the Finlay Report concerning warrant 266/2000, dated 29 April 2002
- correspondence from Bradley and Burn to Finlay in 2002
- the Burn memo of 13 April 2002 and the accompanying annexure, and
- Bradley's email of 12 April 2002, concerning the release of the 266/2000 warrant.<sup>433</sup>

NSWCC records indicate that Giorgiutti returned this file to the NSWCC registry on 6 November 2012. The file was conveyed to Operation Prospect later the same day.<sup>434</sup> At some point while the file was in his possession, Giorgiutti made a copy, which he kept in his possession after he finished working at the NSWCC in July 2013. Giorgiutti provided his copy of the file to Operation Prospect at a hearing held on 11 August 2014, in response to a summons to produce documents.<sup>435</sup>

On 21 June 2012 Giorgiutti removed NSWCC file no 091938/1 from the NSWCC registry.<sup>436</sup> This was a Mascot file that concerned the alleged leak of information to Kaldas about Sea's undercover activities. The file contained the following documents:

- NSWCC Information Reports
- emails of NSWPF and NSWCC officers
- NSWCC file notes
- chronology of events documents
- ERISP transcripts
- correspondence
- telecommunications interception material, including affidavits and transcripts of intercepted telecommunications
- sworn statements
- call charge records
- personal profile documents
- OCC Minutes, and
- the copy of the affidavit sworn in support of the application for NSWCC LD warrant number 266/2000, obtained from the Supreme Court in June 2012.

432 NSWCC, Recfind File Audit 068578/1, 22 September 2014, p. 1.

433 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 12 April 2002.

434 NSWCC, Recfind File Audit 068578/1, 22 September 2014, p. 2.

435 Letter from Bruce Barbour, Ombudsman, NSW Ombudsman to John Giorgiutti, 6 August 2014. pp. 4-6.

436 NSWCC, Recfind File Audit 091938/1, 22 September 2014, p. 3.

There is no record of when Giorgiutti returned this file to the NSWCC, although it is clear this occurred as the NSWCC produced the file to Operation Prospect on 14 November 2012 in response to a notice to produce records.<sup>437</sup> It is possible that Giorgiutti returned this file to the NSWCC registry on the same day that he returned the other file, namely, 6 November 2012.

### 22.3.3 Material produced by Giorgiutti to Operation Prospect

The items that Giorgiutti produced at the Operation Prospect hearing in August 2014 included copies of NSWCC documents, CDs, files and a NSWCC laptop. These were items that he had taken home in 2012 when he went on leave intending to finalise his report. Giorgiutti ceased his employment with the NSWCC on 17 July 2013. At the time, he signed an exit checklist that declared he had returned all NSWCC equipment and files, and that he had no other NSWCC documents in his possession.<sup>438</sup>

The laptop produced by Giorgiutti to Operation Prospect had the same service tag as a laptop recorded in the NSWCC's asset database, but bore a different asset number. A NSWCC asset disposal form recommended in June 2013 that the laptop be recorded as having been disposed of as it could not be located<sup>439</sup> (a NSWCC asset management form records the laptop as being 'written off' in May 2013). From the evidence before Operation Prospect, it appears that the NSWCC was not aware that Giorgiutti had this laptop, and accordingly made no attempt to retrieve or otherwise ensure the security of the laptop or any other NSWCC material Giorgiutti may have had.

Giorgiutti took possession of the NSWCC laptop before commencing leave in 2012, ostensibly to review emails relevant to the NSWCC's internal investigation into Mascot. He did not return the laptop when he finished his employment at the NSWCC, despite signing a declaration that he had returned all NSWCC property. The NSWCC was unaware that Giorgiutti had the laptop until it was produced to Operation Prospect under summons, and NSWCC asset management forms record that the laptop was 'written off' in May 2013 when it could not be located.

Giorgiutti gave evidence to Operation Prospect that he had "a salary sacrifice laptop" which he had given back to the NSWCC once he had "finished with it".<sup>440</sup> Giorgiutti told Operation Prospect that he intended to review a number of emails in the course of his investigation into events at Mascot while he was on leave, but that these emails could not be examined while using the operating system on Giorgiutti's home computer.<sup>441</sup> Giorgiutti stated that he had asked the NSWCC's IT department to return his salary sacrifice laptop to him so that he could examine the emails using that computer.<sup>442</sup> Giorgiutti then gave evidence that:

*... they've given me a laptop that's got a Crime Commission barcode on it so they've probably got my laptop, and they've given me a Crime Commission laptop.*<sup>443</sup>

Giorgiutti made two points in his submission to Operation Prospect about his possession of the laptop; they appear contradictory. First, he submitted that he was entitled to the laptop as the result of a salary sacrifice arrangement with the NSWCC, and he had no dishonest intention to retain it in August 2012. On the evidence before Operation Prospect, no such arrangements were in place in respect of NSWCC laptops. Further, as noted above, NSWCC asset management records state that the laptop was written off and could not be located. It is difficult to reconcile Giorgiutti's submission with those records. If a salary sacrifice arrangement did exist that entitled Giorgiutti to retain the laptop, it is reasonable to assume that this would have been recorded in a NSWCC staff or asset record.

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437 NSWCC, Recfind File Audit 091938/1, 22 September 2014, p. 1.

438 NSWCC, Exit Interview and Checklist, John Michael Giorgiutti, 19 July 2013.

439 NSWCC, Asset Disposal Form, [name], Approved [name], 3 June 2013; NSWCC, Asset Database of unknown Assets, [name], 10 December 2015.

440 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1388.

441 Ombudsman Transcript, John Giorgiutti, 11 August 2014, pp. 1387-1388.

442 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1388.

443 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1388.

Second, Giorgiutti submitted that as a result of significant personal and workplace difficulties between August 2012 and July 2013, he had forgotten he still had the laptop when he signed the exit declaration and would have returned it to the NSWCC if he had remembered. Operation Prospect has not been able to determine the accuracy of this claim on the evidence before it. However, Giorgiutti's submission that he would have returned the laptop if he had remembered that he still had it in or after July 2013 appears to contradict his assertions that he was entitled to the laptop in any case, as a result of the above-mentioned salary sacrifice arrangements.

## 22.4 Giorgiutti's contact with and dissemination of documents to Kaldas

In undertaking his NSWCC investigation into LD warrant 266/2000, Giorgiutti had access to a large number of NSWCC documents relevant to Mascot's targeting of Kaldas. Giorgiutti had taken these materials home prior to taking leave in August 2012. The evidence before Operation Prospect indicates that, between May 2012 and August 2012, Giorgiutti met with Kaldas on a number of occasions and provided Kaldas with copies of restricted NSWCC documents relating to Mascot.

Kaldas's staff officer at the relevant time gave evidence to Operation Prospect that on 21 May 2012, Kaldas left the office at 3:30 pm to meet with John Giorgiutti.<sup>444</sup> The staff officer's evidence on this subject was informed by a contemporaneous diary note that he had made. The staff officer stated that Kaldas had told him that he (Kaldas) was going to meet with Giorgiutti, that Giorgiutti had arranged the meeting and Kaldas did not know what the meeting would be about, and that Kaldas asked the staff officer to make a note of this meeting.<sup>445</sup>

### 22.4.1 Mending the relationship between the NSWCC and Kaldas

As discussed elsewhere in this report, Kaldas was aggrieved about being targeted in the Mascot investigations undertaken by the NSWCC. In October 2004, Kaldas transferred to the NSWPF Gangs and Organised Crime Strike Force. This role would necessarily involve greater contact between Kaldas and the NSWCC, given the NSWCC's investigative focus on organised crime.

Giorgiutti's evidence to Operation Prospect was that when Kaldas commenced in that role, Bradley instructed Giorgiutti to mend the relationship with Kaldas. He said that Bradley told him "we're going to put our arm around him"<sup>446</sup> and agreed to Giorgiutti meeting up with Kaldas, with the NSWCC Director (Criminal Investigations), Tim O'Connor, as a "referee".<sup>447</sup> Giorgiutti told Operation Prospect that:

*... my instructions for that were, "Look, tell him whatever he wants to know, give him whatever he wants and just put his mind at ease."<sup>448</sup>*

Kaldas told Operation Prospect that he attended a luncheon with Bradley, O'Connor and Giorgiutti in about 2006, at which Bradley gave an apology of sorts for Kaldas having been targeted by Mascot.<sup>449</sup> Giorgiutti told Operation Prospect that he made amends with Kaldas at this luncheon by telling Kaldas that LDs had been used, but this was legitimate as there were allegations that Kaldas had been involved in corrupt conduct.<sup>450</sup> Giorgiutti also said he conveyed to Kaldas that:

*Phillip said anything I know, anything you want, anything you want me to show you, you let me know. Okay.<sup>451</sup>*

444 Statement of Information (Interview), [Staff Officer to Deputy Commissioner Specialist Operations], 12 February 2015, p. 43.

445 Statement of Information (Interview), [Staff Officer to Deputy Commissioner Specialist Operations], 12 February 2015, p. 44.

446 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1369.

447 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1370.

448 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1370.

449 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2313-2314.

450 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1370.

451 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1370.

When this version of events was put to Bradley, he rejected it in forthright terms.<sup>452</sup> Bradley conceded that “put an arm around is an expression that I use”,<sup>453</sup> but his typical use of the expression would be directed at persuading a person towards a particular point of view rather than to resolve a dispute. Bradley told Operation Prospect that he did not remember telling Giorgiutti to reconcile with Kaldas, but that “we have to work with him so, you know, be nice to him, ‘Put your arm around him,’ or something”.<sup>454</sup> In his evidence, Bradley also stated:

*... look, I don't think I've ever said to Giorgiutti give him [Kaldas] whatever he needs to satisfy him that there was nothing inappropriate done about him, but like if I was aware that there were telephone taps on Kaldas, listening devices on Kaldas, which I would have been, I wouldn't have suggested in a fit that Kaldas be given access to that material; firstly because it's illegal, secondly because it's inappropriate and thirdly because I can't see how saying to Kaldas “Look, here's all the private conversations that your wife had with her mother” or whatever, on the home telephone, I mean how could that help to reconcile the relationship and so I think it's extremely unlikely that I would have said anything like that.<sup>455</sup>*

## 22.4.2 Giorgiutti's evidence on contact with Kaldas

Giorgiutti gave evidence to Operation Prospect at a hearing on 11 August 2014. His evidence was that he discovered, subsequent to his conversation with Bradley in late 2004, that Sea had not volunteered information to Mascot about Kaldas, but had instead been asked by Mascot investigators in his debrief: “What do you know about Kaldas?”<sup>456</sup> Giorgiutti said he became concerned at this point about the appropriateness of targeting Kaldas:

*So then I realised, “Shit what have we done here? We've, we've crucified this bloke”, and I already had instructions – well (1) it was in the course of my duties, (2) I can disseminate whatever I like, (3) I had an instruction of Phil, even though he's gone, to tell Kaldas and give him whatever we want ...<sup>457</sup>*

Giorgiutti's evidence was that prior to going on leave in August 2012 he provided some of the NSWCC material in his possession to Kaldas:

- Q: Did he ask you to give him any documents or copies of any of documents from Mascot?
- A: I don't know whether he asked me or whether I volunteered them, but I had, I was well within my rights to give them to him because
- Q: So what did you give him?
- A: So he was also a member of staff at the commission as well.
- Q: Sure, so what did you give Mr Kaldas?
- A: If you understand, this was a total like, for want of a better word, fuck-up and I didn't have to think about what basis am I going to do this on and so what I didn't know was - I was very circumspect because I didn't want to give him stuff that wasn't already out there. I didn't know whether I could trust him. I didn't know whether he was going to use it against me. He could go back to Singleton. So if you understand, I was basically in charge of this finding out what happened to protect the state.
- Q: Sure?
- A: And I need him to help me, I need others to help me and I've got to sort of play - you know, I was like in an undercover role so to speak to try and - and he's not stupid; I mean, he was undercover himself. And so whatever he - if he asked for something I may or may not have given it and if I gave

452 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3031.

453 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3032.

454 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3032.

455 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3032.

456 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1372.

457 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1372.

*him stuff I might have volunteered it. You ask him; he'll tell you. Whatever he tells you he won't tell a lie, I'm confident.*

*Q: Alright. What do you remember giving him? Can we take it from your answer that you gave him some documents that are Crime Commission documents? Don't worry about whether they're already in the public domain but can we take it that you physically gave him documents?*

*A: Yes; yes, but what I gave him, let me think - look, I can tell you this: in August 2012, every August, September my wife and I go overseas for six weeks so in August 2012 because I wasn't going back to the commission because of this operation and I had to continue this investigation, I took home a bunch of documents for me to continue, to further that process, all right? And so what I did was I got him over one day, I don't know when it was, in August.<sup>458</sup>*

...

*Q: So did you give him copies, photocopies or he took photocopies or did you just let him read the documents or how did it work?*

*A: He only took a couple - look, he read them. I don't know how much he read. He took a couple of documents and if he took them I just got another copy and put it in the file. But he'll tell you. There's no, there's no secret in a sense, in this, because, um, what then happens is that, in, in - when the Ombudsman's involved in it I'm saying - and with Singleton, I'm saying well look if you give this stuff to the Ombudsman I want to go down there and sit down with him and give him the over - exactly what I'm doing now I wanted to do then, and talk about what I had and where I got to and I would have told you all these things back in 2012, right? Because as far as I'm concerned I've never done anything wrong. All my disseminations are all lawful. I mean, you mightn't like it but that's the way it was at the Crime Commission and, you know, I can give you countless examples, even to my friendly Ombudsman up here.<sup>459</sup>*

### 22.4.3 Kaldas's evidence on contact with Giorgiutti

Kaldas gave evidence to Operation Prospect on 5 September 2014. His evidence initially was that all of the documents he produced to Operation Prospect had come from the anonymous bundles he received at his workplace.<sup>460</sup> He denied having ever received NSWCC documents from Giorgiutti or any other NSWCC officers. Kaldas stated that his relationship with current and former NSWCC officers who had been involved in Mascot (particularly Giorgiutti and Bradley) was still "a little bit tense and raw" because of his targeting by Mascot.<sup>461</sup> Kaldas told Operation Prospect that:

- he had attended a lunch with Bradley, at which Bradley offered an apology of sorts for Mascot targeting him<sup>462</sup>
- he had never been given any documents by Giorgiutti, Bradley or O'Connor,<sup>463</sup> and
- he had never asked Giorgiutti, Bradley or O'Connor to provide him with any documents.<sup>464</sup>

Kaldas's evidence on those points was as follows:

*Q: And can we take it from what your evidence has been today that none of these people [Bradley, Giorgiutti and O'Connor] gave you any documents?*

*A: Yes, that's the case.*

*Q: Alright. And you, you didn't ask them to give you any documents?*

<sup>458</sup> Ombudsman Transcript, John Giorgiutti, 11 August 2014, pp. 1372-1373.

<sup>459</sup> Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1375.

<sup>460</sup> Statement of Information (Interview), Nick Kaldas, 9 November 2012, p. 12; Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2177-2178.

<sup>461</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2236.

<sup>462</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2236.

<sup>463</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2237.

<sup>464</sup> Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2237.

A: *No, no.*

Q: *Alright. Are you sure about that?*

A: *Well, I mean, I can't recall every conversation over the last 12 years, but I don't, no, I don't, I don't think I would have, because I don't think, I know what the answer would be.*

Q: *"You can't have them"?*

A: *Yeah.*

Q: *No, you're, you're being asked specifically whether any of those people provided you with documents?*

A: *The answer was no, Mr Ombudsman.*<sup>465</sup>

After it was put directly to Kaldas that Giorgiutti had given him confidential NSWCC documents during one or more meetings at Giorgiutti's home, Kaldas gave the following evidence:

- he attended Giorgiutti's home on a number of occasions<sup>466</sup>
- during these attendances, Giorgiutti showed him confidential NSWCC documents<sup>467</sup> on at least some of these occasions, Kaldas took away some of the documents that Giorgiutti had shown him,<sup>468</sup> and
- the documents that Kaldas took away from his meetings with Giorgiutti included the supporting affidavit for a TI warrant application targeting his former wife's home and NSWCC LD affidavit 262-268/2000.<sup>469</sup>

Kaldas's evidence on those points was as follows:

Q: *Mr Giorgiutti gave you a whole lot of documents, didn't he?*

A: *No.*

Q: *Are you sure about that?*

A: *Look, we've had, we've had many exchanges over many, many years, but I don't recall him giving me a whole bunch of documents.*

Q: *You went to Mr Giorgiutti's home and he gave you access to confidential Crime Commission documents, didn't he?*

A: *He let me read some stuff, yes.*

Q: *You didn't tell us that this morning. I asked you questions about this and you denied that Mr Giorgiutti had given you any documents?*

A: *Yeah, he let me read some documents.*

Q: *Are you seriously suggesting that when I asked you that question, you didn't understand that it included letting you read some documents?*

A: *We've had many discussions and many points of - all sorts of aspects of this matter has been discussed with him and there's been many times where he's shown me things and we simply had a talk about it.*

Q: *Deputy Commissioner, I'm going to ask you a question and please think very carefully before answering it. Did Mr Giorgiutti provide you with information that he permitted or documents, Crime Commission documents, that he permitted you to take away with him, ah, with you?*

A: *Take away with me?*

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465 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2237.

466 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2314-2315.

467 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2314-2315.

468 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2315.

469 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2318.



- Q: Yes. You've confirmed that he showed you documents - - -?
- A: Yes.
- Q: --- and you had access to them, but did you take away documents that he provided you with? Think very carefully before you answer this question.
- A: Look, I think he may have, yes.
- Q: What do you mean you think he may have? He did, didn't he?
- A: Yes.<sup>470</sup>
- ...
- Q: I'm not asking you how many times you've been there. Unless on every occasion you've been there he's provided you with documents, I'm not interested in any other occasions. It's a very clear question: you were provided with documents by him that were confidential documents and you took them away, didn't you?
- A: Yes, I would have.
- Q: So why did you not disclose that when you were asked questions repeatedly earlier today about what information was provided to you by people, that was confidential and relevant to these matters?
- A: I think in some ways I blocked it out of my mind.<sup>471</sup>
- ...
- Q: Mr Giorgiutti let you copy some of those documents and take them away, the copies, didn't he?
- A: I don't think I copied them, he did; and he gave me some documents, yes.
- Q: He gave you some documents?
- A: Yes.
- Q: All right, what documents were they?
- A: I think it was the affidavits.
- Q: Which affidavits?
- A: The affidavits that I have: there's only two or three.
- Q: So the TI affidavit to do with your former home?
- A: Yes.
- Q: And the affidavit about listening device warrant number 266?
- A: Yes.
- Q: And so you knew that they were documents Mr Giorgiutti gave you but you didn't disclose to the Ombudsman that fact in your evidence earlier today?
- A: Yes.
- Q: And any other documents that he gave you?
- A: Look, he may have. But they were the main ones.<sup>472</sup>

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470 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2314.

471 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2315.

472 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2318.

Kaldas told Operation Prospect that he had wanted to protect Giorgiutti, and that Giorgiutti had sought an assurance that Kaldas “wouldn’t give him up”.<sup>473</sup> His main motivation in not disclosing that Giorgiutti had given him documents had been to protect Giorgiutti.<sup>474</sup> Kaldas only acknowledged that he had received confidential NSWCC documents relating to Mascot from Giorgiutti after it was put directly to him in his examination on 5 September 2014. Kaldas’s admission that he received at least two Mascot affidavits directly from Giorgiutti was directly contrary to his statements that he had received material from an anonymous source, as made to the Commissioner of Police in September 2012 and to the Ombudsman both in November 2012 and in the examination in September 2014.

This admission also undermines Kaldas’s statement, in his complaint to the Commissioner of Police, that he was being blamed for the circulation of confidential NSWPF and NSWCC documents “despite it being impossible for me to have had the sort of material disseminated (e.g. affidavits for warrants)”.<sup>475</sup> As discussed in section 22.2, it is clear that by 16 August 2012 at the very latest, Kaldas had access to the affidavits provided by Giorgiutti and to transcripts of interviews conducted by investigators from Tumen and Emblems. As discussed in section 22.1 above and at 22.9 below, the first newspaper articles that referenced these documents were published on 9 September 2012, some three weeks later.

