



NSW Ombudsman

Level 24 580 George Street
Sydney NSW 2000

Phone 02 9286 1000

Fax 02 9283 2911

Tollfree 1800 451 524

TTY 02 9264 8050

Web www.ombo.nsw.gov.au

Our reference: C/2001/8956

Contact: Christine Burgess

Phone: 02 92861013

Fax: 02 92832911

Email: cburgess@nswombudsman.nsw.gov.au

Mark Fenlon
9 Welland Close
Jamisontown NSW 2750

Dear Mr Fenlon

Your complaint concerning the conduct of police at Blacktown

I refer to your letter of complaint and meeting with Ombudsman officers on Monday 4 February 2002.

Please find attached my letter to the Commander, Internal Witness Support Unit requiring the Police Service to carry out an investigation into your complaint.

My letter notes that Ombudsman officers will monitor the progress of the investigation under the provisions of section 146 of the *Police Service Act*.

I have asked that Police Service investigators meet with Ombudsman officers at the commencement of the investigation.

Please contact Ms Burgess if there are any matters that you wish to discuss.

Yours sincerely

- 7 FEB 2002

Simon Cohen
Solicitor
for the Ombudsman

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Sydney NSW 2000

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COPY

Detective Chief Inspector G Lapham
Internal Witness Support Unit
Human Resources
NSW Police Service
Level 8, Avery Building
College Street
DARLINGHURST NSW 2010

Dear Ms Lapham

Complaint by IPC concerning the conduct of police at Blacktown

Please find enclosed a copy of a letter of complaint, which has been identified as one made under the provisions of the Protected Disclosures Act 1995. In accordance with the requirements of section 8A of the Police Service Act, I am notifying you of this complaint concerning possible unethical, corrupt or criminal conduct by officers within Blacktown Local Area Command.

For the purpose of determining whether this complaint should be investigated, Ombudsman officers met with the complainant in February 2002.

Please be advised of the following:

- the complaint is referred to the Commissioner as provided by s 132 of the Police Service Act.
- this complaint should be investigated.

I note that the complainant has raised concerns about the integrity of any Police Service investigation into his complaint. I request that very careful consideration be given to determining the appropriate command and investigators to undertake this investigation.

As provided for by section 145 of the *Police Service Act*, I request that the police officers investigating this complaint have regard to the following matters:

- the complainant refers to COPS data in support of allegations of misconduct etc. An examination of relevant COPS entries would be an appropriate beginning point for the investigation of particular allegations of misconduct.
- any investigation of the allegations should take place in conjunction with a response by the Police Service to the management matters raised in the complaint.

Regardless of the outcome of the investigation into particular allegations, the complaint raises concerns regarding the integrity of COPS data, the role of police officers in entering information on COPS and the role of duty officers, local area commanders and other Police Service managers in assuring the quality of this information.

These issues may be amenable to an immediate response by the Police Service re-enforcing the necessity for integrity of this information and the role of supervisors in reviewing COPS material.

Pursuant to the provisions of Section 146 of the *Police Service Act*, this office will monitor the progress of the investigation. I would ask that:

- at the time of allocation of this matter for investigation, the investigating officer and supervisor contact this office to make arrangement for a meeting to discuss the investigative approaches to be employed.
- this office be provided with relevant COPS entries and analysis as soon as it is prepared.
- this office be contacted in respect of all interviews to enable an Ombudsman officer to observe those interviews.

Yours sincerely



Simon Cohen
Solicitor
for the Ombudsman

- 7 FEB 2002



It is noted that the above information was obtained from the files of the FBI and is being furnished to you for your information.

The information contained in this report is based on the review of the files of the FBI and is being furnished to you for your information.

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The information contained in this report is based on the review of the files of the FBI and is being furnished to you for your information.

Very truly yours,

[Signature]

1964

Special Agent in Charge



ABN 22 870 745 340

12 December 2001

Our Ref: 9451/1

Mr Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

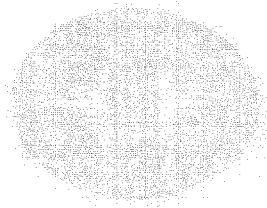
Dear Mr Fenlon

The Police Integrity Commission has received your correspondence, dated 13 November 2001, concerning your complaint about officers within the Blacktown Local Area Command. I apologise for the delay in acknowledging its receipt.

The matter will be assessed and the Commission will contact you again.

Yours sincerely

Stefanie Vuong
Complaints Assessment Analyst



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20535

MEMORANDUM FOR THE ATTORNEY GENERAL
SUBJECT: [Illegible]

DATE: [Illegible]

The above information was obtained from [Illegible] and [Illegible] on [Illegible] and [Illegible].

The above information was obtained from [Illegible] and [Illegible] on [Illegible] and [Illegible].

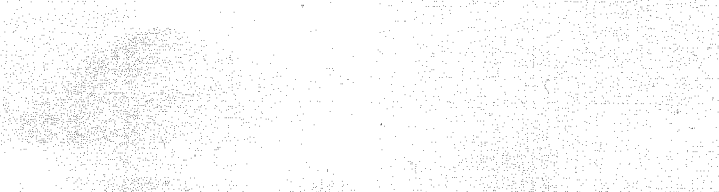
Very truly yours,

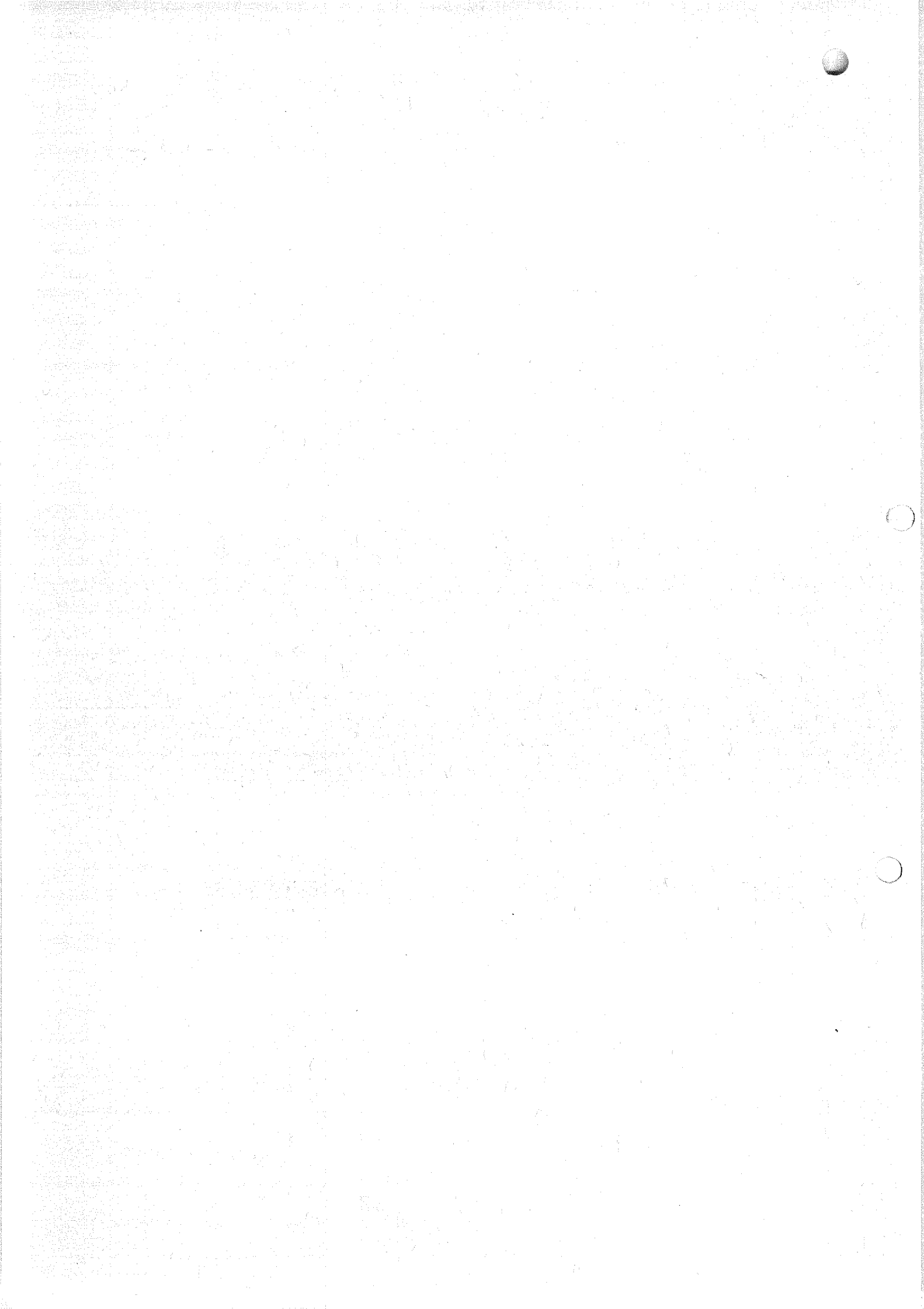
[Illegible Signature]

Special Agent in Charge
[Illegible]



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Mark Fenlon

From: Mark Fenlon <markfenlon@bigpond.com>
To: <aust1ber@police.nsw.gov.au>
Sent: Friday, 26 April 2002 10:46
Subject: Police and Public Safety Act - Complaint by Sgt Fenlon

Dear Mr Aust,

Please bring the following matter to the attention of Acting Commissioner Moroney as a matter of urgency.