## 22.5 Analysis of evidence on unauthorised dissemination in 2012

### 22.5.1 Anonymous bundles of documents

Multiple packages of documents were delivered to key individuals around mid-2012 to September 2012. The packages contained both NSWPF investigation documents and confidential NSWCC documents. Some documents were common to a number of the packages. There appears to have been some sharing of documents among the recipients, such that it cannot now be established with precision who received which particular documents or when they were first received.

Mr K, Mr J, Officer H, Small, Officer D and Kaldas all told Operation Prospect that they had received anonymous bundles of documents through the mail. Only Mr K, Officer H and Officer D appear to have made a complete list or record of the documents they received in these bundles. Small provided a CD containing documents that he described in evidence as “documents that I guess you would describe as having been leaked or circulated” and which were not publicly available.<sup>476</sup> Mr J did not provide Operation Prospect with a list of the specific documents he received, but gave evidence that he provided all those documents to Operation Prospect, along with other non-NSWCC and non-NSWPF materials he had collected since 2002.<sup>477</sup> Kaldas made no record of the documents he received in each bundle, although he gave evidence as to which of the bundles may have contained particular documents. The utility of that evidence is qualified by Kaldas’s later admission that Giorgiutti provided him with copies of two NSWCC affidavits that Kaldas had previously said were included in the anonymous bundles delivered to his home.

Kaldas had provided some documents to the PIC Inspector in August 2012, including the affidavits he had obtained from Giorgiutti, as well as a description of the documents he had in his possession.<sup>478</sup> Kaldas did not inform the PIC Inspector that he had received the affidavits from Giorgiutti.

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473 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2316.

474 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2315-2316.

475 NSWPF internal memorandum from Deputy Commissioner Nick Kaldas to Commissioner Andrew Scipione, 13 September 2012, p. 2.

476 Ombudsman Transcript, Clive Small, 14 July 2014, p. 438.

477 Ombudsman Transcript, [Mr J], 12 August 2014, pp. 1455-1457; Documents produced to Operation Prospect by [Mr J] on 29 May 2013.

478 Letter from Deputy Commissioner Nick Kaldas, NSWPF to the Hon David Levine, Inspector of the Police Integrity Commission, 16 August 2012.

## 22.5.2 Dissemination of NSWCC documents

Operation Prospect cannot determine with certainty, from the evidence before it, the origin of the anonymous packages, the person or persons who copied and/or distributed the documents, and their purpose in doing so. What is clear is that NSWCC LD affidavit 262–268/2000 was passed to one or more individuals after Giorgiutti and a NSWCC solicitor obtained a copy from the NSW Supreme Court. At the time the affidavit was disseminated to those persons, only the NSW Supreme Court and the NSWCC (and possibly, the PIC Inspector) legitimately held a signed and sworn copy. The most likely explanation for the dissemination of the affidavit beyond the NSWCC and the Supreme Court, drawing from the evidence of both Kaldas and Giorgiutti, is that Giorgiutti released the affidavit without authorisation.

Giorgiutti took a NSWCC laptop and at least two NSWCC files (or copies of the documents in those files) with him when he commenced a period of leave in August 2012. The materials in Giorgiutti's possession included LD affidavit 262–268/2000 and other NSWCC documents. The NSWCC took no steps to secure the return of the laptop; it appears the NSWCC was unaware that Giorgiutti had the laptop (see section 22.3.3). It further appears that Giorgiutti's possession of the files and the laptop has led to highly sensitive and confidential documents being released to Kaldas (at the very least) and most likely also to others. The exact manner of dissemination of these NSWCC documents is not clear from the evidence before Operation Prospect. All that is established is that at least some of the documents in Giorgiutti's possession were also in the anonymous bundles of documents, and that Giorgiutti gave two particular affidavits to Kaldas.

Giorgiutti has submitted that another NSWCC officer provided NSWCC LD affidavit 262-268/2000 to Kaldas at some point between 2002 and September 2012. The evidence before Operation Prospect does not support Giorgiutti's submission. The NSWCC officer nominated by Giorgiutti was not involved in the Mascot investigations in any meaningful way. The NSWCC file copy of that affidavit appeared to be missing after April 2002 and could not be located when Giorgiutti commenced his review of Mascot in 2012.<sup>479</sup> Giorgiutti obtained a copy of the affidavit from the Supreme Court in June 2012. There is no evidence to suggest that the NSWCC officer nominated by Giorgiutti obtained a copy of the affidavit after that date. It seems implausible that the officer had obtained a copy from the NSWCC file prior to April 2002 and had not circulated it to Kaldas or any other person until 2012, or alternatively had circulated it in the interim but the recipient had not disclosed the affidavit until 2012. On the latter scenario, any such recipient of the affidavit (and in particular Kaldas) did not provide it to Emblems when it was reviewing the Mascot actions in 2003-2004. Finally, Kaldas conceded in evidence to Operation Prospect that Giorgiutti had given him a copy of NSWCC LD affidavit 262-268/2000 in 2012.

As noted in section 22.7.2, Giorgiutti gave evidence to Operation Prospect that he believed he was entitled to release documents to Kaldas and was not restricted from doing so by the now repealed NSWCC Act or the TI Act. At best, Giorgiutti was mistaken in this belief. Giorgiutti had a delegation under section 9 of the NSWCC Act to exercise specific functions conferred on the Commission, but it is difficult to read that delegation as providing lawful authority to disseminate NSWCC information to Kaldas as Giorgiutti saw fit. Giorgiutti's assessment of his own authority to disseminate NSWCC documents is also inconsistent with the clear instruction in the NSWCC Investigations Manual and TI Manual, as set out at Chapter 20. Those manuals clearly stated that the restrictions on dissemination of TI material applied even to disclosures made to other members of the NSWCC, and that the restrictions were further and additional to the secrecy requirements under the NSWCC Act.

It is similarly difficult to accept Giorgiutti's evidence that he was acting under instructions from Bradley to provide this information to Kaldas. Bradley strongly denied having instructed Giorgiutti to do so, noting that this would have been illegal, inappropriate, and probably not helpful in any case. More relevantly, at the time that Giorgiutti gave documents to Kaldas in 2012, Bradley was no longer the Commissioner of the NSWCC. If Giorgiutti believed he was carrying out an instruction of the Commissioner in providing NSWCC documents to Kaldas, he should have confirmed this with the current. There is no evidence before Operation Prospect to suggest that Giorgiutti sought or obtained a similar direction from Singleton in 2012 to provide any documents to Kaldas.

<sup>479</sup> Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 16 April 2002; Letter from Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 22 April 2002.

### 22.5.3 Conflicting accounts of receipt of documents by Kaldas

Operation Prospect cannot determine which particular documents Kaldas may have received in anonymous bundles. Though he acknowledged in evidence that he obtained documents from Giorgiutti that included two affidavits,<sup>480</sup> Kaldas maintained that he had received documents in anonymous packages.

He gave evidence to Operation Prospect that he did not make a notation or record of the material he received, nor identified that material specifically to others at the time. This is in contrast to the actions of Officer D, Officer H and Mr K, who either made a list of what they received, or managed the documents so that a list could be made. Officer D, in addition, had the bundle of documents passed on to and verified by another officer, and then handed to a Deputy Commissioner who in turn provided the bundle of documents to the appropriate authority.

Operation Prospect also received conflicting accounts – all attributed to Kaldas – about when, where and how he received the unmarked bundles containing confidential NSWCC documents. Kaldas told Operation Prospect during his examination on 5 September 2014 that the bundles of documents turned up at his office, and he gave specific evidence about the three occasions on which this occurred. A different account, recorded by Hudson in a diary note, was that Kaldas told him he had received a package on 31 August 2012, delivered through the mail “in his letterbox with a number of stamps on it” and that he told Hudson that he would discuss it in his meeting with the Commissioner.<sup>481</sup> There is no evidence before Operation Prospect of Kaldas presenting the material he had received to Scipione. Gallagher gave evidence that Kaldas told him he received the documents at his office.<sup>482</sup> Craft’s evidence was that Kaldas told him the documents were delivered to his home address. Finally, Giorgiutti’s evidence was that Kaldas told him that he would “go home sometimes [and] there were brown envelopes in his letterbox” and he “doesn’t know where stuff came from”.<sup>483</sup>

It is unclear from this evidence whether Kaldas received the bundles of documents that he said he received, at his home or his workplace. Kaldas’s explanation for the discrepancy between his account of events and Hudson’s diary note was that he may have confused Hudson. A weakness in this explanation is that other NSWPF officers and Giorgiutti also gave contrary accounts about where and when Kaldas received the documents. The discrepancies suggest either that Kaldas could not accurately recall his receipt of the unmarked bundles (and gave conflicting accounts to others), or that Craft, Giorgiutti and Hudson were each mistaken in recalling what Kaldas had told them. The most likely explanation on the evidence before Operation Prospect is that Kaldas’s recall of events was mistaken.

It appears that in mid-2011 Kaldas inquired about accessing information that the PSC held in relation to him.<sup>484</sup> On 17 June 2011, Kaldas sent an email to Craft, who was at the time the Professional Standards Manager for the NSWPF Specialist Operations Command, seeking access to “my record or any material held by [PSC] on my file”.<sup>485</sup> Kaldas stated in his evidence to Operation Prospect that he made this request as he

*... was hearing from a lot of people, one in particular, who alleged that the [SCIA] team had fabricated evidence on people’s internal affairs records and it was found to be not only inaccurate but blatant lies.*<sup>486</sup>

Kaldas’s request to Craft on 17 June 2011 appears to have been entirely appropriate. It is significant only in that it indicates that, at least between September 2010 and October 2012, Kaldas had an ongoing interest in obtaining material relevant to his concerns and complaints about the conduct of SCIA officers.

480 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2315-2319.

481 Diary, David Hudson, 3 September 2012.

482 Statement of Information (Interview), Peter Gallagher, 12 December 2014, p. 34.

483 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1382.

484 Email from Detective Inspector Matthew Craft, NSWPF to Deputy Commissioner Nick Kaldas, NSWPF, 20 May 2011.

485 Email from Deputy Commissioner Nick Kaldas, NSWPF to Detective Inspector Matthew Craft, NSWPF 17 June 2011; Ombudsman Transcript, Matthew Craft, 21 August 2014, p. 1962.

486 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2283.

## 22.5.4 Recording and handling anonymously received documents

Kaldas's evidence as to how he dealt with the documents that he said he received is troubling. The proper response, at a minimum, would have been to record how and what documents were received, to have the list of documents verified by another officer, and either to notify or convey the documents to another officer. This was the course of action adopted by Officer D, who was the other serving NSWPF officer to receive similar documents. Officer D acted appropriately: he recognised the connection between the material he had received and the investigations conducted by Emblems, he understood the significance of confidential police records being disseminated anonymously, and he took action to account for the receipt of the documents.

Kaldas gave evidence that the documents arrived in three bundles,<sup>487</sup> they revealed what he considered to be criminal misconduct,<sup>488</sup> and their contents shocked him.<sup>489</sup> This does not adequately explain the failure to record the receipt of the documents, particularly for an experienced investigator such as Kaldas. If the documents suggested possible criminal conduct by SCIA officers – who are members of the NSWPF – this was an added reason to record and report the anonymous dissemination of the documents.

Kaldas told Operation Prospect that he was reluctant to go directly to the Commissioner of Police after receiving the first bundle of documents, as Scipione had taken over command of SCIA in 2001 and Kaldas believed that Scipione had known about problems there but failed to address them.<sup>490</sup> Kaldas conceded that he reported to Scipione after the second bundle of documents arrived because Kaldas was aware that his complaint would need to be made to the Commissioner of Police.<sup>491</sup> This reasoning could equally have applied after the first bundle of documents was received.

Kaldas's actions in dealing with the documents that he said he received anonymously do not appear to have contravened any specific NSWPF procedures or directions for handling apparently sensitive materials obtained from an unknown or anonymous source. It is perhaps not surprising that the NSWPF Handbook does not specifically address a situation of that kind. In the circumstances, however, no satisfactory explanation has been provided as to why Kaldas did not disclose his receipt of the documents to the Commissioner for some weeks after the first tranche arrived, and why only selected documents formed part of his complaint to the Commissioner in September 2012. This was not appropriate conduct for a Deputy Commissioner who had supervised the Professional Standards Command that promoted the values and ethics policies of the NSWPF.

## 22.5.5 Misleading statements and evidence

The statutes that confer powers on royal commissions and similar commissions of inquiry to summon and examine witnesses all contain provisions that make it an offence for a person to knowingly make a false or misleading statement to the relevant body. The relevant provisions that applied to evidence given in Operation Prospect are section 37(1)(c) of the *Ombudsman Act 1974* (Ombudsman Act) and section 21(1) of the *Royal Commissions Act 1923* (which applied pursuant to section 19(2) of the Ombudsman Act).

Those provisions illustrate the importance Parliament has placed on witnesses giving truthful and honest answers to commissions of inquiry. Case law describes false and misleading testimony on oath as a serious offence, both to courts and to commissions of inquiry. The case law suggests also that the commission of an offence is more serious when committed by a person who has a role in the administration of justice, such as a police officer. Courts have repeatedly held that commission of the offences of perjury and false testimony undermine the administration of justice. An example is the observation in *R v Bulliman*<sup>492</sup> of Abadee J (Gleeson CJ and Hunt CJ agreeing):

487 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2166.

488 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2168-2170.

489 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2166 and 2283.

490 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2169.

491 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2169.

492 *R v Bulliman* (Unreported, New South Wales Court of Criminal Appeal, 25 February 1993).

*False evidence strikes at the whole basis of the administration of justice and indeed, it undermines the whole basis of it. Justice inevitably suffers, whatever be the motive for the making of false statements on oath and whatever be the circumstances in which the offence or offences are committed.*

Kaldas initially said in oral evidence under oath to Operation Prospect on 5 September 2014 that he thought the affidavits relating to LD warrant 266/2000 and TI warrants 403-406/2001 were in the first or the second bundle of unmarked documents he received.<sup>493</sup> He said too that the NSWCC documents he provided to Operation Prospect (which included both affidavits) had all been received anonymously in those unmarked bundles.<sup>494</sup> He further said that he had not asked for or been given any documents relating to Mascot by certain specific persons (including Giorgiutti).<sup>495</sup> It was later put to Kaldas in the same examination on 5 September 2014 that Giorgiutti had given him copies of some NSWCC documents relevant to Mascot's targeting of Kaldas.<sup>496</sup> Kaldas acknowledged at this point that Giorgiutti had directly provided him with copies of the affidavits for LD warrant 266/2000 and TI warrants 403-406/2001.<sup>497</sup>

The evidence that Giorgiutti and Kaldas gave on the understanding between them sheds little light on the issue. Giorgiutti's evidence was that there was "no secret" about the fact that he gave documents to Kaldas in August 2012, and he believed he was legally entitled to do so (a belief that was unreasonably mistaken). On the other hand, Kaldas gave evidence that Giorgiutti had sought an assurance that he would "not give Giorgiutti up". Both accounts are contradictory and should be viewed with scepticism.

In summary, it is clear from the evidence before Operation Prospect that Giorgiutti provided Kaldas with a number of confidential NSWCC documents. Kaldas initially gave evidence to Operation Prospect that provided a different explanation as to how he obtained confidential NSWCC documents. This explanation contradicted Giorgiutti's evidence, and was contrary also to the evidence of other witnesses as to the explanation Kaldas had given them in 2012 about his receipt of the documents. It was only after the substance of Giorgiutti's evidence was put to Kaldas on 5 September 2014 that Kaldas confirmed that he received some of those documents in personal meetings with Giorgiutti. Kaldas accepted that his earlier evidence that Giorgiutti had not given him any documents was false.

## **22.6 Potential sources of the NSWPF investigation documents disseminated in 2012**

This section examines how confidential NSWPF documents relating to Sibutu, Tumen and Emblems (including the final reports) entered the public domain in 2012. As discussed earlier in this report, those documents were disseminated in 2012 to various people including journalists and former and serving NSWPF officers who had an interest in the strike force investigations. The discussion commences with an explanation of the e@gle.i information management system in the NSWPF, in which the strike force documents were stored.

e@gle.i is a NSWPF Investigation Management System that allows officers to capture and report on information gathered during major investigations. Access to e@gle.i is highly restricted and access to investigation files is usually limited to officers who are conducting or have conducted the relevant investigation. The investigation files for Sibutu, Tumen and Emblems are all stored on e@gle.i.

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493 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2177.

494 Statement of Information (Interview), Nick Kaldas, 9 November 2012, pp. 12-15; Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2177-2178.

495 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2235-2336.

496 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2313-2315.

497 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2318.

## 22.6.1 Media interest in Emblems (May to June 2012)

In May 2012 the Minister for Police referred the Emblems report to the PIC Inspector, seeking advice as to whether it should be released.<sup>498</sup> This led to renewed media attention in Emblems, and by extension, Operation Mascot. The media interest prompted Galletta, the lead investigator for Emblems, to start uploading media articles to the Emblems investigation file maintained on e@gle.i. Throughout May and June 2012 Galletta monitored the media and uploaded Emblems related stories to e@gle.i.

On Sunday 3 June 2012 a newspaper article published portions of a 2004 letter<sup>499</sup> from Galletta to the Police Association of NSW updating them on the progress of Emblems.<sup>500</sup> Galletta became aware of this article and had a conversation with the Secretary of the Police Association about it. Galletta gave evidence to Operation Prospect that the Secretary denied disseminating the letter to the newspaper and informed Galletta that he would ask a legal representative to contact him.<sup>501</sup> The article and the conversation with the Secretary apparently disturbed Galletta, as he made the following note on e@gle.i: "I had impression that something (sued, investigation, repercussions) underway against myself (either by NSWPF, COP or DCoP Burn, those on investigation)".<sup>502</sup>

On Monday 4 June 2012 Galletta made a request through e@gle.i to the NSWPF e@gle.i Support Section for three copies of the briefs of evidence for each of Strike Forces Sibutu, Tumen and Emblems.<sup>503</sup> That same day, these briefs were burned onto a total of nine CDs and retained at the NSWPF Investigative Systems Support (ISS) office for collection by Galletta.

The following day, 5 June 2012, Galletta collected these CDs from the Officer in Charge of e@gle.i Support at the ISS office.<sup>504</sup> According to Galletta, he took the CDs and placed them in his "safe at work".<sup>505</sup> At the time, Galletta worked at the Metropolitan Robbery Unit, located at Hurstville. Operation Prospect has not been able to identify whether Galletta told any other person of these actions.

In his evidence to Operation Prospect, the Officer in Charge of e@gle.i Support explained that it was established practice in the e@gle.i Support section to retain a digital copy of each investigation on the "production drive", pending transfer to CD to be kept in a safe in the office (a process known as "archiving"). This "production drive" is protected by both a username and password system<sup>506</sup> and is only accessible by e@gle.i Support staff. At the time of Galletta's request on 4 June 2012 approximately five staff members could access the "production drive".<sup>507</sup>

The Officer in Charge of e@gle.i Support gave evidence that the e@gle.i program creates a new "build number" for each request for a brief of evidence.<sup>508</sup> This means that separate requests for production of e@gle.i briefs containing the same material will have different "build numbers". The date on which a brief is "built" in e@gle.i is recorded in the footer of the brief.<sup>509</sup> Any copy of a particular e@gle.i brief that is subsequently made will contain the same "build" date in the footer (rather than the date on which the file was printed or copied).<sup>510</sup>

498 Letter from the Hon Michael Gallacher, Minister for Police and Emergency Services to the Hon David Levine, Inspector of the Police Integrity Commission, 11 May 2012, p. 1.

499 Letter From Detective Inspector Mark Galletta, NSWPF Strike Force Emblems to [name], Secretary, Police Association of New South Wales, 18 May 2004.

500 Aston, Heath. 'Secret report criticises bugging of police', *The Sun-Herald*, 3 June 2012, p. 18.

501 Ombudsman Transcript, Mark Galletta, 20 August 2014, pp. 1851-1852.

502 NSWPF, e@gle.i Investigation Log Entry, Mark Galletta, 3 June 2012.

503 The e@gle.i Support Section is housed within an office with a number of other sections which is collective known as Investigations Support Services (ISS).

504 NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Emblems 6809*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012; NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Tumen 6810*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012; NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Sibutu 6811*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012.

505 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 90.