Senior Deputy Commissioner K.Moroney
Acting Commissioner of Police

Dear Sir,

I have been advised by Christine Burgess, Senior Investigator, office of the NSW Ombudsman, that my complaint surrounding the Crimes (Police and Public Safety Amendment) Act, has been allocated by Deputy Commissioner Madden to Superintendents Laycock and Carroll for investigation.

I strongly object to that allocation based upon a significant conflict on interest which exists with those officers or indeed any senior officer within the NSW Police Service given the scope of the allegations made in my complaint.

I point out that my complaint was not confined to the implementation of the Crimes (Police and Public Safety Amendment) Act solely within the Blacktown Local Area Command. My complaint in fact indicated that there was evidence to suggest that the practices referred to (i.e. illegal searches and artificial inflation of statistics) were in fact also taking place at other local area commands throughout the State and that there was a high probability that this action had been unofficially endorsed by Local Area Commanders as a result of pressure applied to those Commanders through the OCR process. This fact was quite apparent to members of the Ombudsman's office staff by whom I have been interviewed concerning the matter.

I submit that there is quite obviously a major conflict of interest for the NSW Police Service in conducting an investigation into this matter and that conflict of interest is service wide.

To evidence that conflict of interest I submit the following:

Evidence of improper and unlawful conduct as outlined in my complaint concerning the implementation of the Police and Public Safety Act would almost certainly result in,

1. liability on the part of the NSW Police Service in civil litigation actions by members of the community for unlawful detention and unlawful searches.
2. liability on the part of the NSW Police Service in civil litigation actions by members of the community for fraudulently and improperly recording their details on the computerised operational policing system.
3. criminal, serious departmental or civil proceedings against the individual officers involved in carrying out the searches and creating the subject COPS entries.
4. criminal, serious departmental or civil proceedings against Local Area and Region Commanders where such improper and unlawful conduct in respect to the legislation was and has been taking place under their Command.
5. significant public criticism and embarrassment for the senior management of the NSW Police Service.

Such outcomes are highly probable where a thorough and unprejudiced investigation of the complaint

29/04/02

was carried out.

These outcomes are highly contrary to the interest of the NSW Police Service and as such a significant conflict of interest, which cannot be reasonably put aside, does in fact exist for the NSW Police Service in conducting the investigation.

This conflict of interest should have been apparent to Deputy Commissioner Madden in considering the matter.

I have absolutely no doubt that a legal advising has been sought and since provided regarding the implications for the Police Service should my allegations be substantiated by relevant evidence. If these adverse outcomes were identified in that advising, why did Mr Madden not seek to distance the senior administration from the matter in the interest of ensuring a transparent and unbiased investigation?

I raised similar concerns with the NSW Ombudsman concerning this complaint being referred to the NSW Police Service for investigation.

As indicated in my complaint, I must now consider that any investigation into my complaint will be, if it has not already been, compromised. It is not in the interest of the Police Service or indeed many senior officers within the NSW Police Service to expose evidence of improper conduct or criminality surrounding the Crimes (Police and Public Safety Amendment) Act on such a scale, particularly since they may themselves be involved.

A further issue raised in my complaint was a genuine concern for my welfare as an internal informant concerning this complaint, particularly as it follows upon my complaint concerning the corruption of the police promotion system. Like the promotion system complaint, its very nature casts serious doubt upon the integrity and managerial ability of senior officers within the Police Service.

I consider that the action of Deputy Commissioner Madden in allocating my complaint for investigation by the officers nominated, (who are not only colleagues of Superintendent Wales, but whom may also themselves be implicated in either endorsing, turning a blind eye or failing to adequately supervise personnel under their command in respect to the implementation of the Crime (Police and Public Safety Amendment) Act,) was improper, lacked appropriate consideration of the facts and has ultimately exposed me to further risk of retribution. It is clear that my welfare as an internal informant was either not a consideration in Mr Madden's decision or determined by him to be of low priority.

You must appreciate Sir, that my level of anxiety concerning retribution arising from being an internal informant in both the complaint concerning police promotions and this matter is significant. Both issues disclose systemic organisational corruption. That anxiety is exacerbated when I am advised by persons close to Special Crime and Internal Affairs that they lack faith in the Services' capacity to investigate itself.

Thus far this assertion has been borne out in the manner in which the Police Service dealt with my complaint concerning the promotion system and is being re-enforced by the manner in which this latest complaint is being dealt with. I have been advised by the Ombudsman that this latest matter has been in the hands of the Service since early February, 2002 and only now (albeit inappropriately) has been allocated for investigation. There is every appearance that there are some significant shortcomings regarding the quality and outcomes of internal investigations when issues surrounding management are under scrutiny.

To compound matters, the issue of promotions corruption has still not been effectively resolved. The risk to the organisational integrity of Service as a consequence of having introduced a corrupt promotion system is still present and will remain present whilst corruptly appointed officers remain in position. That risk will not be addressed by the introduction of another promotion system nor can it ever, until the some 400 complaints received at SCIA concerning corrupt appointments are fully investigated and action taken to remove those involved, regardless of rank.

Given all of these valid concerns, I therefore must respectfully request that you rescind the direction of Mr Madden in this matter immediately and that you make personal representations to the Police Integrity Commission for that agency to conduct an independent investigation of my complaint concerning the implementation of the Crimes (Police and Public Safety Amendment) Act by members of the NSW Police.

I would also indicate that the Minister has been aware of my concerns relating to the implementation of the Crimes (Police and Public Safety Amendment) Act, by the NSW Police Service, since December last year, both in so far as it's abuse by members of the NSW Police Service and its ineffectiveness. I was advised that he would refer it to former Commissioner, Mr Ryan personally for attention. Given circumstances I can only assume therefore that you have assumed responsibility for the matter and have some knowledge of same.

Sgt Mark Fenlon

Mark Fenlon

From: AUST, BERNARD <AUST1BER@POLICE.NSW.GOV.AU>
To: <markfenlon@bigpond.com>
Sent: Thursday, 2 May 2002 1:19
Attach: TXT00000.htm
Subject: Re: Police and Public Safety Act - Complaint by Sgt Fenlon

--- Received from NSWP.AUST1BER 0293395458

02/05/02 12:19

Mark

Good morning. The action of sending your correspondence to Court and Legal Services for advice is purely to ensure that the matters you raise are dealt with properly.

Please do not concern yourself with any perceptions that your matters may or may not have been properly dealt with on prior occasions, this will certainly not be the case now.

I have no knowledge of how other matters may have been dealt with in the past but let me assure you Mark that I intend that proper process will be followed in relation to the matters and concerns you raise. I always try to operate in a fair and ethical way, such is my commitment to this present duty.

regards

Bernard Aust

From: markfenlon@bigpond.com
 To: AUST1BER@POLICE.NSW.GOV.AU
 Date: Thu, 2 May 2002 11:22:21 +1000
 Subject: Re: Police and Public Safety Act - Complaint by Sgt Fenlon

Dear Mr Aust,

Thank you for your latest response. Mr Moroney's action in referring the matter to Legal Services at this late stage suggests that such action had not previously been undertaken by SCIA or Mr Madden prior to his allocation of the matter for investigation. This is disturbing, particularly having regard to the letter of Mr Simon Cohen, (Solicitor for the Ombudsman) which accompanied my complaint.

Perhaps you are in a position to clarify the reason for such referral. Is it to identify the risks to the Service should the allegations prove correct or is it to establish whether a conflict of interest exists for the Service in carrying out the investigation or indeed has Mr Moroney sought a legal advising regarding both issues?

I should also like to know what the process, you referred to, will be.

Thank you again for your reply.

Yours Sincerely,

Mark Fenlon
Sergeant

----- Original Message -----

From: AUST, BERNARD

To: markfenlon@bigpond.com

Sent: Wednesday, 1 May 2002 4:26

Subject: Re: Police and Public Safety Act - Complaint by Sgt Fenlon

--- Received from NSWP.AUST1BER 0293395458

01/05/02 15:26

Mark

A/CoP Moroney has read your correspondence and forwarded it to the Court and Legal Section for urgent advice before initiating any other course of action. I shall ensure that this initial process is finalised during next week and inform you of the next stage in the process.

regards

Bernard Aust

From: markfenlon@bigpond.com

To: AUST1BER@POLICE.NSW.GOV.AU

Date: Tue, 30 Apr 2002 17:45:14 +1000

Subject: Re: Police and Public Safety Act - Complaint by Sgt Fenlon

Dear Mr Aust, thank you for your reply. I will await the response of Mr Moroney.

Sgt Mark Fenlon

--Original Message -----

From: AUST, BERNARD

To: markfenlon@bigpond.com

Sent: Monday, 29 April 2002 5:25
Subject: Police and Public Safety Act - Complaint by Sgt Fenlon

--- Received from NSWP.AUST1BER 0293395458

29/04/02 16:25

Mark

I shall show your letter to A/CoP Moroney today and tomorrow, if not earlier, inform you of his subsequent decision or actions in relation to your submission.

regards

Bernard Aust

All mail is subject to content scanning for possible violation of New South Wales Police Service Electronic Mail Policy. All persons are required to familiarise themselves with the content of the policy located on the MEMO Bulletin Board and on the NSWPS Intranet.

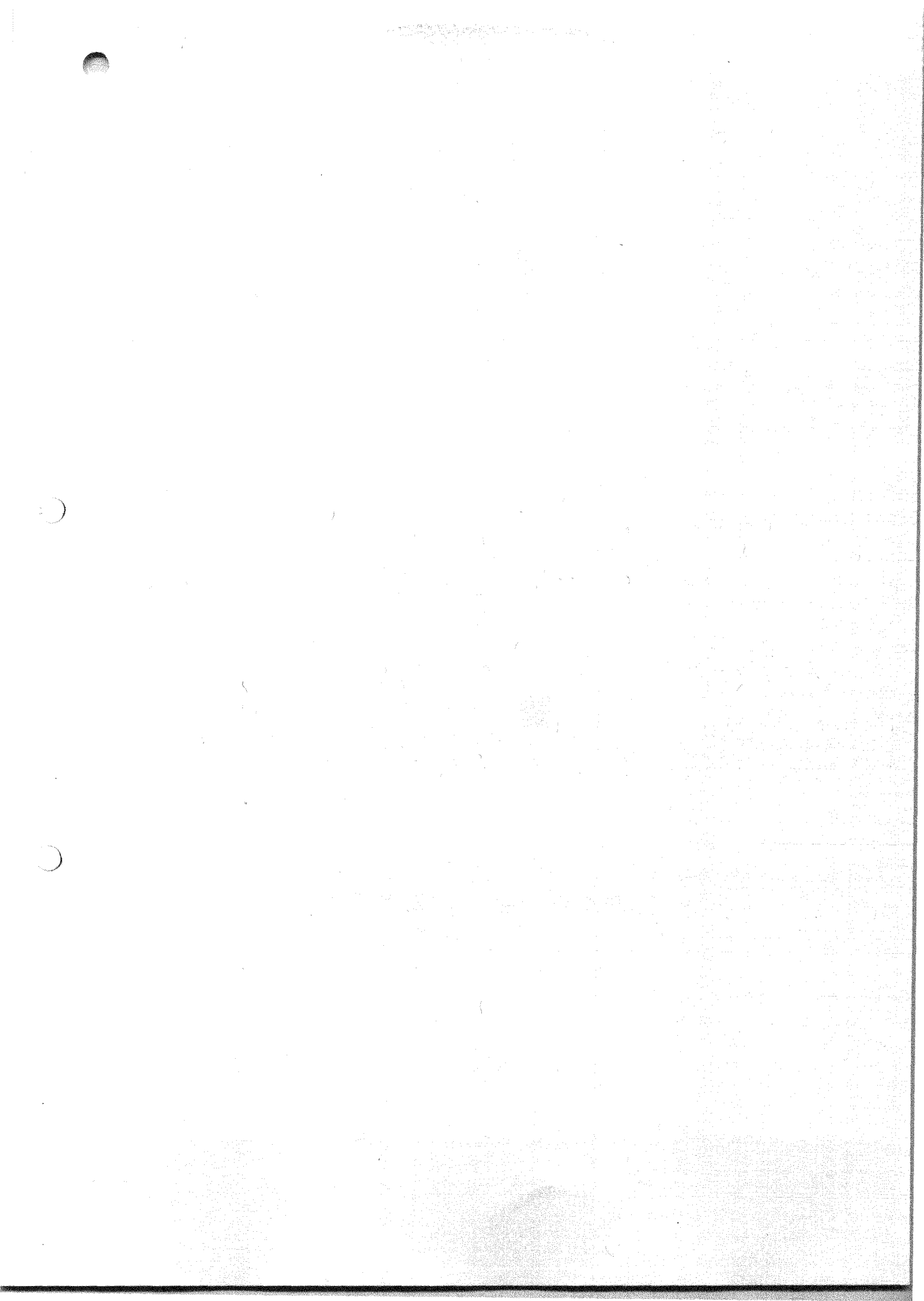
--- 01/05/02 15:26 --- Sent to

-> markfenlon@bigpond.com

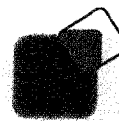
This message and any attachment is confidential and may be privileged or otherwise protected from disclosure. If you have received it by mistake, please let us know by reply and then delete it from your system; you should not copy the message or disclose its contents to anyone.

--- 02/05/02 12:19 --- Sent to

-> markfenlon@bigpond.com







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Level 24 580 George Street
Sydney NSW 2000

Phone 02 9286 1000

Fax 02 9283 2911

Tollfree 1800 451 524

TTY 02 9264 8050

Web www.ombo.nsw.gov.au

Our reference: C/2001/8956
Your reference: CIS:02000834

Contact: Christine Burgess
Phone: 02 92861013
Fax: 02 92832911
Email: cburgess@nswombudsman.nsw.gov.au

Mark Fenlon
9 Welland Close
Jamisontown NSW 2750

Dear Mr Fenlon

Your complaint concerning the conduct of police at Blacktown

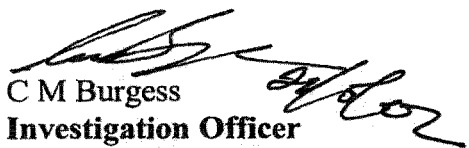
I refer to previous correspondence relating to your complaint about the conduct of police. I wish to advise that your complaint has been allocated to Chief Inspector Matthews of The Hills Local Area Command. Macquarie Region Acting Commander Becke will supervise the overall investigation of your complaint.

Ms Demetrius of this office and I have already had one meeting with Chief Inspector Matthews, wherein he relayed information he has already sourced. That information was obtained as a result of various searches carried out on the NSW Police computer system. Chief Inspector Matthews advised that when he has completed the computer searches he will then commence interviewing the various parties that are be relevant to the investigation.

It is difficult to place a time frame on when those interviews will commence, however I anticipate that should occur in approximately one month. That will be depended on what other data is sourced in the interim. While I can understand that you may be frustrated by the slow progress of this investigation, I believe you will understand that there is a great deal of data to research and analyse prior to the commencement of interviews.

This office will have ongoing involvement in the investigative process through our monitoring role, however, Chief Inspector Matthews will of course keep you advised of future progress once he has finalised the computer based research.

Yours sincerely


C M Burgess
Investigation Officer
for the Ombudsman



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Fourth paragraph of faded text in the lower middle section.

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Police Power Statistics.