506 Statement of Information (Written), [Officer in Charge of e@gle.i Support], 12 December 2014.

507 Statement of Information (Written), [Officer in Charge of e@gle.i Support], 9 September 2013, pp. 877-888.

508 Ombudsman Transcript, [Officer in Charge of e@gle.i Support], 29 May 2014, pp. 61-62.

509 Ombudsman Transcript, [Officer in Charge of e@gle.i Support], 29 May 2014, p. 64.

510 Ombudsman Transcript, [Officer in Charge of e@gle.i Support], 29 May 2014, pp. 64-65.

On 7 June 2012 a Senior Constable within the e@gle.i Support section copied the Sibutu and Tumen e@gle.i briefs (along with numerous other strike forces) from the production drive database to a single CD and archived the CD in the office safe in accordance with established practice.<sup>511</sup> The copies of the Sibutu and Tumen briefs were then deleted from the production drive. On 12 June 2012 the Officer in Charge of e@gle.i Support undertook the same process for the Emblems brief.<sup>512</sup>

The consequence of those actions, at the date of archiving, was that the only briefs of evidence for Sibutu, Tumen and Emblems known to exist on physical CDs were either held by Galletta or secured in the ISS safe. The two e@gle.i support staff who handled the briefs of evidence both made statements to Operation Prospect denying having disseminated the material from either the archived CDs or the production drive to any party without authorisation.<sup>513</sup>

## 22.6.2 Dissemination of NSWPF documents in mid-2012

Operation Prospect commissioned an independent forensic analysis to investigate the documents that were disseminated in electronic form. In conjunction with other evidence before Operation Prospect, this analysis showed that in early July 2012, selected individual documents were most likely (while not certainly) copied from at least the Emblems e@gle.i CDs that were in the possession of either the ISS or Galletta. Further evidence from that independent forensic analysis shows that Giorgiutti also came into possession of a copy of the complete e@gle.i brief for Emblems, as well as records and documents from Sibutu and Tumen. These materials were contained on separate CDs. As discussed below in section 22.6.8, the copy of the Emblems e@gle.i brief on the CD provided to Operation Prospect by Giorgiutti has been conclusively linked to the Emblems e@gle.i brief file on the CDs held either by Galletta or in the ISS safe.

It is important to note at this stage that the Emblems e@gle.i brief file contained investigative material from Tumen, including records of interview between Tumen investigators and a number of current and former NSWPF officers. All those documents were disseminated without authorisation to other parties, and were included in the bundles of documents received by Mr J, Mercer, Mr K and Officer H.

Giorgiutti gave evidence to Operation Prospect on 24 October 2014, in which he stated that Kaldas gave him a digital (or CD) copy of "Emblems documents":

- A: *The Commission got from Kaldas documents that the Commission didn't have that came from Emblems.*
- Q: *Sorry, the Commission?*
- A: *Yes.*
- Q: *What, you, got documents from Kaldas - - -?*
- A: *Yes.*
- Q: *That he got from Emblems? Or that came to him that Emblems had?*
- A: *They were Emblems documents, yes.*
- Q: *What documents?*
- A: *I've given them to you, it's on those CDs. I think they were, there was [sic] some statements. They're on the CDs. I don't - - -*
- Q: *So did you ask Kaldas to give them to you?*
- A: *There was - for some reason I needed a statement, or statements. He had them, or had it, and what I got was a CD with a number of statements.*

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511 Statement of Information, (Written), [Senior Constable within the e@gle.i Support section], 19 January 2015,

512 Statement of Information, (Written), [Officer in Charge of e@gle.i Support], 12 December 2014.

513 Statement of Information (Written), [Senior Constable within the e@gle.i Support section], 19 January 2015; Statement of Information (Written), [Officer in Charge of e@gle.i Support], 11 May 2015.



- Q: *From Kaldas?*
- A: *More than what I asked for, yes.*
- Q: *A CD with a number of statements that were Emblems statements?*
- A: *Statements taken by Emblems investigators, I think, yes.*
- Q: *And Kaldas gave that CD to you?*
- A: *Yes, you've got the CD, I gave it to you.*
- Q: *No, don't worry about that. I want to know where you got it. Kaldas gave it to you, did he?*
- A: *Yes.*
- Q: *Are you absolutely confident about that?*
- A: *Yes.*
- Q: *And when did he give that to you? Was this this day he was at your house where - - -?*
- A: *No. No, I can't remember. I suggest you burn a copy of it, so you can probably get it from the CD, but I can't remember. Yeah, it would have been in June or July - July or August, I imagine - - -<sup>514</sup>*

There is a further discussion of Giorgiutti's evidence in section 22.6.6 below, in which he stated that Small and Kaldas gave him CDs that contained documents relating to Emblems and other strike forces. Small told Operation Prospect that he did not give confidential Emblems documents to anyone.<sup>515</sup> Kaldas gave evidence that he did not disseminate the documents that he had received other than in the course of seeking legal advice.<sup>516</sup> It should be noted that later in the course of the same examination on 28 October 2014, Giorgiutti was unable to nominate any of the materials he had produced to Operation Prospect as the CD that he claimed Kaldas had provided to him.<sup>517</sup>

The report that Giorgiutti and another NSWCC officer drafted in August 2012 concerning NSWCC LD warrant 266/2000 contained extracts from the interviews conducted by Tumen investigators of NSWPF officers who had previously worked at Mascot.<sup>518</sup> The relevant documents were generated in the course of NSWPF investigations and were not connected with any NSWCC investigations, except to the extent that the matters under investigation concerned the conduct of NSWPF officers working at Mascot. As such, there is no reason why those documents would be in the possession of the NSWCC prior to any unauthorised dissemination in 2012. It is possible that Giorgiutti obtained the Tumen interviews from the CD that contained Emblems documents, as referred to in his evidence above.

Mr K gave evidence that he received two packages of NSWPF and NSWCC material at his home address "midway through 2012 ... about June 2012".<sup>519</sup> It is unknown if the documents that Mr K received were printed from CDs that were in the possession of Small and Giorgiutti. However, many of the documents Mr K received are the same as documents that Small and Giorgiutti had in digital format.

### 22.6.3 Provision of documents to Mercer

In late August 2012 Mr K made contact with Mercer and handed him copies of the material that was anonymously delivered to Mr K.<sup>520</sup> As discussed in section 22.1.2, Mercer's evidence to Operation Prospect was that he received documents both anonymously through the mail (directed to his workplace) and from

514 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2437-2438.

515 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 473-475.

516 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2184-2186 and 2208-2209.

517 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2472-2477.

518 [NSWCC senior solicitor], *Report into the apparent circumstances leading to the application for warrants numbered NSWCC LD No. 95 of 2000 and NSWCC LD No. 266 of 2000 and Strike Force Emblems*, NSWCC, 20 August 2012, pp. 35-61.

519 Ombudsman Transcript, [Mr K], 14 August 2014, p. 1547.

520 Ombudsman Transcript, [Mr K], 14 August 2014, pp. 1549-1550.

Mr K.<sup>521</sup> Mercer reviewed that material and on 28 August 2012 posed a number of questions to the NSWPF for the purpose of articles he was writing.<sup>522</sup> On 9 September 2012 Mercer wrote several articles using the material he had received, and continued to write further articles throughout September.<sup>523</sup>

Around September 2012 a meeting took place at a cafe in Balmain where a number of affected officers and Mr J were present. The attendees at the meeting discussed Emblems and Mascot. Mr K told Operation Prospect that he attended the meeting, as did his solicitor, two former NSWPF officers who had both been named on LD warrant 266/2000, Kaldas, Mr J and Mercer (who arrived late at the meeting).<sup>524</sup> Mr K gave evidence that documents were not exchanged at the meeting, and that Kaldas had already obtained legal advice in relation to Emblems and Mascot by that time.<sup>525</sup> In his evidence to Operation Prospect, Kaldas confirmed that he met with Mr K, Mr K's solicitor, and others in Balmain on one occasion to discuss possible legal action connected with those officers being targeted by Mascot and SCIA officers.<sup>526</sup>

#### 22.6.4 Galletta's possession of confidential material

As discussed above in section 22.6.1, on 4 June 2012 Galletta requested the creation of a total of nine CDs containing the e@gle.i briefs for Sibutu, Tumen and Emblems. Galletta took possession of these nine CDs on 5 June 2012. On 11 September 2012 Galletta commenced duty but left before the end of his shift and started a period of sick leave. He gave evidence to Operation Prospect that he removed the nine CDs from his work safe and took them to his home address.<sup>527</sup> Galletta categorically denied that he disseminated any of these CDs or copies of material on the CDs to any other person.<sup>528</sup>

On 17 December 2012 Galletta attended the Office of the NSW Ombudsman in accordance with a notice to give information and produce relevant documents. Specifically, the notice compelled Galletta to produce:

*Documents relevant to the scope and purpose of Prospect ... of the following police conduct: the actions and inactions of police officers involved in the following NSW Police Force strike forces or joint strike forces ("the strike forces): Strike Emblems, Strike Force Sibutu, Strike Force Tumin [sic]...*<sup>529</sup>

The nine e@gle.i CDs that Galletta had in his possession fell within the terms of that notice. Galletta did not produce those CDs or inform investigators of their existence during his interview with the Ombudsman's office on 17 December 2012.<sup>530</sup>

On 2 May 2013 Operation Prospect emailed Galletta a letter that constituted a "call for information". The letter invited Galletta "to provide any further information, documents or material in your possession which you believe may be relevant to our investigations".<sup>531</sup> Galletta did not provide Operation Prospect with any material in response to this letter.

Galletta then participated in a further two interviews with Operation Prospect investigators on 19 June and 17 July 2013. During both of those interviews, he orally provided information relating to Emblems, Sibutu and Tumen.<sup>532</sup> Prior to each interview, Galletta was given access to both electronic and hardcopy documents relating to the three strike forces to assist his preparation. In neither interview did Galletta disclose that he was already in possession of CDs that contained the very same material he had been provided by Operation Prospect.

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521 Ombudsman Transcript, Neil Mercer, 14 August 2014, p. 1481.

522 Ombudsman Transcript, Neil Mercer, 14 August 2014, p. 1482; Catherine Burn, Personal notes, NSWPF, 7 September 2012.

523 Portfolio of Neil Mercer, scrapbook containing media articles in relation to Prospect/Emblems/Mascot.

524 Ombudsman Transcript, [Mr K], 14 August 2014, pp. 1549 and 1554-1556.

525 Ombudsman Transcript, [Mr K], 14 August 2014, pp. 1562-1563.

526 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2311-2312.

527 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 90.

528 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 98-100; Galletta, M, Submission in reply, 10 August 2015, p. 17.

529 Notice of Requirement to give a Statement of Information and/or Produce Documents under s. 18 of the Ombudsman Act from Bruce Barbour, Ombudsman to Mark Galletta, NSWPF, 12 December 2012.

530 Statement of information (Interview), Mark Galletta, 17 December 2012.

531 Letter from Director, NSW Ombudsman to Detective Inspector Mark Galletta, NSWPF, 2 May 2013.

532 Statement of information (Interview), Mark Galletta, 19 June 2013 and Statement of information (Interview), Mark Galletta, 17 July 2013.

On 18 July 2013 Galletta participated in a fourth interview with Operation Prospect. During this interview he was shown two Emblems e@gle.i CDs that had been provided to Operation Prospect by the PIC Inspector and had been copied from the Emblems e@gle.i CD maintained in the ISS safe. The purpose of this interview was to see if Galletta could assist Operation Prospect in clarifying the origin of the two CDs. Operation Prospect was aware at that time that the discs had been provided to the PIC Inspector by the NSWPF, but were unsure about where the CDs originated from within the NSWPF (as they did not match any of the holdings produced directly by the NSWPF to Operation Prospect).<sup>533</sup> The two CDs shown to Galletta were identical in external appearance to the Emblems e@gle.i CDs that Galletta had obtained from ISS (a fact not known at this time by Operation Prospect).

It was only when shown the CDs that Galletta told Operation Prospect he had requested ISS in June 2012 to produce CDs containing the briefs of evidence for Sibutu, Tumen and Emblems. Galletta advised Operation Prospect that he held copies of the CDs at his private residence:

Q: *Um, since our first meeting with you and referring to the one on the 19th of June, ah, we have come into some information around, um, some particular material that, um, appears to have been leaked out of, ah, New South Wales Police or another New South Wales government department, um, into the public domain. And we have information that would suggest that at some time you were in possession of material, - - -*

A: *Okay.*

Q: *- - - from which that leak was derived. Um, so, in lieu of that, we'd like to ask you some questions on that issue. Um, firstly, I'm just going to show you two – two articles. Show you two articles here. The first one's reference number OMB000239. And the next one is OMB000238. Um, they're two DVDs, the first – both from New South Wales Police Force, um, titled, Emblems 6809 Brief of Evidence Strike Force Emblems Prosecution Copy and then dated on the 4th of June 2012. I'll just hand them both to you. I just wanted to ask you, um, if you could tell us whether you'd been in contact with those DVDs before and – and the context around that?*

A: *I got them made up. Um, and shows it on e@gle.i that I got them made up. One, because at the time I got them made up, I was – they were there for my protection in case I was concerned that, because of the nature of what was going on and the people who – the people involved, I was worried that things might go missing on the e@gle.i investigation, um, notwithstanding, you know, a secure program. Um, and I have copies of those at home.*

Q: *Pardon me?*

A: *I have copies of those at home.*

Q: *At home?*

A: *Mmm.*

Q: *Now?*

A: *Mmm hmm.*

Q: *How many copies?*

A: *I can't remember, to be honest.*

Q: *So when you had them printed off, how many copies were printed off on the Police system?*

A: *Oh, it would be on e@gle.i, to be honest, because I, you know, I wasn't hiding them from anybody. Um, I deliberately put it on there because, as I said, for my protection.*

Q: *So, to your knowledge, could you have burnt more than two copies off the system?*

A: *I could have, yeah.*

<sup>533</sup> As discussed later, these CDs were copied from ISS archives. However, this occurred in September 2012, after the dissemination of information and media reports.

Q: *And you said that you were - - -*

A: *Actually, no, it – it – yeah, I know – I do now – I’ve got three ‘cause I did Sibutu, Tumen and Emblems; and there is three of each.*

Q: *Three of each.*<sup>534</sup>

As the interview progressed, Galletta elaborated on why he had requested the creation of the e@gle.i CDs on 4 June 2012 and advised that all of the CDs created in response to his request were in his possession:

Q: *And – and why did you decide on three – three copies?*

A: *I – I don’t know. Oh, because they made three copies. I didn’t ask how many I want, I don’t think. They just provided three copies so I took three each. Yeah*

Q: *Each of, so 9 discs.*

A: *Yeah. And I’ve got them at home.*

Q: *How many?*

A: *Pardon?*

Q: *How many discs are at home?*

A: *Yeah, the nine.*<sup>535</sup>

Galletta then explained the movements of the CDs:

*When I did them I was still at work on the 4th of June until, what’s that – September – two or three months later, they’re in my safe at work and there’s only one other person has the combination for that, um, who has no relevance to anything. Um, and when so I ceased work, I took them home with me and they’ve been in a box in – in a cupboard at home.*<sup>536</sup>

Galletta offered the following explanation as to why he did not inform Operation Prospect about the existence of these CDs during previous interviews or after having controlled access to documents associated with Tumen and Emblems in preparation for his interview in July 2013:

Q: *... Um, is there any reason during that conversation or upon being presented with the brief of evidence, that you didn’t make reference to the fact that you already had copies of that material?*

A: *It wasn’t raised and I didn’t think it was relevant. I – I honestly I, um, was familiar with the way it was set out but I haven’t accessed – since I’ve kept those I – and even the floppy discs – I have deliberately not accessed any of those because I wanted to read the material that you had provided rather than access the documents that I have retained.*

Q: *What’s the difference, ah, we – we should - - -*

A: *There probably isn’t any difference but I wanted to do it that way.*<sup>537</sup>

Galletta went on to explain that over the years he had also taken home numerous reports and documents related to the aforementioned investigations for his own “protection”<sup>538</sup>:

*Look, it’s – the saving of documents on discs in this age of technology is what people do. It’s not uncommon to keep copies of things. I’ve always kept copies of briefs of evidence and – and things like that. Um, and as I said, that’s where I’ve kept – well, obviously, with the – with these being downloaded and – and made up, it’s – it’s always going to be on a – on another program. But, as I said, because I was getting concerned that I was becoming a target and, as I’ve said repeatedly, that I’m the scapegoat in the middle and allegations*

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534 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 84-86.

535 Statement of information (Interview), Mark Galletta, 18 July 2013, pp. 87-88.

536 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 90.

537 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 92.

538 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 85.

*could be made about myself about some of the things that we did and didn't do; I wanted to have a complete copy of all of the investigations in case – in case something happened.*<sup>539</sup>

On 31 July 2013 a fortnight after giving the preceding evidence, Galletta delivered to the Ombudsman's office, eight e@gle.i CDs (three for Emblems, three for Tumen and two for Sibutu) and hardcopy material relating to those strike forces. Galletta did not explain the whereabouts of the third Sibutu CD, which remains unaccounted for. Galletta submitted that these were the only e@gle.i CDs he had received on 5 June 2012. However, the receipts for the Emblems, Sibutu and Tumen e@gle.i CDs signed by Galletta and dated 5 June 2012 record that three copies of each CDs were provided to him<sup>540</sup> (and he referred to receiving nine CDs in his preceding evidence). Galletta told Operation Prospect that when e@gle.i is used to compile an electronic brief of evidence (such as the Emblems, Tumen and Sibutu briefs created on 4 June 2012), that system also generates a hyperlink to the full compilation of documents contained in that brief.<sup>541</sup> An audit of the e@gle.i system shows that Galletta was the only person to access the hyperlink that was created for the electronic briefs that he was given on 4 June 2012, between that date and the publication of the first of Mercer's articles concerning Emblems on 9 September 2012.

### 22.6.5 Evidence of e@gle.i support staff

Operation Prospect interviewed all staff members of the NSWPF e@gle.i Support Team during 2012, in relation to the dissemination of information relating to Emblems, Sibutu and/or Tumen. They each stated they did not access any of those investigations on e@gle.i, the Production Drive or the "archived" CDs for any reasons other than those connected to their official duties. An audit of the e@gle.i system supports those claims.

With one exception, all staff members stated they had not disseminated any hardcopy or digital documents from Emblems, Sibutu or Tumen to any other person. The exception was the Officer in Charge of e@gle.i support who made two copies of the Emblems e@gle.i brief from the archived CD located in the ISS safe on 12 September 2012.<sup>542</sup> This was done in response to a request from the PSC.<sup>543</sup> That request stemmed from correspondence between Levine, Police Minister Gallacher's office and the NSWPF, which indicated that the PIC Inspector had not received copies of the transcript of Burn's interview by Emblems investigators dated 30 June 2003 or Burn's briefing note to Finlay dated 13 April 2002.<sup>544</sup> The two CDs provided by the Officer in Charge were incorporated into the bundles of documents which the NSWPF delivered to the PIC Inspector to assist him in his review, which was ongoing as at September 2012.

### 22.6.6 Giorgiutti's possession of confidential material

On 11 August 2014 in giving evidence to Operation Prospect, Giorgiutti produced several DVDs and CDs. The e@gle.i briefs of evidence for Strike Forces Sibutu, Tumen and Emblems were contained on three of these CDs. Other CDs contained various NSWCC documents relating to Mascot, transcripts of interviews conducted by Tumen investigators, emails between former Mascot officers, and media articles.

539 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 91-92.

540 NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Emblems 6809*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012; NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Tumen 6810*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012; NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Sibutu 6811*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012.

541 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 93-94; Statement of Information (Written), [Officer in charge of e@gle.i Support], 9 September 2013, p.297.

542 Ombudsman Transcript, [Officer in charge of e@gle.i Support], 29 May 2014, pp. 82-86.

543 Ombudsman Transcript, [Officer in charge of e@gle.i Support], 29 May 2014, pp. 82-86.

544 Email from Chief of Staff, Office of the Minister for Police and Emergency Services to Commissioner Andrew Scipione, NSWPF, 20 September 2012; Statement of Information (Interview), [Professional Standards Command investigation manager], 2 March 2016, p. 19.

In his evidence to Operation Prospect, Giorgiutti stated that he had received the majority of the CDs containing NSWPF documents from Small,<sup>545</sup> and that between June and August 2012, Kaldas had given him a CD containing a number of statements that Giorgiutti assumed were relevant to Emblems.<sup>546</sup> When Giorgiutti was shown the various CDs he had produced to Operation Prospect and asked who had provided the CDs to him, he could not nominate which of those CDs (if any) was the one that Kaldas had provided to him.<sup>547</sup> However, Giorgiutti gave evidence that he thought Kaldas had given him one CD containing copies of interviews of Burn conducted by Tumen and Emblems investigators.<sup>548</sup>

Small told Operation Prospect that he had not given confidential Emblems documents to anyone.<sup>549</sup> Kaldas told Operation Prospect that he had sought legal advice about the documents included in the anonymous bundles sent to him, and that he did not do anything else with those documents.<sup>550</sup>

### 22.6.7 Investigation of storage and movements of e@gle.i CDs

Operation Prospect investigated Galletta's claim that he placed the nine e@gle.i CDs in his work safe on 5 June 2012 and removed them on 11 September 2012 when he started a period of sick leave.

Operation Prospect interviewed the NSWPF officer who was the only other person with access to this safe during that period. The officer worked with Galletta at the NSWPF Metropolitan Robbery Unit from 2008.<sup>551</sup> She stated that she had access to the safe as part of her duties<sup>552</sup> and would access it at least once a week.<sup>553</sup> She described the safe as being located in Galletta's office, approximately 60 centimetres in height,<sup>554</sup> consisting of two drawers, and containing things such as keys, money, swipe passes and 'OC' spray.<sup>555</sup>

During her interview, the officer was shown the eight e@gle.i CDs that Galletta had provided to Operation Prospect. She stated that she had not seen the CDs before,<sup>556</sup> and had not seen them in Galletta's work safe.<sup>557</sup> When asked if it was likely that she would have seen them had they been kept in the safe, she responded:

*I suppose it depends on where they were in the safe whether I'd see them. As indicated, I'm sure the top drawer has all the keys in, so they were definitely not there. Well, if they were like that [in plain view] I would have seen them, and nothing was in the top drawer. And the bottom drawer I'd only access the box with the OC spray in, so if they were in other sort of envelopes or anything like that, no. Well, I hadn't seen them, no.*<sup>558</sup>

Operation Prospect also interviewed the officer who became Acting Commander of the Metropolitan Robbery Unit after Galletta commenced sick leave, for approximately the next two years.<sup>559</sup> This officer had access to the work safe in question during that time. He told Operation Prospect that he did not see any e@gle.i CDs in the safe.<sup>560</sup>

When presented with the evidence of both witnesses, Galletta maintained that the CDs were concealed within a folder inside the safe, and that the manner in which the CDs were stored explained why other NSWPF officers did not see them between June and September 2012.<sup>561</sup>

545 Ombudsman Transcript, John Giorgiutti, 11 August 2014, pp. 1388-1390; Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2473-2475.

546 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2437-2438 and 2472.

547 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2472-2477.

548 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2437-2438 and 2472-2473.

549 Ombudsman Transcript, Clive Small, 14 July 2014, pp. 473-475.

550 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2184-2186 and 2208-2209.

551 Statement of Information (Interview), [name], 26 March 2015, pp. 3-4.

552 Statement of Information (Interview), [name], 26 March 2015, pp. 4-5

553 Statement of Information (Interview), [name], 26 March 2015, p. 6.

554 Statement of Information (Interview), [name], 26 March 2015, p. 6.

555 Statement of Information (Interview), [name], 26 March 2015, p. 5.

556 Statement of Information (Interview), [name], 26 March 2015, p. 15.

557 Statement of Information (Interview), [name], 26 March 2015, pp. 15-16.

558 Statement of Information (Interview), [name], 26 March 2015, p. 16.

559 Statement of Information (Interview), [Acting Commander Metropolitan Robbery Unit], 19 March 2015, p. 4.

560 Statement of Information (Interview), [Acting Commander Metropolitan Robbery Unit], 19 March 2015, p. 12.

561 Galletta, M, Submissions in reply, 10 August 2015, p. 16.

## 22.6.8 Forensic analysis of e@gle.i CDs

The independent forensic analysis commissioned by Operation Prospect compared the Emblems e@gle.i CD produced by Galletta on 4 June 2012 (the Galletta CD), the archived Emblems e@gle.i CD held in the ISS safe (the ISS CD), and the CDs produced under summons to Operation Prospect by Giorgiutti and Small (Giorgiutti CD and Small CD). This process involved taking a selection of files from the source CDs (the Galletta and ISS CDs) and comparing them with files on the Giorgiutti and Small CDs.

Two files on the Galletta CD, the ISS CD and the Giorgiutti CD were selected for analysis: these were the entire Emblems e@gle.i Brief of Evidence that was contained on a single PDF document<sup>562</sup> and an associated HTML software program that allows the user to access parts of the Emblems e@gle.i Brief of Evidence via 'hyperlinks'. These files were not on the CDs produced by Small.

The file content of the PDF document and HTML software program on the Giorgiutti CD was identical in every respect to the equivalent files on the Galletta and ISS CDs. The identical nature of the files can be seen in Table 9, below. The examination of the HTML software program appears in "File Group 1" and the PDF document appears in "File Group 2". Under the column headed "Evidence ID", the Galletta CD is headed OMB000462, the ISS CD is headed OMB001661 and the Giorgiutti CD is headed OMB001477.

**Table 9: Analysis of Emblems brief of evidence and HTML software program files**

File Group	Evidence ID	File Name	File Path	File Size (bytes)	Created (UTC)	Modified (UTC)	MD5 Hash
Galletta CD	S629101 – OMB000462	boe.html	BOE_Prosecution\	462	2012-Jun-04 02:18:43	2012-Jun-04 02:18:43	6445ff96ea61e0a4e897a18e276e6707
ISS CD	S629102 – OMB001661	boe.html	BOE_EMBLEMS.6809\BOE_Prosecution\	462	2012-Jun-04 02:18:43	2012-Jun-04 02:18:43	6445ff96ea61e0a4e897a18e276e6707
Giorgiutti CD	S629104 – OMB001477	boe.html	BOE_Prosecution\	462	2012-Jun-04 02:18:43	2012-Jun-04 02:18:43	6445ff96ea61e0a4e897a18e276e6707
Galletta CD	S629101 – OMB000462	boe.pdf	BOE_Prosecution\	299,006,884	2012-Jun-04 02:18:43	2012-Jun-04 02:18:43	8ef7320e92fe897360b3f4f6630a5d6
ISS CD	S629102 – OMB001661	boe.pdf	BOE_EMBLEMS.6809\BOE_Prosecution\	299,006,884	2012-Jun-04 02:18:43	2012-Jun-04 02:18:43	8ef7320e92fe897360b3f4f6630a5d6
Giorgiutti CD	S629104 – OMB001477	boe.pdf	BOE_Prosecution\	299,006,884	2012-Jun-04 02:18:43	2012-Jun-04 02:18:43	8ef7320e92fe897360b3f4f6630a5d6

As seen, all digital information is identical including the MD5 hash value. This is important as:

*The MD5 hash value represents a unique identifier for an electronic file. It is often referred to as a "digital fingerprint" of an electronic file. The MD5 algorithm is a widely used cryptographic hash function used to generate a 32 digit hexadecimal number (MD5 hash value) derived from the binary contents of a file. A minor change to the contents of the file will result in a change to the MD5 hash value generated. If comparing multiple files, differences in the binary content between the files, including hidden or non-user accessible metadata, will result in different MD5 hash values.*<sup>563</sup>

This analysis shows that the file contents of both the Emblems e@gle.i Brief of Evidence PDF document and the associated HTML software program are identical on the Giorgiutti CD, Galletta CD and ISS CD. As noted above, e@gle.i records the date that a brief of evidence is 'built' in the footer of that document. The digitally-identical copies of the Emblems e@gle.i brief are dated 4 June 2012 on all three CDs. Galletta's request was the only request for creation of an Emblems e@gle.i brief that was actioned on that date. A brief 'built' in response to a different request on an earlier or later date would have recorded a different date in the document footer, and would result in a different MD5 hash value for that file.

The conclusion of this analysis is that the documents on the Giorgiutti CD could only have come from the Galletta CD, the ISS CD or, for a brief time from 4 June 2012 to 12 June 2012, the e@gle.i Support Production Drive prior to its transfer onto an archive CD and placement in an ISS safe. All relevant staff who had access to the ISS safe or e@gle.i Support Production Drive have denied disseminating any such material without authorisation. Furthermore, a complete copy of the e@gle.i Brief of Evidence PDF document and associated

<sup>562</sup> This file contained all documents uploaded to the Emblems e@gle.i investigation including Investigation Notes and all "Products" such as transcripts of records of interview and investigation reports.

<sup>563</sup> NSW Ombudsman, Operation Prospect – Digital File Analysis (Phase 1), 26 February 2015, p. 12.

HTML software programs can only be produced by accessing e@gle.i itself and instituting an auditable 'briefing building' process. An audit undertaken of e@gle.i shows that Galletta is the only person to have requested the 'building' of an Emblems e@gle.i CD using this process. Accepting all of that evidence, the reasonable inference is that the files on the Giorgiutti CD were copied from the Galletta CD.

Small gave evidence to Operation Prospect that he had not disseminated Emblems-related materials to other people. The electronic documents that Small produced to Operation Prospect did not include a copy of the e@gle.i Emblems PDF document. A further three individual digital files that were contained on the Small CD were forensically analysed for Operation Prospect. These files were three separate transcripts of records of interview by Tumen investigators saved as PDF documents.<sup>564</sup> The three files from the Small CD were compared to files contained on the Galletta and ISS CDs.

The results of this examination are presented in Table 10, below. The examination of each of the three files is presented, respectively, in "File Groups" 3, 4 and 5. Under the column headed "Evidence ID", the Galletta CD is headed OMB000462, the ISS CD is headed OMB001661 and the Small CD is headed IB000616.

**Table 10: Analysis of Tumen interview files**

File Group	Evidence ID	File Name	File Path	File Size (bytes)	Created (UTC)	Modified (UTC)	MD5 Hash	
Galletta CD	3	S629101 – OMB000462	573910.pdf	BOE_Prosecution\Associated\	102,926	2012-Jun-04 02:18:41	2012-Jun-04 02:18:41	56f4240d4f83bba286023354dfe66aaa
ISS CD		S629102 – OMB001661	573910.pdf	BOE_EMBLEMS.6809\BOE_Prosecution\Associated\	102,926	2012-Jun-04 02:18:41	2012-Jun-04 02:18:41	56f4240d4f83bb9286023354dfe66aaa
Giorgiutti CD		S629103 – IB000616	Moroney, Peter, 21 Nov 2002.pdf	Documents through mail\	102,926	2014-Jul-09 08:38:40	2012-Jul-08 07:40:08	56f4240d4f83bb9286023354dfe66aaa
Galletta CD	4	S629101 – OMB000462	573912.pdf	BOE_Prosecution\Associated\	116,735	2012-Jun-04 02:18:41	2012-Jun-04 02:18:41	44b4c559262d165f9ef779a95b07bccb
ISS CD		S629102 – OMB001661	573912.pdf	BOE_EMBLEMS.6809\BOE_Prosecution\Associated\	116,735	2012-Jun-04 02:18:41	2012-Jun-04 02:18:41	44b4c559262d165f9ef779a95b07bccb
Giorgiutti CD		S629103 – IB000616	Burn, Cath, interview, 2 Dec 2002.pdf	Documents through mail\	116,735	2014-Jul-09 08:38:36	2012-Jul-08 07:11:42	44b4c559262d165f9ef779a95b07bccb
Galletta CD	5	S629101 – OMB000462	573902.pdf	BOE_Prosecution\Associated\	104,164	2012-Jun-04 02:18:41	2012-Jun-04 02:18:41	6913449028a967c423128d97671610ae
ISS CD		S629102 – OMB001661	573902.pdf	BOE_EMBLEMS.6809\BOE_Prosecution\Associated\	104,164	2012-Jun-04 02:18:41	2012-Jun-04 02:18:41	6913449028a967c423128d97671610ae
Giorgiutti CD		S629103 – IB000616	Albury, Paul, interview 25 Oct 2002.pdf	Documents through mail2\	112,233	2014-Jul-09 08:39:56	2012-Oct-02 05:14:23	9847b05044ecae834d8ca810f7f992d5

Two of the files were identical on the Small, Galletta and ISS CDs, except for their creation time and date (see File Groups 3 and 4). While it is possible that these files on the Small CD originated from the Galletta CD or the ISS CD, the exact origin cannot be definitively identified from this analysis.

Another file (File Group 5) had exactly the same written content but possessed different digital qualities, including a different MD5 hash value. The copy of this file on the Small CDs cannot be linked to the copy of the corresponding file on either the Galletta CD or the ISS CD.

## 22.7 Attitude of parties to dissemination of restricted documents

This section discusses the evidence given to Operation Prospect by a number of witnesses about their understanding of the secrecy provisions in the NSWCC Act and the restrictions on dissemination of information that applied in the NSWCC. The analysis deals principally with the evidence of three witnesses. The legal and policy framework applying in the NSWCC to the dissemination of official information was outlined in Chapter 20.

Many witnesses who gave evidence to Operation Prospect were previously either NSWCC members or staff, or were former or serving police officers who had worked on NSWCC investigations (including but not limited to Mascot). The witnesses appeared by their answers to generally understand and agree that section 29 of the NSWCC Act restricted the communication of NSWCC information to anyone outside the NSWCC. Similarly,

<sup>564</sup> Numerous investigative documents from Strike Force Tumen were saved in the Emblems e@gle.i investigation and associated with the Emblems e@gle.i CDs.



witnesses indicated their understanding that the NSWCC Management Committee could decide to release information under section 7 of the NSWCC Act.

Two witnesses (Giorgiutti and Kaldas) gave evidence that they believed that any person who was a current member of the NSWCC could lawfully possess and receive any NSWCC information, at any time.<sup>565</sup> Kaldas stated that this was his understanding, and Giorgiutti provided the same explanation.<sup>566</sup> Their position was that a person who had been inducted to the NSWCC (and who was therefore a NSWCC staff member) would be a current member of the NSWCC for this purpose, and entitled to access any and all NSWCC documentation.<sup>567</sup> Giorgiutti and Kaldas stated that a NSWCC staff member was entitled to receive NSWCC information even if they did not have access to such information through the NSWCC's systems and had no operational reason to have it.<sup>568</sup>

The views of Kaldas and Giorgiutti are set out below, followed by evidence on the same issues from Bradley.

### 22.7.1 Kaldas's evidence

In his evidence to Operation Prospect, Kaldas stated his view that a person could have a moral right to obtain information where they had a personal interest in its content, even if they did not have a legal right to obtain that information.<sup>569</sup> Kaldas was seemingly of the view that this did not give rise to a conflict of interests:

Q: *You didn't have any legitimate operational reason for obtaining those affidavits from the Crime Commission, did you?*

A: *Not operational, no.*

Q: *Personal?*

A: *Yes.*

Q: *And obtaining personal information from confidential organisations is a conflict of interest, isn't it?*

A: *Look in this particular matter, having made a complaint under PIDs, I felt, in a moral sense, at least, if not legal, I had a right to pursue the truth, and that's really all I have done.*

Q: *Alright, and you could've- if you thought your right to pursue the truth was one that ought to be appropriately pursued, you could have done that through the normal channels, rather than getting them from Mr Giorgiutti, couldn't you?*

A: *Madam, every effort to pursue the truth through normal channels over a decade failed.*<sup>570</sup>

Kaldas gave evidence that, as a serving police officer, he would not take steps to protect confidential police documents if those documents clearly showed corruption.<sup>571</sup> Kaldas was asked a specific question about the documents he had received and whether they were confidential. He replied that some of the documents, in particular the memo by Burn in April 2002, were nearly 15 years old.<sup>572</sup> It was put to Kaldas that the age of a document did not necessarily mean that it was no longer confidential,<sup>573</sup> he responded as follows:

565 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2319; Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1372; Ombudsman Transcript, John Giorgiutti, 24 October 2013, p. 2487.

566 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2319-2320; Ombudsman Transcript, John Giorgiutti, 24 October 2014, p. 2486.

567 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2319-2320; Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2492-2493.

568 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2320; Ombudsman Transcript, John Giorgiutti, 24 October 2014, p. 2488.

569 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2320.

570 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2320.

571 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2172.

572 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2172.

573 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2172.

*Well, the things you would, would normally depend on to say this document shouldn't be released, jeopardising ongoing investigations, the identity of sources, methodology, I don't think any of that applied. Further to that, the material that I saw clearly proved maladministration and corruption.<sup>574</sup>*

Prior to admitting late in his evidence that he had received NSWCC affidavits from Giorgiutti, Kaldas consistently stated that all the documents he provided to the Ombudsman<sup>575</sup> and to the PIC Inspector had come to him "anonymously" in packages. Kaldas was asked to account for the lapse of time between his receipt of those documents and formalising his complaint about what the "anonymous documents" revealed to him. Kaldas told Operation Prospect that the reason for this delay was that both he and the Commissioner travelled extensively,<sup>576</sup> and also that he was:

*... trying to understand what was happening there. I wasn't really clear that these documents were genuine. I wasn't really clear what the intention of the person sending them to me was. I didn't know whether there was some kind of agenda there that I didn't understand. It took me a while for it all to sink in. I do recall having a number of discussions with various legal advisers, but I can't recall exactly who or when.<sup>577</sup>*

Kaldas subsequently conceded that at least some of the documents he received came from Giorgiutti, and that Kaldas knew those documents were genuine.<sup>578</sup>

Kaldas did not accept directly that receiving (anonymously or otherwise) a document such as the annexure to the Burn memo (that explained why his name was included in LD warrant 266/2000) would give rise to a conflict of interests about how to deal with that information. He told Operation Prospect that:

*If somebody is accused of something and it's inappropriate, and then they receive evidence that it's inappropriate, I, I'm just not sure that I would use the term conflict of interest in receiving the evidence that proves they're innocent.<sup>579</sup>*

Kaldas emphasised that he was not going to hide the documents that were given to him. He explained that he did not give the documents to the Commissioner because he (Kaldas) "wasn't even sure they were going to have an inquiry at that stage".<sup>580</sup> It was Kaldas's intention to hand over the material once an inquiry was announced.<sup>581</sup> During his examination Kaldas stated that he had reported his receipt of the bundles of documents to Scipione because "he's still the Commissioner and if I was going to make a complaint it had to be to the CEO of the organisation".<sup>582</sup>

Kaldas was also asked about having discussed the documents with his lawyer. He said: "I felt probably at the time that my obligation to reveal corruption was more important than the secrecy provisions of the Crime Commission".<sup>583</sup> He stated that he had to get legal advice to protect himself.<sup>584</sup> Kaldas told Operation Prospect that he did not actually give copies of the documents to his lawyers, and denied he had breached the NSWPF Code of Conduct and Ethics because he had an obligation to reveal what he thought was wrong conduct by SCIA. Kaldas said: "I think I had an obligation, this was wrongdoing, it was illegal conduct, and I felt that what I did was simply in pursuit of that".<sup>585</sup>

Kaldas denied that he did anything else with the documents he received, such as providing them to journalists. However, he acknowledged that he may have discussed some of the content with Mr J and possibly others, but nobody else that he could specifically recall.<sup>586</sup>

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574 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2172.

575 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2165, 2177, 2215 and 2218-2219.

576 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2182.

577 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2183.

578 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2319-2321.

579 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2183.

580 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2184.

581 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2184-2185.

582 Ombudsman Transcript, Nick Kaldas, 5 September 2014, pp. 2169-2171.

583 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2208.

584 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2209.

585 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2209.

586 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2210.

## 22.7.2 Giorgiutti's evidence

In both his evidence and submissions to Operation Prospect, Giorgiutti was of the opinion that a person with a delegation to exercise the NSWCC's power to disseminate information under section 7 of the NSWCC Act, was not restricted in doing so by the secrecy provision in section 29 of the NSWCC Act.<sup>587</sup> At all relevant times, Giorgiutti held a delegation under section 9 of the NSWCC Act, either personally or by virtue of his position at the NSWCC, that embraced the exercise of the section 7 power. As noted at sections 22.4.1 and 22.4.2, Giorgiutti told Operation Prospect that he believed he could lawfully disseminate "whatever [NSWCC documents] I liked" and that he had been instructed to do so by Bradley in order to repair the relationship between Kaldas and the NSWCC.<sup>588</sup>

Relevantly, section 7 of the NSWCC Act provided that the exercise of the power to disseminate information was "with the approval of the Management Committee". Operation Prospect has not identified a record of any resolution of the NSWCC Management Committee approving, either generally that Giorgiutti could disseminate NSWCC documents to other people, or specifically that he could release information to Kaldas.