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POLICE POWER STATISTICS

Page: 12

The Hon. JOHN RYAN: My question is to the Minister for Police. Were senior police aware of a complaint about the integrity of statistics relating to knife searches and move-on powers when Deputy Commissioner Dave Madden issued a media release on 23 April this year outlining the New South Wales police commitment to the Police and Public Safety Act? Who is currently investigating this serious complaint, and why is the Special Crime and Internal Affairs division of the New South Wales police not dealing with it?

The Hon. MICHAEL COSTA: I refer to my previous answer on this question.

The Hon. John Ryan: You don't know! You should give me more detail.

The PRESIDENT: Order! I have previously asked members who have a microphone in front of them to either refrain from interjecting or turn the microphone off.

Extract from the NSW Legislative Council Hansard of 13/06/2002 - Proof

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Last updated 14/06/2002.

Police Powers Statistics.

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POLICE POWERS STATISTICS

Page: 11

The Hon. MICHAEL GALLACHER: My question is to the Minister for Police. Does the Minister have confidence in the success of knife search and move-on powers and in particular the integrity of the statistics compiled by each local area command detailing the use of those powers? Is the Minister aware of an internal police complaint that senior police allegedly recorded searches in the computer operated police system [COPS] that never took place? How long has the Minister been aware of this complaint and what action has been taken to address the substance of the complaint?

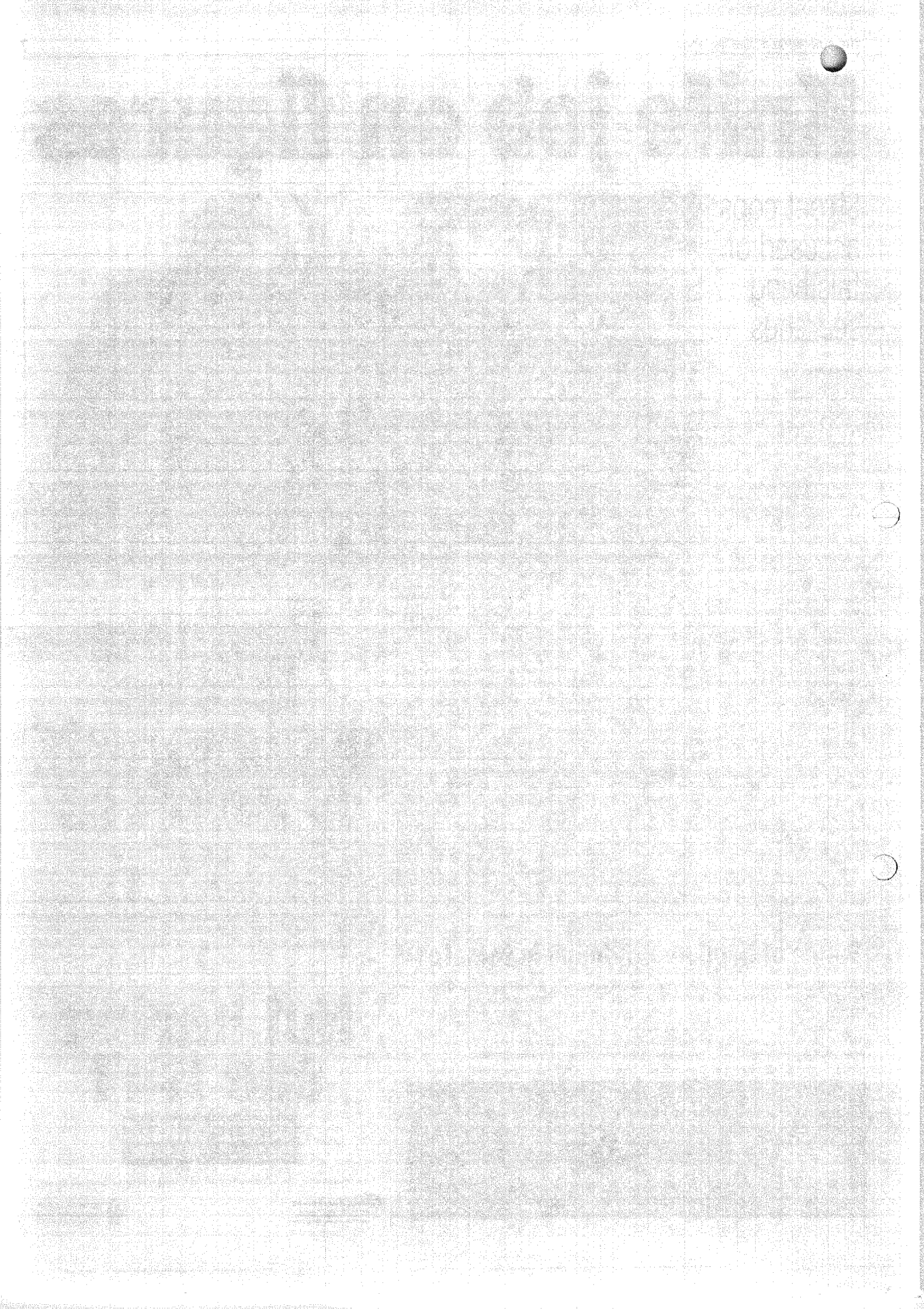
The Hon. MICHAEL COSTA: You should have led off with that question. It is a killer question! I am not aware of what the Leader of the Opposition is referring to. If he has specific allegations and is prepared to give the details to me I will be happy to make the appropriate investigations. But I am sure that, as usual when the Opposition raises these things, there will be very little follow-through.

Extract from the NSW Legislative Council Hansard of 13/06/2002 - Proof

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Last updated 14/06/2002.



Mark Fenlon

From: Mark Fenlon <markfenlon@bigpond.com>
To: Christine Burgess <CBurgess@ombo.nsw.gov.au>
Sent: Monday, 17 June 2002 12:42
Subject: Further request for independent investigation and complaint of intimidation.

Christine Burgess
Senior Investigator
NSW Ombudsman

Dear Christine,

As you would no doubt be aware by now the Police and Public Safety Act complaint I made to your office was mentioned in the media over the weekend. You will recall during our meeting that I made no secret that it was my intention to provide information to both the media and members of parliament concerning the matter after the statutory period under the Protected Disclosures Act had elapsed. The matter has also tentatively raised in the upper house on Friday during question time.

I was monitoring the response of the Police Service and on channel 7, I noted the comments of Deputy Commissioner Madden with great concern.

Mr Madden indicated that (he) the NSW Police Service had confidence in the statistics on the COP system regarding the implementation of the legislation. This was grossly inappropriate and has undermined the integrity of the investigation by pre-empting an investigative finding. In fact this statement is strongly suggestive that the investigation outcome has been pre-determined by the Service. In any event it constitutes improper conduct on the part of Mr Madden.

This clearly supports my contention from the earliest, that the Police Service cannot and should not be trusted to conduct this investigation. There is a clear conflict of interest which has been amply demonstrated in the media response of Mr Madden.

Again I most strenuously object to the involvement of the NSW Police Service in the investigation of this complaint and I request that this objection be brought to the attention of Mr Kinmond once again. I again request a direct and independent investigation by the NSW Ombudsman into this matter. The reasons being obvious, i.e. the potential for political backlash for Government and the accompanying criticism of the management of the Police Service. No more appropriate reasons could exist to justify a decision to carry out such an independent investigation by the NSW Ombudsman.

Should Mr Kinmond again refuse to commit to an independent investigation of the matter, I request that the reasons for that decision, be provided to myself, in particular I request he outline his position on the conflict of interest issue and his assessment of the associated risk to the credibility of Government and Police Service management which might arise as a result of an independent investigation.

17/06/02

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I would also bring to your attention that I was contacted by telephone by Chief Inspector Lapham, about 3.30pm on Saturday 15 June, 2001. That contact was not related to her functions as Commander of the Internal Witness Support Unit. She in fact advised me that she had been directed by the office of Deputy Commissioner Madden to gain information concerning my knowledge of the press release which subsequently appeared in the Sun-Herald on 16 June, 2001. She advised me ostensibly that it was to assist the media unit to prepare a response for Mr Madden to the article. She indicated that she had been specifically asked to enquire as to whether my name would be mentioned in the article. She also asked if I had been in contact with a reporter from that newspaper by the name of Kennedy. This contact by Chief Inspector Lapham was grossly inappropriate and intimidatory regardless of the reasons proffered. Her actions were clearly contrary to the role of officers attached to the Internal Witness Support Unit. Deputy Commissioner Madden has taken advantage of Chief Inspector Lapham's position of trust with this internal witness for no other reason but to seek information in order to minimise damage to the Police Services' reputation that may have arisen from a newspaper article. I was "bounced" for information, pure and simple. I therefore demand an investigation of this matter by the NSW Ombudsman as act of intimidation by the Police Service perpetrated upon an internal witness and therefore a breach of the Protected Disclosures Act.

I would ask that the issues raised in this correspondence be dealt with as a matter of urgency.

Yours Sincerely

Mark Fenlon

> Dear Mr Fenlon

>

> I refer to our telephone of yesterday concerning your complaint (our ref
> c/01/8956).

>

> I have now had the opportunity to consider the matters raised in your
> email to Ms Burgess. I have also reviewed the Ombudsman file in respect
> of your complaint. I note that I have also brought your concerns to the
> attention of Mr Kinmond, Assistant Ombudsman.

>

> In respect of the matters raised in your email:

>

> 1. I note your concerns regarding comments of Deputy Commissioner Madden
> on channel 7 news of Sunday, 16 June 2002.

>

> I have asked the police service to provide this office with a full tape of
> Mr Madden's meeting with the media which formed the basis for media
> coverage on Sunday 16 June 2002.

>

> I have also provided your concerns to the Commissioner of Police, and
> requested that he consider your concerns in the context of the supervision
> of the investigation of your complaint.

>

> I note that this office is continuing to carefully monitor the ongoing NSW
> Police investigation.

>

> 2. I note your view that the contact by Ms Lapham with you on Saturday
> 15 June 2002 was grossly inappropriate and intimidatory. The Protected
> Disclosures Act provides for protection against reprisals (s 20). That
> provision prohibits persons taking detrimental action (including
> intimidation) against a person making a protected disclosure.

>

> Where it appears an employee may have provided information to the media in
> respect of their employer, in the context of a protected disclosure or
> otherwise, there may be legitimate reasons for the employer to contact the
> employee including:

>

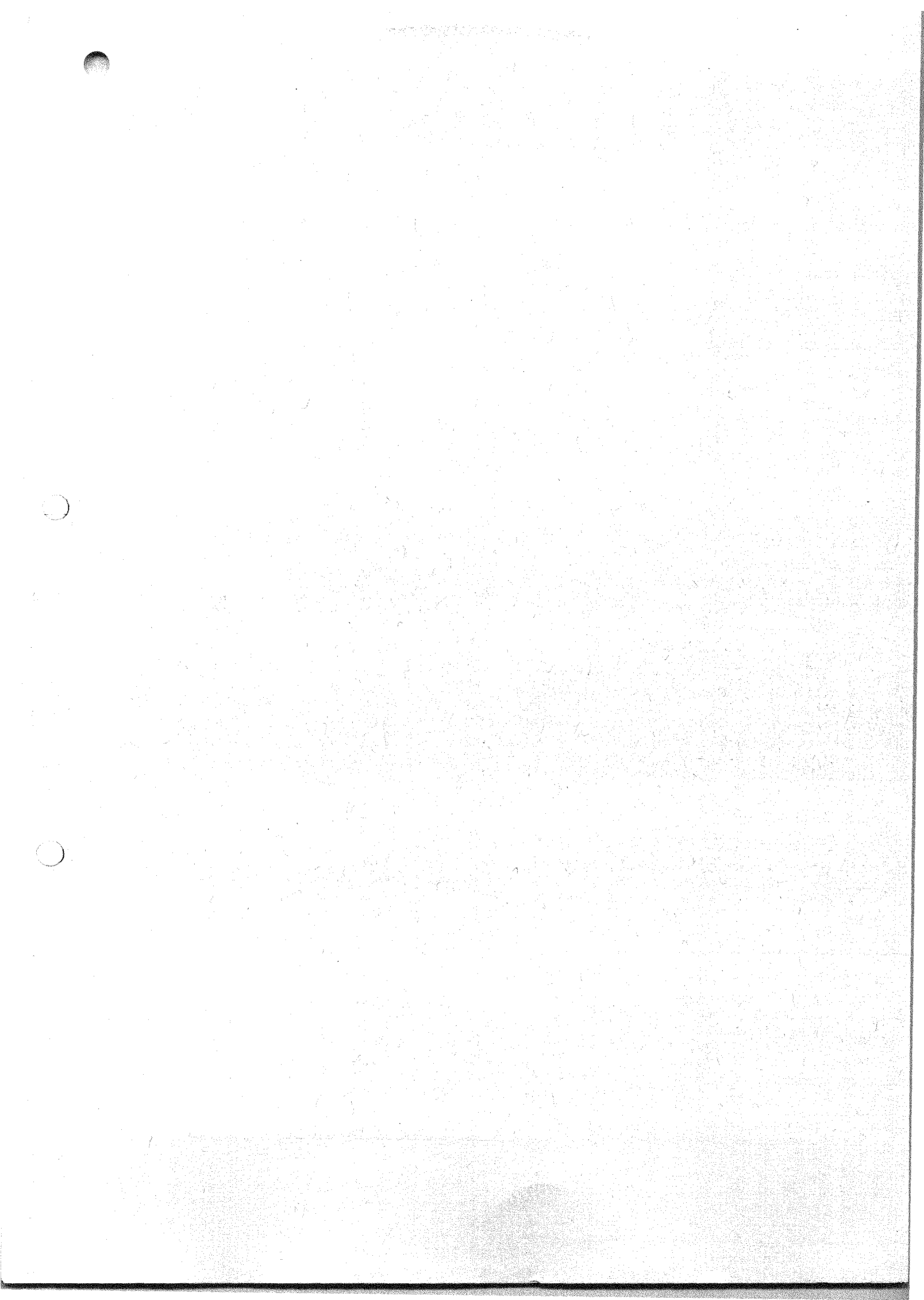
> - to discover whether it was the employee who provided the information to
> the media, and if not to alert the employee to the impending media
> coverage

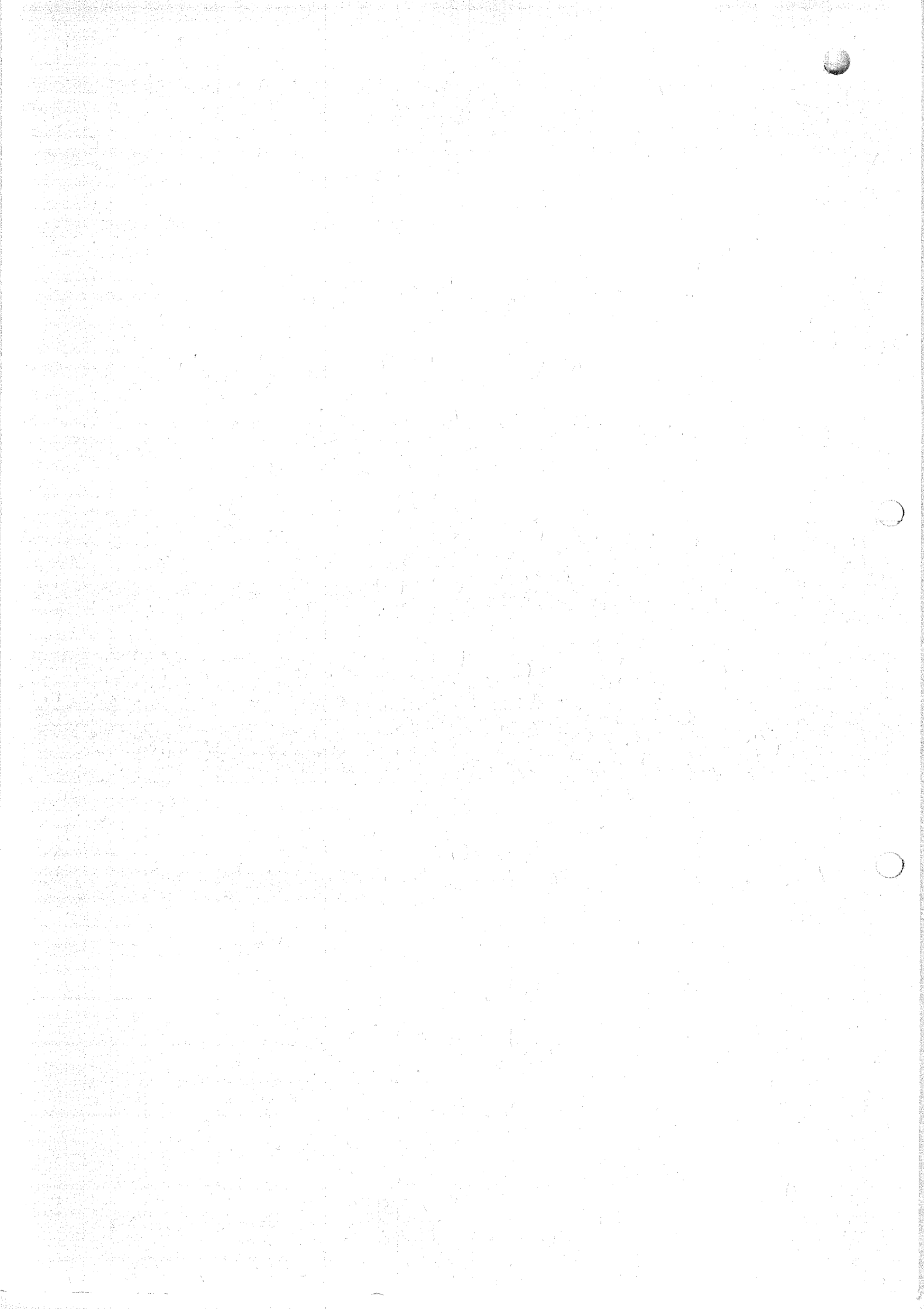
> - to ensure the welfare of the employee