Giorgiutti was also asked about his understanding of the TI Act. One of the documents that he released to Kaldas was a TI affidavit to which that Act applied. Giorgiutti's view was that the TI Act provisions did not apply to internal communications between officers of the NSWCC.<sup>589</sup>

The relevant provisions of the TI Act are set out in more detail in Appendix 3 (Volume 1) to this Report. Section 63(2)(a) of the TI Act provides that "a person must not ... communicate interception warrant information to another person", except as permitted by the Act. A TI affidavit falls within the definition of "interception warrant information" (section 6EA). Communication by one staff member of an organisation to another staff member of that organisation would constitute communication "to another person". Consequently, the communication of interception warrant information (TI material) is permissible only if it falls within a permitted exception.

There are many exceptions in the Act that permit communication of TI material, and all are specifically or narrowly defined. Importantly, there is no blanket exception for communication of TI material within an organisation. Two exceptions that are particularly relevant to the NSWCC are sections 67 and 68. Section 67 permits TI material to be communicated "for a permitted purpose" in relation to an agency. The term "permitted purpose" is defined in section 5 of the Act in terms that differ from one agency to another. The NSWCC is classified as "an eligible authority of a State" (see section 5(1)), and can communicate TI material for "a purpose connected with ... an investigation by the ... eligible authority" of a prescribed offence<sup>590</sup> (and for other purposes not relevant to this discussion). The disclosure by Giorgiutti to Kaldas of a TI affidavit in the circumstances that occurred in or around August 2012 does not come within that exception: there was no investigation of a prescribed offence in which Kaldas was participating. Nor did the dissemination come within section 68, which provides that the chief officer of an agency may communicate TI material to the chief officer of another agency, or to the Commissioner of Police, in the circumstances specified in that section. Giorgiutti was not a chief officer of an agency.

Giorgiutti gave evidence to Operation Prospect that he understood he was free to communicate TI material within the NSWCC, and that the criteria of permitted purpose did not apply for such internal communications:

*It doesn't get to the point of permitted purpose. If I'm in the Crime Commission and I say to [another NSWCC officer], "Have a look at this TI affidavit," I don't have to have a permitted purpose. I can show it to [that NSWCC officer]. It doesn't, it doesn't get to permitted purpose.*<sup>591</sup>

587 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1361.

588 Ombudsman Transcript, John Giorgiutti, 11 August 2014, pp. 1361 and 1372.

589 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1374; Ombudsman Transcript, John Giorgiutti, 24 October 2014, p. 2487.

590 Telecommunications (Interception and Access) Act, s. 5, definition of "permitted purpose", paragraph (a)(i).

591 Ombudsman Transcript, John Giorgiutti, 24 October 2014, p. 2487.

When asked why he believed that it was appropriate to provide Kaldas with Mascot documents, Giorgiutti told Operation Prospect that:

- his actions would not have jeopardised Mascot or any other operation, as the relevant investigations and affidavits had been completed several years earlier<sup>592</sup>
- his discussions with Kaldas concerning inaccuracies in Mascot affidavits were part of Giorgiutti's investigation into LD warrant 266/2000 and related issues with Mascot<sup>593</sup>
- he did not think it was problematic to give Kaldas a copy of a NSWCC TI affidavit relevant to Mascot's investigation of allegations of leaking by Kaldas, because "at the time, my view was I'm entitled to lawfully do it. I'm entitled to ask him about it because I'm doing this investigation",<sup>594</sup> and
- Kaldas was entitled to have access to the TI affidavit because he was a member of staff of the NSWCC at the relevant time,<sup>595</sup> and there were no legislative requirements precluding Giorgiutti from giving a copy of that document to Kaldas.<sup>596</sup> Giorgiutti's dissemination to Kaldas did not need to be for a "permitted purpose" under the TI Act, as Kaldas was a member of staff of the NSWCC.

The short response to those submissions is that they are contrary to and misconstrue the provisions of the NSWCC Act and the TI Act. On the information before Operation Prospect, in providing those two affidavits to Kaldas, Giorgiutti contravened the provisions of the NSWCC Act and the TI Act.

### 22.7.3 Bradley's evidence

Bradley was asked whether the fact that Kaldas was inducted to the NSWCC to work on one or more particular references meant that he was entitled to access NSWCC documents relevant to other references on which he was not inducted to work. Bradley answered:

*Well, he wasn't inducted to work on - I don't think he was inducted to work on a particular reference, he was inducted more generally. If there's a document to the contrary I'd be happy to be corrected, but my recollection is there was a sort of an induction and it wasn't referable to the [X case], for example, which is one that went for years, and that but there was an understanding that if you were there for one purpose you didn't have access to other things.*<sup>597</sup>

As discussed in section 22.4.1, Bradley rejected the suggestion that he had instructed Giorgiutti to provide Kaldas with NSWCC documents relevant to Mascot's investigation of allegations against Kaldas. Bradley's evidence to Operation Prospect was that this would be illegal and inappropriate, and that he could not understand how providing information to Kaldas that he had been inappropriately targeted could restore the relationship between Kaldas and the NSWCC.<sup>598</sup> Bradley stated in evidence that he would have been aware there were TI and LD warrants naming Kaldas, and he "wouldn't have suggested in a fit that Kaldas be given access to that material".<sup>599</sup>

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592 Ombudsman Transcript, John Giorgiutti, 24 October 2014, p. 2489.

593 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2489-2491.

594 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2492-2493.

595 Ombudsman Transcript, John Giorgiutti, 24 October 2014, p. 2492.

596 Ombudsman Transcript, John Giorgiutti, 24 October 2014, pp. 2492-2493.

597 Ombudsman Transcript, Phillip Bradley, 24 October 2014, p. 3030.

598 Ombudsman Transcript, Phillip Bradley, 24 October 2014, p. 3032.

599 Ombudsman Transcript, Phillip Bradley, 24 October 2014, p. 3032.

## 22.8 Analysis of evidence on potential sources of unauthorised dissemination

### 22.8.1 Dissemination of NSWPF e@gle.i documents

The forensic analysis commissioned by Operation Prospect confirms that the Emblems e@gle.i brief, created at Galletta's request on 4 June 2012 and provided to Galletta on a CD on 5 June 2012, was later copied in its entirety and provided to Giorgiutti. The identity of the person who provided this material to Giorgiutti cannot be determined on the evidence before Operation Prospect. In both his evidence and submissions to Operation Prospect, Galletta vehemently denied having ever copied or provided any material from the e@gle.i CDs he obtained on 5 June 2012 to any other person. However, Galletta appears to be the most likely original 'source' of the files on the CD in Giorgiutti's possession, whether or not Galletta was the person who directly provided the files to Giorgiutti.

While it seems possible that the ISS CD could have been the source of the Emblems e@gle.i CD that Giorgiutti held, this conclusion is not supported by the available facts. All relevant ISS staff members have denied providing the ISS CD or its contents to any other person, and none had any obvious motivation to do so. The only recorded access to the ISS CD was by the Officer in Charge of e@gle.i support, who made copies of the CD on 12 September 2012 in response to a request from the NSWPF PSC. That access and copying occurred after relevant documents from the Emblems e@gle.i brief and CDs had already been disseminated, as evidenced by Mercer's articles, Giorgiutti's draft report and Kaldas's complaints. Furthermore, there is no evidence that any of the ISS staff who might have been able to access the ISS CD were in contact with any of the people who received the Emblems e@gle.i documents.

Galletta, however, had three copies of the Emblems e@gle.i CD in his possession from June 2012. Having initially failed to inform Operation Prospect that he had that CD despite multiple requests to provide all relevant documents, Galletta was able to produce only two of the copies of the Sibutu CD. He had earlier told Operation Prospect investigators on 18 July 2013 that he had all nine of the e@gle.i CDs at his home. Galletta submitted that the CDs he produced to Operation Prospect were the only ones he received from ISS.<sup>600</sup> The receipts for the CDs produced for Galletta by the ISS team state that he received nine CDs – three for each of the Emblems, Sibutu and Tumen investigations.<sup>601</sup>

Galletta's statement that he only took the e@gle.i CDs out of the safe in his workplace when he went on sick leave in September 2012 must be viewed with scepticism. It is a self-serving claim: if Galletta had not copied those CDs and had not removed them from the safe between June and September 2012, those CDs could not have been the source of the documents that were circulating prior to September 2012. Other evidence before Operation Prospect does not support Galletta's claim. Mr K's evidence was that he received documents (that included Emblems e@gle.i documents) in two instalments in or around June 2012 and again one month later. Transcripts of interviews conducted by Tumen investigators were being circulated by mid-August 2012 at the very latest. The hard copy documents distributed to Mr K and others are identical to the electronic documents on the Emblems e@gle.i CDs that ISS gave Galletta.

600 Galletta, M, Submission in reply, 10 August 2015, p. 15.

601 NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Emblems 6809*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012; NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Tumen 6810*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012; NSWPF Investigative Systems and Support, Business and Technology Services, *Receipt for Brief of Evidence – Sibutu 6811*, build date 4 June 2012, signed by Mark Galletta on 5 June 2012.

Galletta submitted that senior officers within the NSWPF and the PIC had “over-riding access”<sup>602</sup> to e@gle.i, and could have been the source of the documents from the Emblems, Sibutu and Tumen investigations.<sup>603</sup> That submission is not borne out by the evidence before Operation Prospect. Access to e@gle.i was tightly confined to a small number of officers and was not given generally to all senior NSWPF officers. Although persons can be given covert access to investigations on e@gle.i, the evidence before Operation Prospect is that an e@gle.i user with covert access to an investigation cannot use e@gle.i to request that a brief of evidence be built for that investigation.<sup>604</sup> As noted in section 22.6.4, Galletta’s request on 4 June 2012 to build a brief for Emblems was the only such request recorded on that date. An e@gle.i audit shows that between 4 June 2012 and 9 September 2012, Galletta was the only person to have used the hyperlink generated on 4 June 2012 to request the building of a brief for Emblems. e@gle.i records the date that a brief of evidence is ‘built’ in the footer of that document. This means that an electronic copy of a brief containing the same materials that Galletta requested would have a different MD5 hash value if it was compiled on a different date. The digitally-identical copies of the Emblems e@gle.i brief that are known to Operation Prospect (the Galletta, ISS and Giorgiutti CDs) are all dated 4 June 2012. Galletta’s request was the only request for creation of an e@gle.i brief for Emblems that was actioned on that date. The evidence before Operation Prospect indicates that the copies of the Emblems brief of evidence and associated HTML program on the Galletta and ISS CDs were the only ones in existence after 12 June 2012 (when the ISS CD was created and the copies on the ISS production drive were deleted). That material could not be replicated exactly in a new brief ‘built’ after 4 June 2012. In conjunction with this evidence, and in the absence of evidence that there was any other possible source of these files with the same digital characteristics as set out in Table 9 above, the forensic digital analysis confirms that either Galletta’s CDs or the ISS CD are the source of at least some of the electronic copies of documents produced to Operation Prospect by Giorgiutti.

If Galletta was not the source of the documents produced by Giorgiutti, then one or more members of the ISS team would need to have disseminated them between June and August 2012. There is no evidence before Operation Prospect to support such a conclusion. Furthermore, the evidence of other NSWPF officers working at the Metropolitan Robbery Unit in 2012 casts doubt on Galletta’s claim that he kept the e@gle.i CDs in a safe at his workplace for the entire period between 5 June 2012 and 11 September 2012.

As the documents provided to Operation Prospect by Giorgiutti were NSWPF records to which the NSWCC did not have access, the documents could not have been obtained by Giorgiutti independently of the documents being sourced from e@gle.i. As discussed in Chapter 21, Galletta had also unhesitatingly provided a copy of the Tumen report and summary to Kaldas by email on 1 October 2010. This suggests that Galletta was willing to circulate such information despite being aware of its potential sensitivity and that access to information sourced from e@gle.i was restricted.

Galletta was the lead investigator on Emblems and was one of the investigators who signed off on investigation reports for Tumen and Sibutu. By his own statements, Galletta’s reasons for having the e@gle.i CDs compiled in June 2012 were that he needed the information for his own protection and because he was concerned about material going missing from e@gle.i (despite acknowledging that it was a secure system).<sup>605</sup> Inexplicably, he failed to alert Operation Prospect to the existence of these CDs before 18 July 2013, despite having multiple opportunities to do so. Galletta’s explanation for his failure to supply copies of relevant NSWPF documents to Operation Prospect was that he wanted to read the material supplied by Operation Prospect, rather than access the documents that he had retained.<sup>606</sup> He further stated that he did not believe he was required to produce the documents to comply with notices issued by the Ombudsman in the course of Operation Prospect.<sup>607</sup> Those explanations cannot be accepted.

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602 Galletta, M, Submission in reply, 10 August 2015, p. 9.

603 Galletta, M, Submission in reply, 10 August 2015, pp. 9, 17 and 20.

604 Statement of Information (Interview), [Officer in charge of e@gle.i Support], 29 May 2014, p.63; Statement of Information (Written), [Officer in charge of e@gle.i Support], 9 September 2013, pp. 62 and 286; NSWPF, e@gle.i *Investigation Management Training Manual*, August 2012, pp.271-273 and 317-320.

605 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 84-86.

606 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 92.

607 Galletta, M, Submission in reply, 10 August 2015, pp. 12-15.

## 22.8.2 Inappropriate access to and retention of restricted documents

The evidence before Operation Prospect suggests that, at least among some NSWPF officers, it is not considered an unusual or extraordinary practice to keep personal copies of records relating to completed NSWPF investigations. It is beyond the scope of Operation Prospect to examine whether this attitude or practice is widespread within the NSWPF. It should nevertheless be remarked that it is clearly inappropriate for NSWPF officers to take records of highly protected NSWPF information for personal reasons, and is likely to breach the NSWPF Code of Conduct and NSWPF information management and security policies.

The clearest (but not the only) example of this attitude and practice in the evidence before Operation Prospect came from Galletta. He gave evidence that he requested CD copies of the Sibutu, Tumen and Emblems briefs of evidence from e@gle.i for his own protection and because of a fear of persecution, and not for any operational purpose. The material he accessed constituted restricted data, as information on e@gle.i, is protected by access control systems. According to his own statements, Galletta intentionally caused e@gle.i Support staff to access the material in circumstances where he knew (or ought to have known) that access in this manner was unauthorised. Any fear that Galletta may have held about reprisal or deletion of material from e@gle.i<sup>608</sup> was not an appropriate justification for accessing or causing access to this restricted information.

These are matters that the NSWPF is encouraged to examine further.

## 22.8.3 Concerns regarding evidence given to Operation Prospect

Galletta's evidence to Operation Prospect raised concerns at a number of points.

First, as just discussed, his stated reason for requesting the preparation of CDs containing briefs of evidence for Sibutu and Tumen drawn from e@gle.i, was his concern about becoming a target for reprisals or allegations, and he "wanted to have a complete copy of all of the investigations in case – in case something happened".<sup>609</sup> As discussed above, that was an inappropriate personal reason for seeking access to restricted information. Nor is it clear how gaining access to this restricted information would assist Galletta to rebut any suggestion that he was implicated in leaking that very same information.

Second, Galletta failed to disclose to Operation Prospect the existence of the e@gle.i CDs prior to his evidence on 18 July 2013.

Third, it is difficult to accept Galletta's evidence concerning the location of the e@gle.i CDs between 5 June 2012 and 11 September 2012.<sup>610</sup> To recap the earlier analysis: electronic copies of the Emblems brief of evidence provided to Galletta on 5 June 2012 were disseminated at least to Giorgiutti, likely by a third party; the CDs retained by ISS were the only other potential source of that material; there is no evidence that ISS staff were responsible for disseminating the Emblems brief of evidence, or had a reason or motive to do so; the CDs containing that brief may not have been kept in Galletta's office safe at the Metropolitan Robbery Squad over the entire period between June and September 2012; Galletta insists the CDs were in the safe but may not have been seen by others; and during this same period copies of documents from the Emblems brief of evidence began to circulate.

In light of that evidence, and also of Galletta's failure to inform Operation Prospect of the existence of the e@gle.i CDs until 18 July 2013, his claim that the CDs were only removed from his office safe on 11 September 2012 is unconvincing. However, on the evidence before Operation Prospect, it cannot be concluded that Galletta's statements concerning the whereabouts of the e@gle.i CDs in the period 5 June to 11 September 2012 were deliberately false or misleading.

608 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 84-86.

609 Statement of Information (Interview), Mark Galletta, 18 July 2013, pp. 91-92.

610 Statement of Information (Interview), Mark Galletta, 18 July 2013, p. 90.

## 22.9 Dissemination of Officer N's complaint (September 2012)

As discussed in section 22.6.3, on Sunday 9 September 2012 and Monday 10 September 2012, the *Sydney Morning Herald* published a series of articles by Neil Mercer. The articles related to Mascot, the activities of SCIA officers during the Mascot investigations, and interviews with those officers conducted by Emblems investigators.<sup>611</sup> The articles indicated that Mercer had copies of or access to several confidential NSWPF investigations and reports, including:

- reports of Emblems, Tumen, Sibutu and Shillingstone
- documents relating to the NSWPF investigation known as Operations Banks
- a copy of NSWCC LD warrant 266/2000
- transcripts of interviews with SCIA officers conducted by investigators from Tumen and Emblems, and
- a memorandum written by Burn dated 13 April 2002 (discussed in Chapter 9).

### 22.9.1 Officer N's first complaint

On Monday 10 September 2012 Officer N sent a letter of complaint to the PIC Inspector by email, by facsimile and in hard copy. Officer N's letter stated that Mercer's articles had quoted from documents which were subject to the NSWCC's secrecy provisions, that those documents included confidential information about the management of informers and allegations of police corruption (the release of which was potentially dangerous), and that only a small number of people would have had access to them.<sup>612</sup>

A short time later, Officer N sent a copy of this complaint along with a short covering letter to Carey, by email and internal hard copy mail. At the time, Carey was the Commander of the PSC. The letter to Carey was expressed as a formal complaint about the leaking of information. Officer N's letter expressed "grave concerns about the leaking of this information as it goes to the heart of a covert police investigation involving a police informer".<sup>613</sup> Officer N suggested that this could constitute a criminal offence, and asserted that the integrity of all internal police investigations had been unacceptably compromised.<sup>614</sup>

On the same day it was received, Officer N's complaint to Carey was triaged by the Professional Standards Manager. The Professional Standards Manager's assessment stated in part:

*The comments of the IPC relating to the possible criminal nature of this alleged conduct have been noted. Whilst on face value there is a clear departmental issue of Breach of Code of Conduct, legal advice has been sought in relation to any criminal offences that may have been committed.*

...

*An evidence-based investigation will be conducted for this matter, irrespective of the final complaint issue/s determined by the PSC CMT [Complaints Management Team].<sup>615</sup>*

The Professional Standards Manager referred the matter to the PSC CMT and created a c@ts.i computerised entry.<sup>616</sup> The c@ts.i database is a complaints management system used to record, manage and report on complaints against police and other local management issues.<sup>617</sup> Access to the c@ts.i database is restricted and requires specific authorisation.

611 Mercer, Neil 'I was cleared – Brammer', *Sydney Morning Herald*, 9 September 2012; Mercer, Neil 'Some burning questions for the deputy', *Sydney Morning Herald*, 9 September 2012; Mercer, Neil 'A criminal act', *Sun Herald*, 9 September 2012; Mercer, Neil 'Bugging bombshell as secret files revealed', *Sydney Morning Herald*, 9 September 2012; Mercer, Neil 'Grudges drove surveillance, say officers', *Sydney Morning Herald*, 10 September 2012.

612 Letter from [Officer N] to the Hon David Levine, Inspector of the Police Integrity Commission, 9 September 2012, pp. 1-2.

613 Letter from [Officer N] to Assistant Commissioner Paul Carey, NSWPF, 10 September 2012.

614 Letter from [Officer N] to Assistant Commissioner Paul Carey, NSWPF, 10 September 2012.

615 NSWPF, Triage Form, Complaint from [Officer N], 10 September 2012.

616 NSWPF, Complaint number [number] Investigator's report, Report by [Professional Standards Manager], Professional Standards Command, 3 October 2012.

617 NSWPF *Complaints Administration Training Manual* Version 4.0. 2003, p. 11.



On Tuesday 11 September 2012 Hudson recorded in his diary that he and Carey discussed Officer N's complaint. The entry, marked at 12:40 pm reads:

*Phone conversation with Paul Carey. Indicated complaint had been made by [Officer N] to PSC and [Officer N] had also written to PIC Inspector, complaining of leaks of information. Stated the PSC complaint had been initiated and he was awaiting contact from oversight agencies to identify if one was going to take investigation or oversight.*<sup>618</sup>

At the time, Hudson was responsible for oversight of the Professional Standards Command. The evidence before Operation Prospect indicates that Carey's actions in informing Hudson of Officer N's complaint were appropriate.

## 22.9.2 Officer N's second complaint following publication of further articles

The *Sydney Morning Herald* published further articles written by Mercer on 11 September 2012 and 13 September 2012, revealing further details of Operation Mascot and Strike Force Emblems.<sup>619</sup>

On Thursday 13 September 2012 Officer N emailed a further letter of complaint to Carey regarding the further articles by Mercer. The letter stated that, notwithstanding the earlier complaint, "it is apparent from further Sydney Morning Herald articles by Neil Mercer, that a NSWCC affidavit has also been leaked to Mr Mercer".<sup>620</sup> Officer N considered that this could jeopardise the safety of persons involved in the relevant investigations, and was an improper disclosure of confidential information.<sup>621</sup>

Officer N's further complaint was triaged by the Acting Professional Standards Manager the following day<sup>622</sup> (the Professional Standards Manager who had triaged Officer N's first complaint was on leave). The Acting Manager recommended that the matter be placed before the PSC CMT. Officer N's complaints dated 10 September 2012 and 13 September 2012 were given the same case reference number on c@ts.i, and treated as a single complaint.<sup>623</sup>

## 22.9.3 Identification and management of conflict of interests by PSC

While handling Officer N's complaint, the PSC executive considered that a member of the CMT should be excluded from handling the complaint due to a conflict of interests. The conflict of interests was identified as arising from the fact that the CMT member had been named on NSWCC LD Warrant 266/2000. The Acting Professional Standards Manager who triaged Officer N's second complaint confirmed this officer's exclusion from any involvement in handling Officer N's complaint during an interview with Operation Prospect.<sup>624</sup>

## 22.9.4 Media article commenting on Officer N's complaints

On Sunday 16 September 2012 an article in the *Sunday Telegraph* by another journalist reported that Officer N had lodged a complaint about the recent leak of NSWPF and NSWCC documents.<sup>625</sup>

No part of Officer N's complaint was quoted in the article, and the complaint is referred to only in the first four lines of the article. This lack of detail suggests that the journalist was only told verbally about Officer N's complaint. Nevertheless, the reasonable inference is that information regarding Officer N's complaint was given to the journalist, directly or indirectly, from within either the PSC or the NSWPF Executive Offices.<sup>626</sup>

<sup>618</sup> Diary, David Hudson, 11 September 2012.

<sup>619</sup> Mercer, Neil "New files cast doubt on bug warrant", *Sydney Morning Herald*, 11 September 2012; Mercer, Neil "Kept in dark over bugging", *Sydney Morning Herald*, 13 September 2012.

<sup>620</sup> Letter from [Officer N] to Assistant Commissioner Paul Carey, NSWPF, 13 September 2012.

<sup>621</sup> Letter from [Officer N] to Assistant Commissioner Paul Carey, NSWPF, 13 September 2012.

<sup>622</sup> NSWPF, Triage Form, Complaint from [Officer N], 14 September 2012.

<sup>623</sup> NSWPF, Triage Form, Complaint from [Officer N], 14 September 2012; NSWPF, Triage Form, Complaint from [Officer N], 10 September 2012.

<sup>624</sup> Statement of Information (Interview), [Acting Professional Standards Manager], 9 May 2014, p. 39.

<sup>625</sup> [Name], 'Confidential police papers leak examined in internal inquiry', *The Sunday Telegraph*, 16 September 2012.

<sup>626</sup> The NSWPF Executive Offices include the NSWPF Commissioner, the Deputy Commissioners, and their personal staff.

Operation Prospect has established from an analysis of relevant email records that in the days leading up to the publication of the article, the journalist had telephone contact with both Hudson and Kaldas.<sup>627</sup> The journalist also submitted two draft versions of his article to the NSWPF Media Unit prior to its publication.

The journalist's contact with Hudson occurred on Friday 14 September 2012. Internal NSWPF emails show that at that time, the journalist was making enquiries with the NSWPF on another matter and requested to speak to Hudson. According to the emails, Hudson spoke with the journalist at some time between 4:00 pm and 4:45 pm on 14 September 2012.<sup>628</sup>

At 5:40 pm, the journalist submitted a draft article to the Executive Media Advisor, Public Affairs Branch of the NSWPF. The draft referred to Officer N making a complaint "last week" regarding the leaking of confidential documents and included publicly known information regarding Emblems and Mascot. The term "last week" may be a reference to Officer N's letter of complaint to the PIC Inspector on the previous Sunday (9 September 2012) which was had attached to Officer N's first complaint to the NSWPF.

NSWPF phone records show that calls were made from Kaldas's mobile telephone to the journalist at 8:46 pm on 14 September 2012 and at 10:26 am on Saturday 15 September 2012. A second draft of the article by the journalist was submitted to the NSWPF Media Unit at 11:29 am on 15 September 2012. There is no evidence before Operation Prospect that Kaldas was aware of Officer N's complaints when the telephone calls were made or that Kaldas was a source of information for the article.

In the second draft of the article, the reference to Officer N having made the complaint "last week" was removed and an additional statement was added: "One completely neutral party told The Sunday Telegraph that a judicial inquiry was needed".

On Sunday 16 September 2012 the article titled "Confidential police papers leak examined in internal inquiry" was published in the *Sunday Telegraph*. A number of paragraphs from the draft sent to the media unit had been deleted.

## 22.9.5 Investigation into disclosure of Officer N's complaint to journalist

In the days following Officer N's complaint, seven NSWPF officers (sworn and unsworn) and one NSW Ombudsman officer accessed the c@ts.i entry related to that complaint. An inspection of official Duty Books and interviews with six PSC staff members has established that, with the exception of one unrelated access that was deemed accidental, each person who accessed the entry was attached to PSC or the Police and Compliance Division of the NSW Ombudsman's office and did so in connection with their official functions.<sup>629</sup> Each of the PSC staff members denied revealing the details of Officer N's complaint to any person not authorised to receive it.

PSC staff interviewed by Operation Prospect appeared to understand the requirement to maintain the confidentiality of an internal police complainant. All expressed great concern that Officer N's complaint was disseminated from PSC to external parties. The following quote is indicative of all those interviewed:

Q: *Okay. And I mean I think I know what the answer's going to be to the question, but what was your opinion of the fact that [Officer N's] complaint was leaked to the media? What's your opinion of that?*

A: *Um, diabolical.*

Q: *Yes.*

A: *Um, we shouldn't – that shouldn't be happening...Um, it was bad enough that the material was leaked that led to the complaint let alone apparently the complaint itself or the – or knowledge of the complaint itself. So that's not – that's just not on, you know, - - -*

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627 It should be noted that Operation Prospect has no lawful power to obtain the journalist's phone records. Information about telephone contact between the journalist and NSWPF officers has been derived from NSWPF records obtained by Operation Prospect.

628 Email from Assistant Commissioner David Hudson, NSWPF to [name], NSWPF, 14 September 2012.

629 Information obtained during course of section 18 interviews and/or inspections of Official NSWPF Duty Books or Personal Work Diaries.

Q: Okay.

A: - - - like, um, I – I can't condone that in any way shape or form, you know... And – and not – and not only that, not just with [Officer N] but with the whole other matters that were happening at the time, it shouldn't be aired publically, you know, it should be, um, investigated like we see here, um, and then, um, go from there but, um, yeah, I – I can't – I cannot support that at all, yeah.<sup>630</sup>

## 22.9.6 Analysis of evidence on dissemination of information concerning Officer N's complaint

The evidence before Operation Prospect indicates that the PSC handled Officer N's complaints of 10 and 13 September 2012 appropriately. The PSC identified a perceived conflict of interest in relation to an officer in the CMT and took appropriate action to ensure the officer had no involvement in handling this complaint. There is no evidence to indicate that any person had inappropriate access to the c@ts.i entry concerning Officer N's complaint. Nor can any inference be drawn from the article that the journalist was given or shown a hardcopy of Officer N's complaint letters.

It is clear that one or more persons with knowledge of Officer N's complaint provided information about the existence and subject matter of that complaint to the journalist between 10 September 2012 and 15 September 2012. On the evidence available to Operation Prospect, it is not possible to identify who provided this information to the journalist.

## 22.10 Request for Operation Banks report (October 2012)

### 22.10.1 Kaldas's request to Gallagher

After making a complaint to the Commissioner of Police in September 2012 about matters relating to Mascot and SCIA, Kaldas sought further information about the conduct of SCIA officers. Gallagher gave evidence to Operation Prospect that during a regular scheduled meeting in October 2012, Kaldas asked Gallagher to provide him a copy of the internal NSWPF investigation report into Operation Banks.<sup>631</sup> Gallagher refused the request, advising Kaldas that he did not have a copy of the report and would not assist in obtaining one.<sup>632</sup>

Gallagher gave evidence that Kaldas apparently became angry at this response, and said:

*...“Well copies of your emails [Gallagher's] or copy of – of your stuff have come up – come up in the – the documents [the anonymous packages] that we're getting.”[...] Um, and I – I'm sure he was referring to that brown paper envelope, he sort of said that in a – in a – in a bit of an angry manner.*<sup>633</sup>

When asked if he would have provided a copy of the Operation Banks report, Gallagher said:

*... it would have been completely inappropriate to get anything like that because he was so focused on Catherine Burn and, um, you know, Mal Brammer and John Dolan and, you know, the people that had wronged him and, um, at that time though he kept telling me he was a, ah, a whistle blower in relation to this matter... I'd never just go no to pick a fight, you know, but just able to say no and – and – and talk – talk my way through it, but he wasn't entitled to it. So he was never going to get it.*<sup>634</sup>

630 Statement of Information (Interview), [Acting Professional Standards Manager], 9 May 2014, p. 47.

631 Gallagher was the officer in charge of an interview investigation into Operation Banks, which was a SCIA related police operation that took place in 1998. Gallagher's report was critical of SCIA practices and led to the Strike Force Sibutu investigation into the preparation of affidavits by members of the NSWPF Integrity Testing Unit.

632 Statement of information (Interview), Peter Gallagher, 12 December 2014, pp. 22 -23.

633 Statement of Information (Interview), Peter Gallagher, 12 December 2014, p. 24.

634 Statement of Information (Interview), Peter Gallagher, 12 December 2014, p. 27.

After the meeting, Gallagher left the room and had a conversation with a Superintendent who was at that time working directly for Gallagher as part of the NSWPF Leadership, Injury Management and Return to Work Special Project Team.<sup>635</sup> Gallagher informed the Superintendent that Kaldas had requested documents from him.<sup>636</sup> The Superintendent gave evidence to Operation Prospect confirming that Gallagher had told him that Kaldas requested documents relating to Operation Banks, that Gallagher refused the request, and that Kaldas was “not happy” at this refusal.<sup>637</sup>

Kaldas gave evidence to Operation Prospect that he remembered discussing Operation Banks with Gallagher in 2013, but did not remember asking for the report.<sup>638</sup> Kaldas did not agree that he had asked for that report.<sup>639</sup> When asked to assume that he may have done so and to explain a reason why, Kaldas said that there would not have been an operational reason and that “if I did ask for it, it would be simply to uncover the truth”.<sup>640</sup>

Another matter to be noted is the evidence from Gallagher that Kaldas referred to emails authored by Gallagher that were received in the unmarked packages. Kaldas has not given any such emails to Operation Prospect. Nor are there any in the hardcopy documents received anonymously by other individuals who produced documents to Operation Prospect under summons. Two sets of NSWPF email correspondence dated 21 October 2003 and 11 November 2003 authored by Gallagher and other NSWPF parties can be found on the Emblems eagle.i CDs. Both sets of email correspondence are also contained on the copy of the Emblems eagle.i CD in Giorgiutti’s possession. The email correspondence dated 11 November 2003 is also contained in a hardcopy NSWCC file no. 068578 Part 3. This is the same file that Giorgiutti showed to Kaldas during a meeting at Giorgiutti’s house in August 2012.

## 22.10.2 Analysis of evidence on request for Operation Banks report

It is not in question that Kaldas and Gallagher discussed the Operation Banks report at a meeting between them. Gallagher gave Operation Prospect a firm account of the meeting that he reported at the time to another officer. His evidence was that Kaldas requested a copy of the Banks report from Gallagher; Gallagher refused to provide the report; and Kaldas responded that copies of Gallagher’s emails were included in unmarked bundles of documents that Kaldas had received. Kaldas did not accept that account of the meeting, beyond confirming they had discussed Operation Banks.

Kaldas had earlier requested information about the Operation Banks report in the email he sent to Carey on 29 September 2010 that is discussed in Chapter 21. Specifically, Kaldas requested material about (but not restricted to) the findings/recommendations for five task forces, including “T/F Banks, where adverse findings were made against a number of officers, and recommendations regarding criminal charges, although not ultimately acted on”. A briefing note that was handed to Kaldas on 5 October 2010 at his request (see Chapter 21) also included information about Operation Banks and other strike forces.<sup>641</sup>

It is not otherwise apparent why Kaldas may have requested Gallagher to provide him with a copy of the Banks report in October 2012. By that time Kaldas had made a formal complaint to the NSWPF about the conduct of SCIA officers dating back to 1999. Annexed to the complaint were various NSWCC and Emblems documents. Kaldas’s complaint formed a substantial part of the terms of reference for Jooriland<sup>642</sup> (although it is uncertain whether Jooriland had commenced by the time Kaldas and Gallagher met).

There was discussion in Chapter 21 of requests that Kaldas made to other NSWPF officers in 2010 for access to restricted documents. A number of officers responded to those requests by accessing reports or preparing information that could be provided to Kaldas. Gallagher appears to be the only NSWPF officer, on the evidence

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635 Statement of Information (Written), [Superintendent], 13 January 2015.

636 Statement of Information (Interview), Peter Gallagher, 12 December 2014, p. 28.

637 Statement of Information (Written), [Superintendent], 13 January 2015, p. 1.

638 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2321.

639 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2321.

640 Ombudsman Transcript, Nick Kaldas, 5 September 2014, p. 2321.

641 NSWPF, Internal document prepared by [Ms D], ‘Brammer Summary’ (undated).

642 NSWPF, *Strike Force Jooriland – Terms of Reference* from Commander Paul Carey to Detective Inspector Thomas Barnes, 8 October 2012, pp. 1-2.

before Operation Prospect, who did not readily agree to assist with Kaldas's requests for information. Gallagher considered that his relative seniority within the NSWPF meant that he was better able to refuse such a request,<sup>643</sup> while junior officers might struggle to take the same course:

*... a junior officer would find it very, very difficult to – to say no. If the Deputy Commissioner called for a report or called for a file or there would be a very brave person that stood up to him, um, in relation to that because, you know, um, rightly or wrongly a Deputy Commissioner can have a huge influence on somebody's career.*<sup>644</sup>

A finding was recorded against Kaldas in Chapter 21 of this report for unreasonable conduct in requesting information on two occasions from other NSWPF officers, and receiving information on a third occasion. The basis of that finding was that Kaldas did not comply with the NSWPF Code of Conduct and Conflict of Interests Policy. The limited evidence available to Operation Prospect regarding the meeting between Gallagher and Kaldas does not support a similar finding against Kaldas. The evidence nevertheless raises a question as to whether it was appropriate for a Deputy Commissioner to request a subordinate officer assist in providing access to a restricted document in the circumstances in which Kaldas made the request to Gallagher.

## 22.11 Overall analysis of information handling and dissemination in 2012

The discussion in the following section is in four parts. The first part summarises what is known about the instances of unauthorised dissemination and improper handling of confidential NSWCC and NSWPF material that occurred in 2012 that are not fully explained. That is, a conclusion cannot safely be drawn from the evidence before Operation Prospect as to which person or person was responsible for the unauthorised or improper actions. The three parts that follow discuss three officers whose actions have been the subject of critical comment in the preceding discussion – Kaldas, Giorgiutti and Galletta. Findings are recorded in the final section of this chapter about some of the actions discussed in this section.

### 22.11.1 Unauthorised dissemination in 2012 – unresolved events

The following instances of unauthorised dissemination of confidential NSWCC and NSWPF material that occurred in 2012 are not fully explained on the evidence before Operation Prospect:

- Eight persons gave evidence or information to Operation Prospect that in 2012 they received anonymous packages containing NSWCC and NSWPF documents and CDs. Most of the documents were not in the public domain before 2012 (section 22.1). Appendix 4 lists 122 such documents. Each of the eight recipients gave evidence to Operation Prospect that they did not know the identity of the person(s) who anonymously disseminated the documents, except that some of the persons shared documents with each other.
- At least seven of those persons received a copy of NSWCC LD affidavit 262-268/2000. The evidence before Operation Prospect suggests that the source of the dissemination was a copy of the affidavit that was placed on a NSWCC file on 19-20 June 2012 by Giorgiutti and a NSWCC solicitor (section 22.3.1).
- Two internal complaints that Officer N made in September 2012 to the PIC Inspector and the PSC about Mercer's articles in the *Sydney Morning Herald* were the subject a few days later of an article in the *Sunday Telegraph* (section 22.9.4). It was clear from the content of the article that the journalist had been given details of Officer N's complaint letters. The journalist had telephone contact with Kaldas and Hudson in the days before publication of the article, but there is no evidence that either was the source of information for the article.

643 Statement of Information (Interview), Peter Gallagher, 12 December 2014, pp. 26-27.

644 Statement of Information (Interview), Peter Gallagher, 12 December 2014, p. 39.

## 22.11.2 Kaldas's actions, submissions and analysis

### 22.11.2.1 Kaldas – actions

Chapter 21 discusses two internal requests that Kaldas made in 2010 for information that was Mascot-related, and two occasions on which information of that nature was provided to him. This chapter mentions an internal request that Kaldas made in mid-2011 for information that the PSC held in relation to him (section 22.5.3). The following is a summary of the actions taken by or involving Kaldas in 2012 that have been the subject of comment in this chapter, including adverse and critical comment:

- Kaldas gave evidence that he received three anonymous packages of confidential documents at his workplace, probably in August and September 2012 (section 22.1.8). Other witnesses gave evidence that Kaldas told them he received the documents at his home address (section 22.1.9).
- Kaldas did not make a record or note of either the time or date he received any of the documents, or the identity and nature of the documents in each bundle (section 22.1.8). He disclosed the documents to his solicitors (section 22.1.9).
- Kaldas contacted the PIC Inspector by email on 23 May 2012 to foreshadow that he may make a complaint, and he followed up (as requested by the PIC Inspector) by making a formal written complaint on 16 August 2012. The complaint included several documents that are listed in Appendix 4 and in section 22.2. Kaldas also made a written complaint to the Commissioner of Police dated 13 September 2012 in which he advised that he had “received material from an anonymous source” (section 22.1.8). It appears that Kaldas did not present any of the material he had received to the Commissioner (section 22.5.3).
- Giorgiutti met with Kaldas on a number of occasions in May to August 2012 (sections 22.1.8, 22.4). Both gave evidence that at a joint meeting in August 2012 (prior to Giorgiutti going on leave) Giorgiutti gave Kaldas some NSWCC documents (sections 22.4.2 and 22.4.3). Kaldas has identified two of those documents as being TI affidavit 403-406/2001 and LD affidavit 262-268/2000, which were the affidavits sworn in support of Mascot's applications for TI warrants 403-406/2000 and LD warrants 262-268/2000 (section 22.4.3).
- Kaldas gave evidence in which he initially denied having ever received NSWCC documents from Giorgiutti or any other NSWCC officers. He then altered that evidence and said that Giorgiutti had shown and given documents to him when he visited Giorgiutti's home, including the supporting affidavits for TI warrants 403-406/2000 and LD warrant 266/2000 (section 22.4.3).
- Kaldas had telephone contact on two occasions with a journalist on the days before the journalist published an article about internal complaints made by Officer N to PSC (section 22.9.4). However, there is no evidence that Kaldas was the source of information for the article.
- Kaldas asked a senior NSWPF officer (Gallagher) for a copy of the Operation Banks report in October 2012. The officer refused and gave evidence to Operation Prospect that Kaldas was angry at the refusal (section 22.10). Kaldas does not agree with Gallagher's account of the meeting.