> - to assist in determining whether the employee has made a protected
> disclosure to a journalist pursuant to s 19 of the Protected Disclosures
> Act

> - to obtain information about what was provided to the media to assist in
> responding to potential media coverage

>
> Without more, contact for these purposes would not appear to be an offence
> as provided for by s 20 of the Protected Disclosures Act.
>
> In order to assist in determining whether your complaint concerning the
> contact by Ms Lapham with you on 15 June 2002 should be investigated, I
> would ask you to provide further written information concerning your
> complaint. In particular, I request your advice as to the following
> matters:
>
> a. please advise, to the best of your recollection, as to the precise
> conversation between yourself and Ms Lapham.
> b. please identify the conduct of Ms Lapham that you view as
> intimidatory.
>
> I note that at this time, as provided for by s 142 of the Police Service
> Act, this office will take no further action in connection with this
> complaint until I have received your response to my request. I would ask
> that you provide a response by 25 June 2002.
>
> I note that the Police Service Act provides that should no response be
> received the Ombudsman may treat your complaint as having been dealt with
> in a manner acceptable to you (s 142(4)).
>
> Should there be any matters you wish to discuss, please contact me on 9286
> 0953, or by return email.
>
> Yours faithfully
>
> Simon Cohen
> Solicitor
> for the Ombudsman
>





PRESS RELEASE

ON THE 10TH DECEMBER 2001, I PROVIDED A COPY OF A COMPLAINT I HAD MADE TO BOTH THE NSW OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION CONCERNING FALSIFICATION OF STATISTICS AND ABUSE OF AUTHORITY SURROUNDING THE POLICE AND PUBLIC SAFETY ACT TO THE POLICE MINISTER.

I DID SO IN GOOD FAITH, FULLY EXPECTING THAT THE MINISTER, ONCE MADE AWARE OF THE MATTER, WOULD HIMSELF PERSONALLY INTERVENE TO ENSURE THAT IT WAS INDEPENDENTLY INVESTIGATED AND REMEDIED.

THAT DID NOT OCCUR.

HAVING CALLED FOR AN INDEPENDENT INVESTIGATION OF THE MATTER BY BOTH THE NSW OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION. THAT REQUEST WAS REFUSED. DESPITE THE OBVIOUS CONFLICT OF INTEREST WHICH SUCH A COMPLAINT PRESENTS TO THE POLICE SERVICE, IT WAS REFERRED TO THE NSW POLICE SERVICE FOR INVESTIGATION.

I HAVE NO FAITH IN THE POLICE SERVICE CARRYING OUT AN UNBIASED INVESTIGATION INTO THE MATTER. THE ASSOCIATED SERIOUS CONSEQUENCIAL RISKS, ARISING FROM AN UNBIASED INVESTIGATION, TO BOTH THE POLICE SERVICE AND GOVERNMENT, IS OBVIOUS. ~~ALLOWING THE POLICE SERVICE TO INVESTIGATE THIS MATTER IS AKN TO ALLOWING A CRIMINAL TO INVESTIGATE THEIR OWN CRIME.~~ OMITTED.

I HAVE NO FAITH IN THE NSW OMBUDSMAN CARRYING OUT SUCH AN INVESTIGATION GIVEN ITS DECISION TO IGNORE THAT OBVIOUS CONFLICT OF INTEREST IN REFERRING IT TO THE POLICE SERVICE FOR INVESTIGATION.

AND I HAVE NO FAITH IN THE POLICE INTEGRITY COMMISSION CARRYING OUT SUCH AN INVESTIGATION GIVEN THE COMPLETE LACK OF INTEREST SHOWN BY THE COMMISSION IN THE MATTER.

I ALSO MAKE THOSE STATEMENTS BASED UPON THE MANNER IN WHICH EACH RESPECTIVE AGENCY ADDRESSED MY EARLIER COMPLAINT CONCERNING THE INTRODUCTION AND CONTINUED USE OF A CORRUPT POLICE PROMOTIONS SYSTEM.

THAT COMPLAINT AND THIS LATEST MATTER GO TO THE VERY HEART OF REVEALING GROSS MAL-ADMINISTRATION AND UNETHICAL CONDUCT WITHIN THE SENIOR ECHELONS OF THE NSW POLICE SERVICE, YET NO ONE HAS BEEN OR IS EVER LIKELY TO BE, HELD PUBLICLY ACCOUNTABLE.

THAT HAS TO CHANGE.

THIS TYPE OF MANAGEMENT CULTURE IS ENDEMIC WITHIN THE POLICE SERVICE. A CULTURE WHERE FEAR AND COERSION ARE STILLS THE TOOLS OF TRADE AND WHERE CAREER, CHARACTER AND PERSONAL DESTRUCTION ARE THE REWARD FOR SPEAKING OUT.

THAT HAS TO CHANGE.

I HAD HOPED THIS MINISTER WAS CAPABLE OF BRINGING ABOUT THOSE CHANGES. THAT IS OBVIOUSLY NOT THE CASE.

MARK FENLON

THE DEPARTMENT OF JUSTICE HAS RECEIVED A COPY OF A MEMORANDUM DATED AND CAPTIONED AS ABOVE. THE MEMORANDUM IS BEING FORWARDED TO YOU FOR YOUR INFORMATION AND COMMENT.

IT IS REQUESTED THAT YOU REVIEW THE MATTER AND ADVISE THE DEPARTMENT OF JUSTICE OF YOUR CONCLUSIONS AND RECOMMENDATIONS.

VERY TRULY YOURS,

THE ATTORNEY GENERAL HAS REVIEWED THE MATTER AND HAS ADVISED THAT HE IS IN AGREEMENT WITH THE RECOMMENDATIONS SET FORTH IN THE MEMORANDUM.

IT IS REQUESTED THAT YOU REVIEW THE MATTER AND ADVISE THE DEPARTMENT OF JUSTICE OF YOUR CONCLUSIONS AND RECOMMENDATIONS.