### 22.11.2.2 Kaldas – submissions

Kaldas made written submissions to Operation Prospect that extensively canvassed the jurisdiction and power of the Ombudsman to reach adverse findings in relation to his conduct, the manner in which he was required to give evidence, and the provisional inferences and findings that were drawn from his evidence and notified to him for comment. The issues that he raised – of unfairness, denial of natural justice, procedural irregularity, and legal limitations on the Ombudsman's reporting of this investigation – are discussed in general terms in Chapter 2 of this report. They have also been addressed in correspondence with Kaldas. Some of his submissions directed to the provisional inferences and findings have been accepted, and those inferences and findings are not repeated in this chapter. Equally, Kaldas's submission that it would be inappropriate to take up some issues that have arisen in this investigation in a public report has been accepted.

Kaldas made a submission on whether he failed to deal properly with the unmarked bundles of documents that, according to his evidence, he received on three occasions.<sup>645</sup> He pointed out that there is no prescribed procedure in the police regulations and guidelines for dealing with information received in this way. For example, clause 75 of the Police Regulation 2008 (since repealed) dealt with divulging confidential information, not with the receipt of it. The NSW Police Force Handbook (2010) deals with handling specific types of information, such as exhibits and lost and found property. The better view, he submitted, is that the documents were sent to him in a private capacity, as a person who was the victim of police misconduct. His only act of disclosure, he submitted, was to solicitors retained by him to provide legal advice, which was both proper and sanctioned by common law principle. Kaldas also notified the Commissioner of Police that he had received the documents anonymously, and called at the same time for a proper inquiry into the related issues.

### 22.11.2.3 Analysis

Kaldas's submission that there was no procedure, legally or formally prescribed, that he was required to follow upon receiving confidential documents from an anonymous source is accepted. However, as discussed in section 22.5.4, the proper response would nevertheless have been for Kaldas to record how and what documents were received, to have the list of documents verified by another officer, and either to notify or convey the documents to another officer and have them secured. That was the course of action taken by another NSWPF officer, Officer D.

Among the documents that Kaldas received were LD and TI affidavits that contained sensitive law enforcement information, Mascot codenames and material about a police informant (Sea) and documents written by another Deputy Commissioner (Burn) (section 22.1.8). Kaldas mentioned to a number of senior officers that he had received the documents – Assistant Commissioners Hudson and Gallagher, Detective Inspector Craft and the Solicitor to the NSWCC (Giorgiutti) (sections 22.1.9 and 22.2).

Kaldas could have reacted in a more formal and considered manner to having received confidential NSWCC and NSWPF information that had quite clearly been disseminated in an unauthorised manner. Elsewhere in his submission Kaldas made the point that as a Deputy Commissioner he had responsibilities and interests in the management of the NSWPF as a whole. That proposition is clearly correct, and applies as squarely to his receipt of confidential police information from an anonymous and unauthorised source. It was not a sufficient answer that Kaldas harboured doubts about the Commissioner's preparedness to respond to his concerns. Other steps could have been taken by Kaldas to record and report what had occurred. And in any case, Kaldas did make a written complaint to the Commissioner, but after some delay and without fully reporting what had occurred.

The failure by Kaldas to follow a more regular and expected path meant that conflicting accounts of what documents he received and how he received them have been given in evidence to Operation Prospect. This also left Kaldas open to suspicion by others that he had played a more active role in the unauthorised dissemination of confidential material.

## 22.11.3 Giorgiutti's actions, submissions and analysis

### 22.11.3.1 Giorgiutti – actions

The following is a summary of the actions taken by or involving Giorgiutti in 2012 that have been the subject of comment in this chapter, including adverse and critical comment:

- In June 2012 Giorgiutti was asked by the Acting NSWCC Commissioner to collate documents requested by the PIC Commissioner (section 22.3)
- Giorgiutti commenced an internal review within the NSWCC in June 2012 into the circumstances relating to LD warrants 95/2000 and 266/2000 (section 22.3).

<sup>645</sup> Kaldas, N, Submissions in reply, 19 May 2016, pp. 33-40.

- For the purposes of that review, Giorgiutti and a NSWCC solicitor obtained from the NSW Supreme Court registry on 19 June 2012 a copy of LD affidavit 262-268/2000 (thought to be the only extant copy of the warrant at that time). The NSWCC copied the affidavit and placed it on file, and returned the original to the Supreme Court on 20 June 2012. The affidavit was disseminated to journalists, current and former NSWPF officers and a member of Parliament. The most likely explanation is that Giorgiutti disseminated the affidavit to them, directly or indirectly, but that is conjecture and cannot be positively resolved on the evidence before Operation Prospect (section 22.3.1).
- Giorgiutti removed two files from the NSWCC registry in February 2011 and June 2012 that contained Mascot-related records. Both files were returned to the registry by November 2012 (section 22.3.2). It is known that Giorgiutti copied and retained one of those files.
- Giorgiutti went on leave in August 2012. He took with him some NSWCC documents and a laptop so that he could (according to Giorgiutti) continue work on the internal review that he had commenced two months earlier relating to LD warrants (sections 22.4, 22.4.2).
- Giorgiutti met with Kaldas on a number of occasions in May to August 2012 (section 22.4). Both gave evidence that at a joint meeting in August 2012 (prior to Giorgiutti going on leave) Giorgiutti gave Kaldas some NSWCC documents (sections 22.4.2, 22.4.3). Kaldas has identified two of those documents as being TI affidavit 403-406/2001 and LD affidavit 262-268/2000 (that is, the affidavits supporting applications for TI warrants 403-406/2000 and LD warrants 262-268/2000) (section 22.4.3).
- Giorgiutti ceased employment with the NSWCC in July 2013. He retained NSWCC documents, CDs, files and a laptop, although he signed a declaration at the time that he had returned all NSWCC property (section 22.3.3).
- Giorgiutti had in his possession, and produced to Operation Prospect, CDs and documents that included Mascot-related documents and the briefs of evidence for Strike Forces Sibutu, Tumen and Emblems. Giorgiutti gave evidence that he had received the majority of the CDs from Small, and one from Kaldas between June to August 2012 (section 22.6.6). One of the CDs provided by Giorgiutti to Operation Prospect contained the Emblems e@gle.i brief that was most likely copied from a CD that Galletta held (sections 22.6.8, 22.8.1, and below). The identity of the person who provided this material to Giorgiutti cannot be determined on the evidence before Operation Prospect (section 22.8.1).

### 22.11.3.2 Giorgiutti – submissions

Giorgiutti made a written submission that canvassed the jurisdiction and power of the Ombudsman to reach adverse findings in relation to his conduct, and the manner in which he was required to give evidence to Operation Prospect. Chapter 2 of this report discusses, in general terms, the submissions that Giorgiutti and others made concerning the scope, jurisdiction and conduct of Operation Prospect.

Giorgiutti's submission made observations about his role in the NSWCC, NSWCC management, his working relationship with other NSWCC officers, his involvement in the Mascot investigations, and matters that he had raised with the NSWCC both during his employment and subsequently.<sup>646</sup> Consideration has been given to those submissions to the extent that they are relevant to the general discussion in this report of the management of the NSWCC and the conduct of the Mascot reference.

Giorgiutti's submission specifically addressed two conduct matters relating to him that are discussed in this report: his access to and possession of NSWCC documents; and his retention of a NSWCC laptop.<sup>647</sup> The points that he made in his submission are taken up in earlier sections of this chapter that refer both to his submission and to the evidence he gave to Operation Prospect (for example, sections 22.3.3, 22.5.2 and 22.7.2).

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<sup>646</sup> Giorgiutti, J, Submission in reply, 9 May 2016.

<sup>647</sup> Giorgiutti, J, Submission in reply, 9 May 2016, pp. 48-68 and 68-94.



### 22.11.3.3 Analysis

Giorgiutti had an extensive career with the NSWCC, stretching from 1990 to July 2013. He held the senior position of Solicitor to the Commission from 1996, including throughout 2012 when the events discussed in this chapter occurred. He also acted as Commissioner of the NSWCC for various periods between 1996 and 2007. Giorgiutti would have been closely familiar both with the rigid practices strictly followed in the NSWCC for secure management of confidential information, and with the secrecy provisions in State and Commonwealth legislation that underpinned those practices.

It was surprising, against that background, that Giorgiutti made submissions to Operation Prospect that suggested he had both a general discretion to release information, and the sanction of the Commissioner of the NSWCC to do so. Those submissions are discussed and rejected in section 22.5.2. It was equally surprising that Giorgiutti's submissions did not display a better understanding of the secrecy requirements in the Commonwealth TI Act and the NSWCC Act. Giorgiutti's submissions on those Acts are discussed and rejected in section 22.7.2.

Giorgiutti was entrusted by the NSWCC with the task of preparing a report on the circumstances relating to LD warrants 95/2000 and 266/2000. For the purpose of that task he had access to a range of sensitive material relating to the warrants and the Mascot investigations more broadly. It appears that Giorgiutti took home a considerable volume of material so that he could work on a report while he was on leave. He may have retained some of that material after ceasing employment with the Commission in July 2013. Whether his possession of confidential material away from the office played a part in the unauthorised dissemination of some material into the public domain in 2012 is not a matter that has been established on the evidence before Operation Prospect. However, it points to the need for senior officers to be scrupulous and proper in their handling and possession of confidential material so that questions of that nature do not arise.

The evidence does establish that Giorgiutti gave two NSWCC affidavits to Kaldas, namely TI affidavit 403-406/2001 and LD affidavit 262-268/2000 (which had been sworn in support of applications for TI warrants 403-406/2000 and LD warrants 262-268/2000). Giorgiutti has not given a satisfactory explanation as to why he did so or had authority to do so. As noted earlier, disclosure of documents of that kind is permitted only in accordance with criteria and procedures that are specified in Commonwealth and State legislation. There is no evidence before Operation Prospect that Giorgiutti complied with those legislative requirements.

The evidence also establishes that Giorgiutti retained possession of a NSWCC laptop after he ceased employment with the NSWCC. This matter came to light only in the Operation Prospect hearing (section 22.3.3). Giorgiutti has not satisfactorily explained why that occurred and the NSWCC was not informed that he retained possession of the laptop.

Giorgiutti also acknowledged in evidence that he had received Mascot-related documents and the briefs of evidence for three strike forces from sources outside the NSWCC. Again, this matter only became known as a result of the Operation Prospect hearing and was not a matter that was apparently reported by Giorgiutti to the NSWCC (section 22.6.6).

## 22.11.4 Galletta's actions, submissions and analysis

### 22.11.4.1 Galletta – actions

The following is a summary of the actions taken by or involving Galletta in 2012 that have been the subject of comment in this chapter, including adverse and critical comment:

- In June 2012 the NSWPF e@gle.i Support section responded to a request from Galletta and prepared and gave him three CD copies of each of the briefs of evidence for Sibutu, Tumen and Emblems (section 22.6.1). At about the same time the e@gle.i Support section removed those briefs from the production drive, placed the briefs on CDs and archived those CDs to the ISS office safe.
- Galletta gave evidence that he placed the CDs he had been given in a safe at his workplace, and did not remove them until he went on sick leave on 11 September 2012. On that day he took the nine CDs to his home (section 22.6.4).
- A CD provided by Giorgiutti to Operation Prospect contained the Emblems e@gle.i brief, that was copied either from a CD that Galletta held or from the CD in the ISS safe (sections 22.6.2 and 22.6.8). The reasonable inference is that it was copied from the Galletta CD (sections 22.6.8 and 22.8.1). Only a limited number of officers had access to the production drive, and there is no record in the e@gle.i system of any of them accessing it except as outlined above. All staff members of the Support section who had access to the production drive and the ISS safe gave evidence that they did not use their access for other than official reasons and (with one exception that is immaterial) did not disseminate material from either the archived CDs or the production drive (section 22.6.5).
- Other documents that were being circulated publicly in early July 2012 were most likely sourced from either the Galletta CD or the ISS CD (section 22.6.2).
- Galletta did not disclose or produce the nine CDs to the Ombudsman's office in response to a notice that was issued to him in December 2012 requiring him to produce documents in his possession relating (among other things) to Emblems, Sibutu and Tumen (section 22.6.4). Nor did he do so on three subsequent occasions in May, June and July 2013, when an opportunity reasonably arose for Galletta to disclose that he had CDs in his possession containing information relevant to Operation Prospect. Subsequently, on 18 July 2013 Galletta disclosed that he held at home nine CDs containing e@gle.i information (section 22.6.4).
- Two weeks later Galletta delivered eight discs to the Ombudsman's office. He could not explain the whereabouts of the ninth CD (section 22.6.4). The other NSWCC officer who had access to Galletta's work safe gave evidence that she had opened the safe but had not seen the CDs inside it (section 22.6.7).

### 22.11.4.2 Galletta – submissions

Galletta's evidence and written submission to Operation Prospect<sup>648</sup> have been referred to extensively above. The main points he made were: he requested CD copies of the briefs from e@gle.i as a protective response to a newspaper article that disturbed him (section 22.6.1); he placed the CDs in his work safe and left them there until he ceased employment (section 22.6.7); he did not disseminate the CDs or material on them to any other person (section 22.6.4); his failure initially to produce or reveal the CDs to Operation Prospect was due to a genuine misunderstanding about what he was required to do (section 22.6.4); the eight CDs he produced to Operation Prospect were the only ones he was given by ISS (section 22.8.1); other NSWPF staff had the opportunity to access the same material that he was given (section 22.8.1). Galletta's written submission stressed also that his actions were transparent as he recorded his request for and receipt of the CDs.<sup>649</sup>

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648 Galletta, M, Submission in reply, 10 August 2015.

649 Galletta, M, Submission in reply, 10 August 2015, pp. 7-8.

### 22.11.4.3 Analysis

Galletta's evidence and submissions were discussed above. Concern was expressed about three aspects of his evidence: his reason for requesting e@gle.i briefs for an ostensibly personal reason was unconvincing; his failure to disclose to Operation Prospect that he had the CDs was unacceptable; and his account of the location of the nine CDs during June to September 2012 was unconvincing (section 22.8.3).

Galletta was the officer in charge of three strike forces, including Emblems. He held a senior position in the NSWPF that carried a special responsibility to uphold the values and good reputation of the NSWPF. That responsibility carried over into Operation Prospect and required that his evidence properly reveal his knowledge of and participation in the matters that were being investigated. Galletta's conduct as examined by Operation Prospect did not meet those expectations.

## 22.12 Findings

### 86. Kaldas

Kaldas's conduct in failing to record and report the confidential NSW Crime Commission and NSW Police Force documents that he received anonymously in August to September 2012 was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in sections 22.5.4 and 22.11.2.3, as a Deputy Commissioner of Police he should have reacted in a more formal and considered manner to having received confidential law enforcement information that had quite clearly been disseminated in an unauthorised manner.

### 87. Kaldas

Kaldas's evidence to Operation Prospect concerning his contact with Giorgiutti may, as discussed in section 22.4.3, be conduct that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offence is "False and misleading testimony" in section 21(1) of the *Royal Commissions Act 1923*.

### 88. Giorgiutti

Giorgiutti's conduct in providing the supporting affidavits for T1 warrants 403-406/2000 and LD warrant 266/2000 to Kaldas was conduct that was unreasonable in terms of section 26(1)(b) of the *Ombudsman Act 1974*. As discussed in section 22.11.3.3, Giorgiutti was a senior NSW Crime Commission officer who was entrusted with those confidential documents for a work-related purpose, he had no authority to release the documents to Kaldas and he should not have done so.

### 89. Giorgiutti

Giorgiutti's conduct in providing the supporting affidavit for T1 warrants 403-406/2000 to Kaldas may, as discussed in section 22.7.2, be conduct that is contrary to law in terms of section 26(1)(a) of the *Ombudsman Act 1974*. The conduct may have contravened the requirements of section 63(2)(a) of the *Telecommunications (Interception and Access) Act 1979*.

## 90. Giorgiutti

Giorgiutti's conduct in providing the supporting affidavits for LD warrant 266/2000 and TI warrants 403-406/2000 to Kaldas may, as discussed in section 22.7.2, be conduct that is contrary to law in terms of section 26(1)(a) of the *Ombudsman Act 1974*. The conduct may have contravened the requirements of section 29 of the *New South Wales Crime Commission Act 1985*.<sup>650</sup> It is noted that proceedings for a contravention of section 29 are now statute barred, as the conduct occurred more than six months previously.<sup>651</sup>

## 91. Giorgiutti

Giorgiutti's conduct in retaining a NSW Crime Commission laptop after he ceased employment with the Commission may be conduct that was contrary to law in terms of section 26(1)(a) of the *Ombudsman Act 1974*. The relevant offence is "Larceny by persons in Public Service" in section 159 of the *Crimes Act 1900*. As discussed in section 22.3.3, the laptop was the property of the NSW Crime Commission and it does not appear that Giorgiutti had any legal claim to possession of the laptop after he ceased employment with the NSW Crime Commission.

## 92. Galletta

Galletta's conduct in failing to secure nine e@gle.i CDs that he obtained from the NSW Police Force on 5 June 2012 was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 22.6.8, the reasonable inference from the evidence available to Operation Prospect is that Galletta's failure to secure the CDs resulted in confidential NSW Crime Commission and NSW Police Force information stored on those CDs being disseminated to at least two other parties. Further, Galletta was unable to account for the whereabouts of one of the CDs, as discussed in section 22.6.4.

## 93. Galletta

Galletta's conduct in failing to produce the CDs to the Ombudsman's office in response to a 'Notice of Requirement to give a Statement of Information and/or Produce Documents, Mark Galletta, 12 December 2012' may be conduct of a police officer that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offence is a failure to comply with a lawful requirement of the Ombudsman, under section 37(1)(b) of the *Ombudsman Act 1974*.

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<sup>650</sup> The *New South Wales Crime Commission Act 1985* was repealed on 4 October 2012. However, s. 29 of this Act was in force throughout the period during which Giorgiutti provided these documents to Kaldas.

<sup>651</sup> NSWCC Act, s. 29(2) and *Criminal Procedure Act 1986*, s. 6(1)(c).

## Appendix 4. List of confidential NSWPF and NSWCC documents improperly released.

This appendix lists 122 NSWPF and NSWCC documents that were disseminated without authorisation to serving and former NSWPF officers, journalists, and a member of parliament. The people to whom the documents were disseminated and the manner of dissemination are outlined in Chapter 22, section 22.1.

- Column 1 lists the date on which the document was created.
- Column 2 lists the NSWCC documents that were disseminated. Some of those documents had been provided to a NSWPF Strike Force, and it is possible that the dissemination occurred from within the NSWPF. Where a document was so provided, the name of the Strike Force is given in brackets at the end of the document description, for example (*Strike Force Emblems*).
- Column 3 lists the NSWPF documents that were disseminated. Some of those documents were contained within particular NSWPF Strike Force files. This is signified by the name of the Strike Force in brackets at the end of the document description, for example (*Strike Force Emblems*).
- Column 4 lists the people who were in possession of the documents that were disseminated. This list is based on information provided to Operation Prospect by people who were required to give evidence or produce documents under summons. It is possible that other people not appearing in this list also received the documents in the course of the act of unauthorised dissemination.