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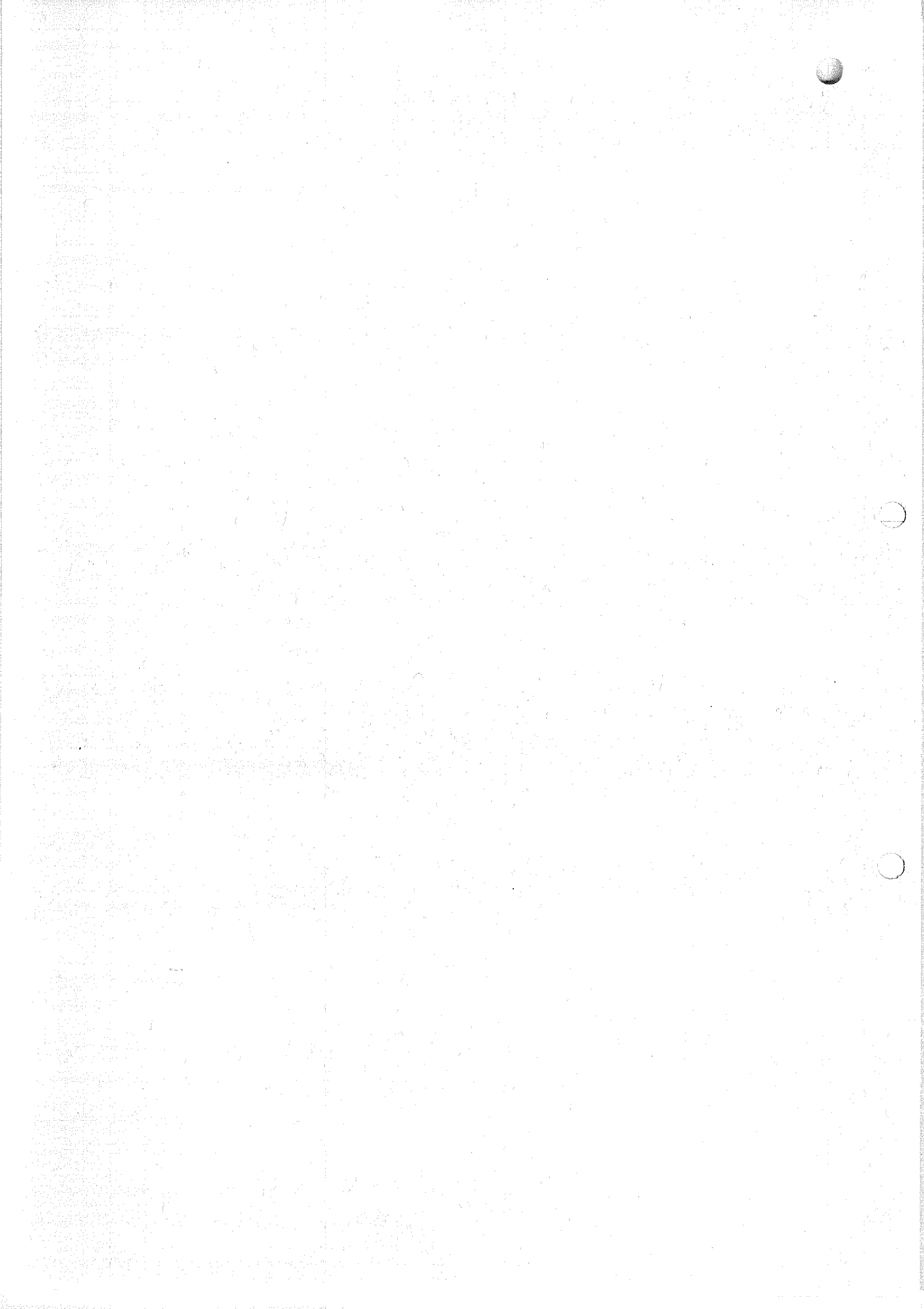
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VERY TRULY YOURS,

THE DEPARTMENT OF JUSTICE HAS REVIEWED THE MATTER AND HAS ADVISED THAT HE IS IN AGREEMENT WITH THE RECOMMENDATIONS SET FORTH IN THE MEMORANDUM.

SECRET





MINISTER FOR POLICE

MEDIA RELEASE

STATEMENT BY MICHAEL COSTA

21 June 2002

Minister for Police Michael Costa today said he and the Office of the Commissioner of Police had assessed the police response to allegations of fraudulent collection of knife statistics.

Mr Costa said both he and Commissioner Ken Moroney were dissatisfied with the time taken to investigate this serious allegation.

"I have assessed the police response to this matter," Mr Costa said.

"It is clear, following the referral of the complaint to NSW Police by the Ombudsman, police have not investigated this matter in the timely manner the public expects.

"Commissioner Moroney has assured me the matter will now be treated urgently.

"He has assured me this investigation will be conducted and completed expeditiously."

Police advise the complaint was received from the Ombudsman on February 12th 2002. Police confirmed Mr Fenlon was yet to be interviewed – over four months since the receipt of the complaint.

Mr Costa said the public should be assured the Ombudsman was overlooking the investigation.

Mr Costa said Commissioner Moroney had advised this unfortunate type of delay would be prevented in the future by the introduction of a Police Complaints case management system, in the coming months. Mr Moroney said it allowed for supervisor monitoring of complaint cases.

"I am committed to addressing the concerns of members of the public and police officers when they are raised with me," Mr Costa said.

"This includes Mr Fenlon, who has justifiable concerns about the delay from the commencement of the internal investigation.

"As I said yesterday, to the best of my and my staff's recollection, the issue of alleged falsification of knife searches was not raised with me on December 10th 2001.

"In any event, at this time the matter was being investigated by the NSW Ombudsman.

Police had advised of the following timeline in relation to these events:

15 November 2001 – Police Integrity Commission referred a complaint to the NSW Ombudsman.

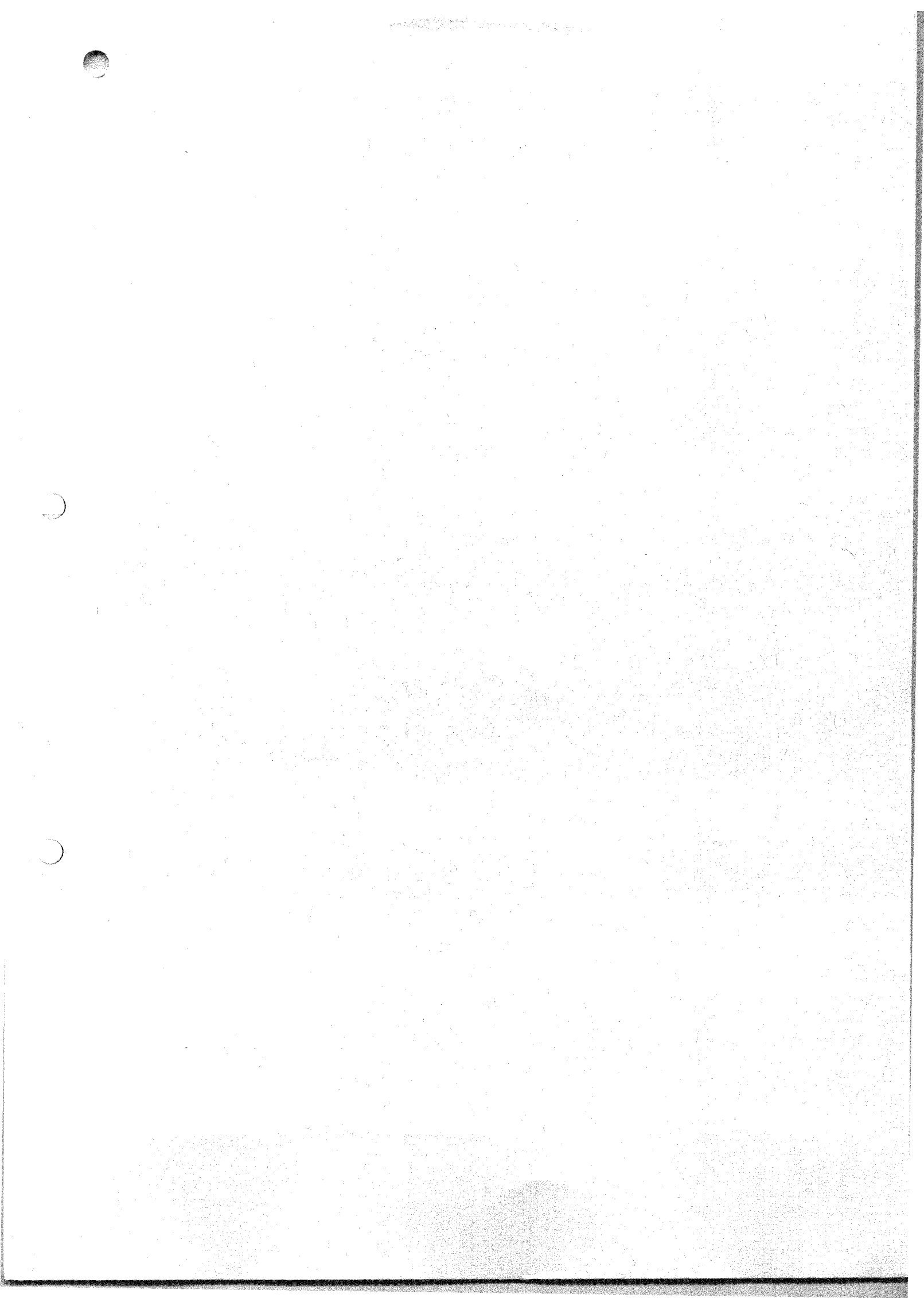
12 February 2002 – Complaint received by NSW Police from the Office of the Ombudsman, advising of the referral to police.