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
1998 (circa)	Undated affidavit with the name [NSWPF officer]. This is a copy of the Ancrum affidavit, discussed in Chapter 3 of this report.		a former NSWPF officer
8/01/1999	NSWCC record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and Sea, 8 January 1999 ( <i>Strike Force Emblems</i> ).		a NSWPF officer (pages 70-71 only of the document); a former NSWPF officer (pages 1-83 only)
2/03/1999		Letter from [DPP solicitor], to Commander Brammer, NSWPF, 2 March 1999 ( <i>Strike Force Emblems</i> ).	a journalist, a MP and a former police officer
2/03/1999		Letter from [Internal Affairs officer], to [DPP Solicitor], 2 March 1999 ( <i>Strike Force Emblems</i> ).	a journalist
12/03/1999	LD warrant 109/1999.		a journalist and a former NSWPF officer
12/03/1999	LD warrant 112/1999.		a journalist
10/05/1999		Letter from [Crown Prosecutor] to [DPP solicitor], ODPP, 10 May 1999 ( <i>Strike Force Emblems</i> ).	two journalists, a MP and a former NSWPF officer
11/05/1999		Letter from Commander Brammer, NSWPF, to the Director of Public Prosecutions, 11 May 1999 ( <i>Strike Force Emblems</i> ).	a journalist and a former NSWPF officer
3/06/1999		Custody records of NSWCC informant Paddle, 3 June 1999 ( <i>Strike Force Emblems</i> ).	a journalist and a MP
29/06/1999		Letter from [Internal Affairs officer], NSWPF to [DPP solicitor], ODPP, 29 June 1999 ( <i>Strike Force Emblems</i> ).	a journalist and a former NSWPF officer

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
3/08/1999		Letter from [Internal Affairs officer], NSWPF to [DPP solicitor], ODPP, 3 August 1999 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer and a MP
19/08/1999		Letter from [Internal Affairs officer], NSWPF to [DPP solicitor], in response to ODPP letter of 19 August 1999, undated ( <i>Strike Force Emblems</i> ).	a former NSWPF officer and a journalist
August 1999 (circa)		Letter from [Internal Affairs officer], NSWPF, to [DPP solicitor], ODPP, undated ( <i>Strike Force Emblems</i> ).	a former NSWPF officer and a journalist
17/09/1999		Letter from [Mascot Subject Officer 4], to [DPP solicitor], ODPP, 17 September 1999 ( <i>Strike Force Emblems</i> ).	a journalist, a former NSWPF officer and a MP
27/09/1999		Letter from Stidwill Solicitors to Commissioner of Police, 27 September 1999 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
23/12/1999		NSWPF internal memorandum from Commissioner Ryan to Deputy Commissioner, Specialist Operations; Deputy Commissioner, Field Operations; Executive Director, Human Resource Services; Commander, Crime Agencies; Commander, Internal Affairs and Special Crime, (all NSWPF), 23 December 1999.	a journalist and a former NSWPF officer
1999 (circa)		ODPP document with copy of Paddle's bail conditions with associated notes, undated, author unknown ( <i>Strike Force Emblems</i> ).	a journalist, a former NSWPF officer and a MP
9/02/2000		Letter from Commander Brammer, NSWPF, to [DPP solicitor], ODPP, 9 February 2000 ( <i>Strike Force Emblems</i> ).	two journalists, a former NSWPF officer and a MP
16/02/2000		ODPP Submission to the Director, <i>Recommendation for No further proceedings</i> , by [DPP solicitor], ODPP, 16 February 2000 ( <i>Strike Force Emblems</i> ).	a journalist, a former NSWPF officer and a MP
16/02/2000		Handwritten notes [Paddle case no [number] – Confidential Note for Director's safe relating to submissions dated 16/2/2000, [DPP solicitor], 16 February 2000 ( <i>Strike Force Emblems</i> ).	a MP
4/04/2000	LD warrant 095/2000 ( <i>Strike Force Emblems</i> ).		a NSWPF officer, four former NSWPF officers and two journalists
23/08/2000	NSWCC file note, <i>Record of conversation between NSWCC Informant Sea, Detective Superintendent Dolan and Mr M Standen at covert premises on 23 August 2000</i> , 23 August 2000.		two former NSWPF officers and a journalist
24/08/2000	Email from Commander Dolan, SCU to Commander Brammer, SCIA, 24 August 2000.		a NSWPF officer
5/09/2000	NSWCC Information Report, <i>Informant contact on 23 August [sic] 2000</i> , reporting officer: Burn, 5 September 2000.		two former NSWPF officers and a journalist
14/09/2000	LD Affidavit 262-268/2000		two NSWPF officers, a MP, two journalists, and two former NSWPF officers
14/09/2000	LD Warrant 266/2000 ( <i>Strike Force Emblems</i> ).		two journalists, three former NSWPF officers and a NSWPF officer

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
25/09/2000	Operations Co-ordination Committee, <i>Confidential Minutes of the Mascot OCC Meeting, 25 September 2000 (Strike Force Emblems)</i> .		a MP
1/05/2001	NSWCC Information Report, <i>Contact with Informant 'Sea' on Tuesday 1 May, 2001 – CD/140</i> , reporting officers: Mahoney/Moore, 1 May 2001.		a NSWPF officer
9/05/2001	NSWCC internal memorandum from Commissioner Bradley, NSWCC to Assistant Director Standen, NSWCC, 9 May 2001.		a NSWPF officer
12/06/2001	Operations Co-ordination Committee, <i>Confidential Minutes of the Mascot OCC Meeting, 12 June 2001</i> .		a journalist
14/06/2001	Email from Commissioner Bradley, NSWCC to Assistant Director Standen, NSWCC and Commander Dolan, SCU, 14 June 2001.		a NSWPF officer
18/06/2001	NSWCC file note titled, <i>Nick Kaldas</i> , 18 June 2001.		a NSWPF officer
26/06/2001		Letter from [name], NSWPF to Commander, Strike Force Sibusu, 26 June 2001 ( <i>Task Force Sibusu</i> ).	a former NSWPF officer
29/06/2001	TI affidavit 403-406/2001.		a NSWPF officer
3/07/2001	NSWCC Information Report, <i>Contact with Sea on 3/7/01 re Security Assessment</i> , reporting officer: Burn, 3 July 2001.		a NSWPF officer
23/07/2001	Email from Commissioner Bradley, NSWCC to Assistant Director Standen, NSWCC, 23 July 2001.		a NSWPF officer
26/07/2001	NSWCC file note titled, <i>SOD 231 – Leak of information Kaldas</i> , 26 July 2001.		a journalist
11/09/2001	List of Mascot/Boat pseudonyms.		three journalists, a NSWPF officer, and a former NSWPF officer
29/11/2001		Various emails between Detective Inspector McFadden, Commander Scipione and Deputy Commissioner Moroney, 29-30 November 2001 ( <i>Strike Force Emblems</i> ).	two journalists, two former NSWPF officers, and a MP
14/12/2001	NSWCC file note titled, <i>Mascot</i> , by Commissioner Bradley, 14 December 2001.		a NSWPF officer
14/12/2001	NSWCC Information Report, <i>Searches of Sea for LD's prior to 01/05/2001</i> , reporting officer: Jewiss, 14 December 2001.		a NSWPF officer
21/02/2002		NSWPF, <i>Strike Force Sibusu Report</i> , CIS [number], Allegations of false and misleading Telephone Intercept and Listening Device affidavits and Search Warrant applications, 21 February 2002 ( <i>Task Force Sibusu</i> ).	a journalist, a MP and a former NSWPF officer
12/04/2002	Email from Commissioner Bradley, NSWCC to Assistant Director Standen, NSWCC, Team Leader Burn, NSWCC and Investigator Heenan, NSWCC, 12 April 2002.		a NSWPF officer

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
13/04/2002	NSWCC internal memorandum from Acting Commander Burn, SCU to Commander SCIA, 13 April 2002.		two NSWPF officers, two journalists, a MP and three former NSWPF officers
Circa 13/04/2002	NSWCC file note, <i>Listening Device Warrant 266/2000 Dated 14 September 2000 (Annexure to Burn Memorandum of 13 April 2002)</i> .		two NSWPF officers, a MP and three former NSWPF officers
14/04/2002		Transcript of television broadcast, 60 Minutes, 14 April 2002 ( <i>non-confidential document originating from Strike Force Emblems brief</i> ).	a journalist and a MP
19/04/2002	Letter from the Commissioner Bradley, NSWCC to PIC Inspector Finlay, 19 April 2002.		a journalist
22/04/2002	Facsimile from PIC Inspector Finlay to Commissioner Bradley, NSWCC, 22 April 2002.		a former NSWPF officer
22/04/2002	Letter from Acting Commander Burn, NSWCC to PIC Inspector Finlay, 22 April 2002.		two NSWPF officers, a MP, a journalist and a former NSWPF officer
29/04/2002	Finlay, M D, PIC Inspector, <i>Report: Operation Florida re: Listening Device Warrant – Report by Inspector of Preliminary Investigation, 29 April 2002 (Strike Force Emblems)</i> .		a former NSWPF officer and a MP
29/04/2002	Letter from PIC Inspector Finlay to A/Commissioner Moroney, NSWPF, 29 April 2002 ( <i>Strike Force Emblems</i> ).		a former NSWPF officer and a MP
29/04/2002	Letter from PIC Inspector Finlay to the Hon. Michael Costa MP, Minister for Police, 29 April 2002.		a journalist and a former NSWPF officer
4/2002 (circa)	NSWCC document titled, <i>LD 266/2000 (CHIN1209)</i> , undated and no author listed.		a former NSWPF officer
4/2002 (circa)	NSWPF Internal memorandum from Detective A/Inspector Heenan to Commander, SCU and Commander SCIA, undated.		a NSWPF officer
14/05/2002	NSWCC Minutes, Meeting in the Commander's Office SCIA, 14 May 2002.		a journalist and a former NSWPF officer
13/06/2002		NSWPF, Transcript of conversation between Detective Inspector Galletta and Malcolm Brammer, 13 June 2002 ( <i>Task Force Sibutu</i> ).	a former NSWPF officer
21/06/2002		NSWPF internal memorandum from Detective Inspector [name] to Commissioner Moroney, NSWPF, 21 June 2002 ( <i>Task Force Tumen</i> ).	two former NSWPF officers
1/07/2002		NSWPF, <i>Strike Force Sibutu Report</i> , CIS [number] - Covert File 2002/4, 1 July 2002 ( <i>Task Force Sibutu</i> ).	two former NSWPF officers
9/08/2002	Email from Team Leader Burn, NSWCC to Commissioner Bradley, NSWCC, 9 August 2002.		a NSWPF officer
21/08/2002		NSWPF record of interview between Detective Inspector [name], Detective Sergeant [name] and [name], 21 August 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
18/09/2002		NSWPF, <i>Strike Force Sibutu Report</i> , CIS [number] – Covert File 2002/05, CIS [number] and CIS [number], 18 September 2002 ( <i>Task Force Sibutu</i> ).	a former NSWPF officer



Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
18/09/2002		NSWPF, <i>Strike Force Tumen Report</i> , 18 September 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
1/10/2002		Letter from [a former Mascot officer], no addressee, October 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
17/10/2002		Letter from forensic psychiatrist to Inspector [name], NSWPF, 17 October 2002 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer, a NSWPF officer and two journalists
22/10/2002		NSWPF, Record of interview between Detective Inspector [name] and [a former Mascot officer], 22 October 2002, pp. 1, 32-34 ( <i>Task Force Tumen</i> ).	a NSWPF officer
25/10/2002		NSWPF, Record of interview between Detective Inspector [name] and [a former Mascot officer], 25 October 2002 ( <i>Task Force Tumen</i> ).	three former NSWPF officers, a NSWPF officer, and a journalist
7/11/2002		Facsimile from Superintendent [name], NSWPF to Detective Inspector [name] NSWPF, attaching October 2002 complaint 7 November 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
12/11/2002		NSWPF internal memorandum from Superintendent [name] to Detective Inspector, 12 November 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
12/11/2002		NSWPF, Record of interview between Detective Inspector [name] Galletta, Detective Inspector [name] and Senior Constable, 12 November 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
18/11/2002		Letter from Detective Chief Inspector [name], NSWPF, to Detective Inspector and Detective Inspector Galletta, 18 November 2002 ( <i>Task Force Tumen</i> ).	two former NSWPF officers
18/11/2002		NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector [name] and Detective Senior Constable [name], 18 November 2002 ( <i>Task Force Tumen</i> ).	two former NSWPF officers
21/11/2002		NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector [name] and Detective Senior Constable [name], 21 November 2002 ( <i>Task Force Tumen</i> ).	three former NSWPF officers, a NSWPF officer and a journalist
2/12/2002		NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector [name] and Superintendent Burn, 2 December 2002 ( <i>Task Force Tumen</i> ).	three former NSWPF officers and a journalist
12/12/2002		NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector and Sergeant, 12 December 2002.	a NSWPF officer (pp 1, 19-22 only of the document); two former NSWPF officers
23/12/2002		NSWPF, Record of interview between Inspector [name] Detective Inspector [name] and Detective Senior Constable [name], 23 December 2002 ( <i>Task Force Tumen</i> ).	a former NSWPF officer
2002 (circa)	NSWCC internal file note, LD 266/2000, undated, unsigned.		a NSWPF officer
7/01/2003	Letter from Assistant Director Standen, NSWCC, to Commissioner Moroney, NSWPF, 7 January 2003.		a journalist
29/01/2003		NSWPF file note by Detective Inspector Galletta, NSWPF regarding legal advice by [barrister], 29 January 2003 ( <i>Task Force Tumen</i> ).	a former NSWPF officer

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
28/03/2003		Legal advice from [barristers] to Michael Holmes, Solicitor for the NSWPF, Florida Listening Devices Act Warrants, 28 March 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
28/03/2003		NSWPF internal memorandum from [NSWPF solicitor] attaching Legal Advice of [barristers], 28 March 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
31/03/2003		Letter from [barrister] to Commissioner Moroney, NSWPF, 31 March 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
11/04/2003		NSWPF internal memorandum from Detective Senior Sergeant to Senior Manager, Operational and Special Advice Unit, Legal Services (legal advice of [barrister] attached), 11 April 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
30/06/2003		NSWPF, Record of interview between Assistant Commissioner, Detective Inspector Galletta and Superintendent Burn, 30 June 2003 ( <i>Strike Force Emblems</i> ).	three former NSWPF officers, a MP, and a journalist
12/08/2003		Letter from Solicitor Giorgiutti, NSWCC to Assistant Commissioner Dobson, NSWPF, 12 August 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
2/09/2003	NSWCC internal memorandum from Detective Senior Sergeant Boyd-Skinner to Commander, SCIA Investigations Unit, 2 September 2003.		a MP
2/09/2003		NSWPF internal memorandum from Detective Senior Sergeant Boyd-Skinner to Commander, SCIA Investigations Unit and SCIA Executive, Complaints Management Team titled, <i>Disclosure of potential conflicts of interest in regards to the Mascot/SOD020 (c@ts.i file [number]</i> , 2 September 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer and a journalist
9/09/2003		NSWPF file note titled, <i>Status of Strike Force Emblems Investigation into the alleged impropriety of Listening Device Warrant 266 of 2000 issued by Judge on 14 September 2000</i> , 9 September 2003 ( <i>Strike Force Emblems</i> ).	a journalist
11/09/2003		Legal advice, Proposed Dissemination of Information by NSWCC to Strike Force Emblems, [barrister], 11 September 2003 ( <i>Strike Force Emblems</i> ).	a journalist
16/09/2003		Legal advice from [solicitor] to NSWPF Health & Workplace Services, <i>Matter of 'M5'</i> , 16 September 2003( <i>Strike Force Emblems</i> ).	a former NSWPF officer two journalists and a NSWPF officer
16/09/2003 (circa)		Annexure to legal advice provided by [solicitor] dated 16/09/2003, <i>Chronology re: M5</i> , undated ( <i>Strike Force Emblems</i> ).	a former NSWPF officer, a journalist and a NSWPF officer
19/09/2003		NSWPF internal memorandum from Detective Inspector Strike Force to Director, Legal Services; Deputy Commissioner (Operations); and Executive Complaint Management Team, 19 September 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer, a journalist and a NSWPF officer
16/10/2003	Operations Co-ordination Committee, <i>Confidential Minutes of the OCC</i> , 16 October 2003.		a journalist
17/10/2003		Letter from [barrister] to Michael Holmes, Director of Legal Services, attaching legal advice, 17 October 2003.	a former NSWPF officer
20/10/2003		Legal advice by [barrister] to NSWPF, <i>Review of Legal advice in relation to Operations Burnley, Altar and Brent</i> , 20 October 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer and a journalist

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
24/10/2003	-	NSWPF file note by Detective Inspector Galletta, <i>Response to question of notice number 911, from Mr Debnam, Opposition Police Spokesperson to Minister for Police, 24 October 2003 (Strike Force Emblems)</i> .	a journalist
3/11/2003		Report, Review of legal advice in relation to Operations Burnley, Altar and Brent, Deputy Director Legal Services (Compliance Law Division) NSWPF, 3 November 2003 ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
27/02/2004		E@gle.i investigation note, <i>Synopsis of record of interview between [NSWPF officers and DPP officer], 27 February 2004 (Strike Force Emblems)</i> .	a former NSWPF officer and a MP
27/02/2004		E@gle.i investigation note, <i>Synopsis of interview of [Crown prosecutor]– ODPP, 27 February 2004 (Strike Force Emblems)</i> .	a journalist
1/03/2004		E@gle.i investigation note, [former NSWPF officer] <i>contacts inquiry 01/03/2004 (Strike Force Emblems)</i> .	a former NSWPF officer, a journalist and a MP
4/03/2004		E@gle.i investigation note, <i>Meeting with Ombudsman officers re status of investigations, 4 March 2004 (Strike Force Emblems)</i> .	a MP
4/03/2004		E@gle.i investigation note, [former NSWPF officer] <i>interviewed re [Paddle], 4 March 2004 (Strike Force Emblems)</i> .	a MP
4/03/2004		E@gle.i investigation note, [person] <i>spoken to 3.45pm on 04/03/2004, 4 March 2004 (Strike Force Emblems)</i> .	a MP
5/03/2004		E@gle.i investigation note, <i>Inquiries re protocol for applications for indemnities, 5 March 2004 (Strike Force Emblems)</i> .	a former NSWPF officer, a MP and a journalist
8/03/2004		E@gle.i investigation note, <i>Information from [person], Ombudsman's Office, 8 March 2004 (Strike Force Emblems)</i> .	a former NSWPF officer, a MP and a journalist
8/03/2004		E@gle.i investigation note, <i>INQ'S with [NSWPF officer] re status of [number], 8 March 2004 (Strike Force Emblems)</i> .	a former NSWPF officer, a MP and a journalist
9/03/2004		Custody records – [person] ( <i>Strike Force Emblems</i> ).	a former NSWPF officer
11/03/2004		E@gle.i investigation note, [solicitor] <i>of ODPP spoken to on 11/03/2004, 11 March 2004 (Strike Force Emblems)</i> .	a former NSWPF officer, a MP and a journalist
18/03/2004		NSWPF CIS [number] <i>Investigators Report, Detective Inspector McErlain, 18 March 2004 (Strike Force Emblems)</i> .	a former NSWPF officer, a MP and two journalists
2004 (circa)	NSWCC file note <i>Strike Force Emblems (CHMG0451)</i> , no author, undated ( <i>Strike Force Emblems</i> ).		a former NSWPF officer and a MP
2004 (circa)		Letter from Detective Inspector Galletta, NSWPF to Chairperson, Executive Complaints Management Team, NSWPF, undated ( <i>Strike Force Emblems</i> ).	two former NSWPF officers
2004 (circa)		NSWPF Investigator's Report, <i>Strike Force Emblems, C@ts.i [numbers], CIS [numbers] (43 pages), undated (Strike Force Emblems)</i> .	two former NSWPF officers and a MP
2004 (circa)		NSWPF, <i>Strike Force Emblems, Investigator's Report 'regarding LD's 95 and 266', Detective Inspector Mark Galletta (Strike Force Emblems)</i> .	a journalist
2004 (circa)	-	NSWPF, <i>Strike Force Emblems Report</i> , undated ( <i>Strike Force Emblems</i> ).	a former NSWPF officer

Date (some approximate)	NSWCC Documents	NSWPF Documents	Party in Possession
25/05/2012	Letter from PIC Inspector Levine, to Commissioner Singleton, NSWCC, 25 May 2012.		a journalist
25/06/2012	Letter from PIC Inspector Levine, to Commissioner Singleton, NSWCC, 25 June 2012.		a journalist
Undated	A schedule of debrief relating to [an officer].		a journalist
Undated	Correspondence from PIC Inspector Finlay to Commissioner Phillip Bradley, NSWCC (date unknown).		a journalist
Undated	Correspondence from or to John Giorgiutti regarding Task Force Volta.		a journalist
Undated	NSWCC document titled <i>LD266/2000</i> , undated and no author listed.		a NSWPF officer
Undated	NSWCC file note titled, <i>Mascot</i> , by Commissioner Bradley, NSWCC undated.		a NSWPF officer
Undated	NSWCC file note titled, <i>Mascot – File Note: Kaldas</i> , by Commissioner Bradley, NSWCC undated.		a NSWPF officer
Undated		Extract from NSWPF Emblems report re Sea's HOD claim ( <i>Strike Force Emblems</i> ).	a NSWPF officer



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