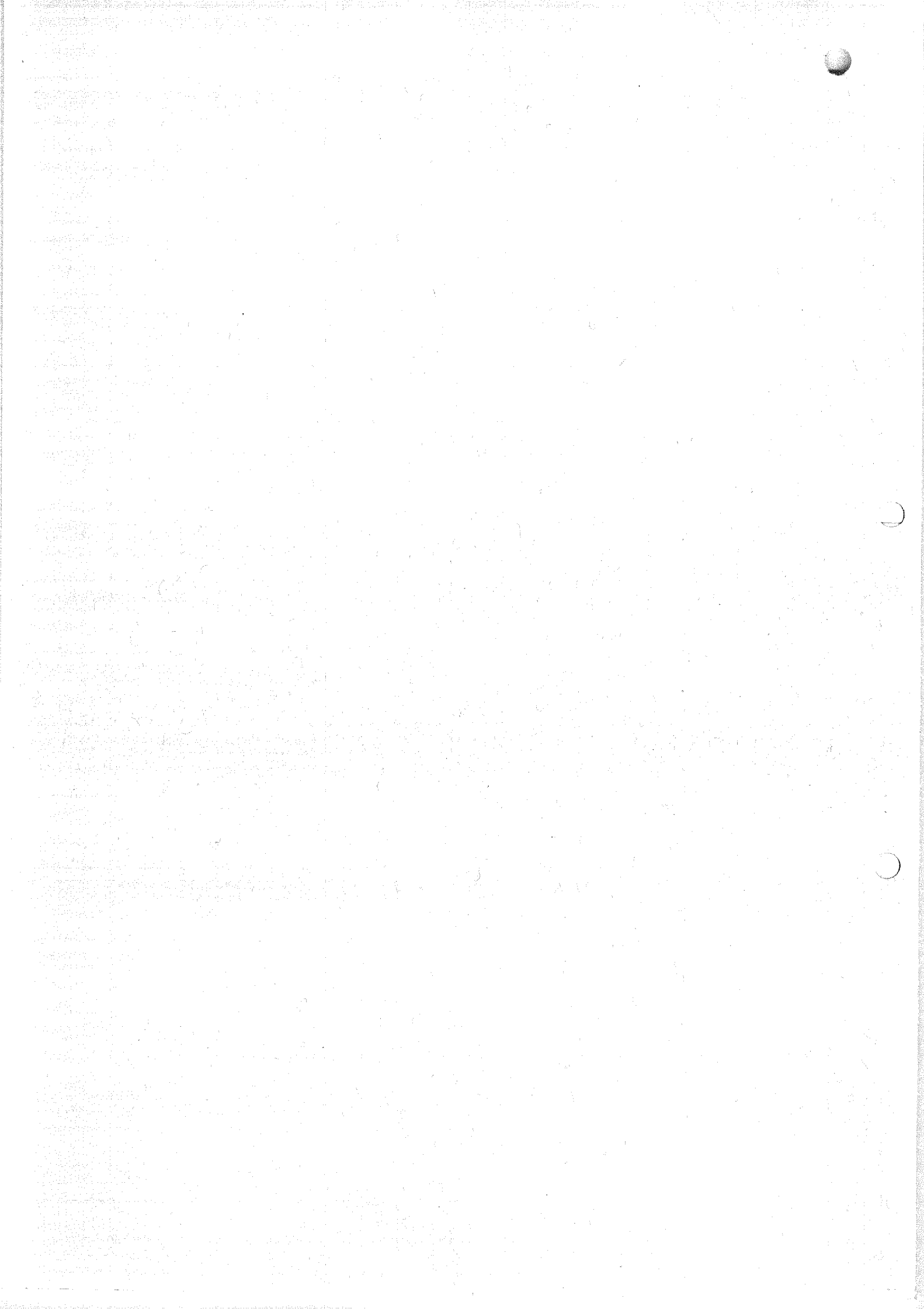
28 February 2002 – Complaint was referred to NSW Police Special Crime and Internal Affairs for consideration.

Mr Costa said he welcomed the referral of the matter to the Police Integrity Commission.

"When matters of this kind are raised by any member of the public, they should be referred to the PIC."

Contact: Josh Murray 0408 166 449





QUESTIONS WITHOUT NOTICE

KNIFE SEARCH STATISTICS

Page: 33

Mr BROGDEN: My question is to the Premier. Can the Premier explain why police whistleblower Mark Fenlon has not been formally interviewed six months after he met and raised concerns with the Minister for Police that statistics on knife searches were being falsified? Will the Premier refer this matter to the Police Integrity Commission for direct and immediate independent investigation?

Mr CARR: Anyone can make a reference to the Police Integrity Commission. The Leader of the Opposition can make a reference. The police constable himself can make a reference.

Mr SPEAKER: Order! I call the honourable member for Epping to order. I call the honourable member for Oxley to order.

Mr CARR: First of all, credit ought to be given to this Government for introducing the toughest knife laws in Australia. Credit ought to be given to the police of this State for using those knife laws to good effect. In fact, I am not aware of a single criticism from the Ombudsman of the way the police have used this significant accretion in police power. It is our Government which gave the police the power.

Mr Brogden: Why hasn't the whistleblower been interviewed?

Mr BROGDEN: Why don't you say something constructive for a change? Why don't you produce a single policy? How unedifying was it for the whole of the Parliament that last night—

Mr Brogden: Point of order: My point of order relates to relevance. I asked the Premier why whistleblower Mark Fenlon has not been interviewed six months after he met with the police Minister.

Mr SPEAKER: Order! There is no point of order.

Mr CARR: Wouldn't you think you would get a constructive policy from them on something? No wonder there was a remonstrance in Parliament last night between the chief of staff of the Leader of the Opposition and the member for Coffs Harbour with unprecedented scenes of conflict spilling into the very corridors of this Parliament. Even hardened veterans of parliamentary conflict going back to the time of Jack Lang were affrighted by what they saw in the corridors as the member for Coffs Harbour took it out on the chief of staff of the Leader of the Opposition. Enough of these distractions! Let's get back to the knife laws. Straighten it up, gentlemen, straighten it up! I am proud of the fact that we gave the police power to stop anyone on a street and remove a knife. In seven years in government the Coalition never contemplated giving police that power.

Mr SPEAKER: Order! I call the honourable member for Davidson to order. I call the honourable member for Oxley to order for the second time.

Mr CARR: We gave it to them, and without a single constructive thing to say about police powers the Leader of the Opposition is trying to discredit the law that we passed in this place. If anyone has got a complaint about the police they should go straight to the Police Integrity Commission. That is an independent body established—again, I might say, by this Government—to hear complaints about

anyone who thinks that anyone in the Police Service is doing the wrong thing. That is where someone aggrieved with police action should go with the relevant information and details.

It is remarkable that since this Government invested police with those powers, they have used those powers to good effect, with no criticism, to the best of my knowledge, from the Ombudsman about any infringement of civil liberties. Again the House will note that a negative, carping Opposition on the sidelines, without a single constructive policy on police management, is trying to discredit a very positive Government initiative that enjoys full public support.

Extract from the NSW Legislative Assembly Hansard of 20/06/2002 - Proof

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Last updated 21/06/2002.



Costa 'ignored' police on bogus knife searches

Stephen Gibbs

The Police Minister, Michael Costa, faces a public brawl with one of his own officers after denying that a whistleblower had warned him crime statistics were being faked.

Sergeant Mark Fenlon claimed yesterday his allegations that fellow police were inflating the number of lawful knife searches they conducted had been ignored by Mr Costa for six months.

In a letter to the Ombudsman dated last November, Sergeant

Fenlon alleged police had either been routinely recording "white" searches which never happened, or abusing their powers by searching citizens without "reasonable cause".

He made the same complaint based on his analysis of apparent inconsistencies in computer records to the Police Integrity Commission at the same time, but his yet to be formally interviewed by either agency, or by the police.

Sergeant Fenlon, who is on long-term sick leave, said he gave Mr Costa a copy of his allegations

during a meeting in late 2001. He said he was "astonished" to find that the Police Integrity Commission had not been alerted to the matter, and that the police had not been told of the allegations.

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While Mr Costa continued to

deny the allegations, he said he was "astonished" to find that the Police Integrity Commission had not been alerted to the matter, and that the police had not been told of the allegations.

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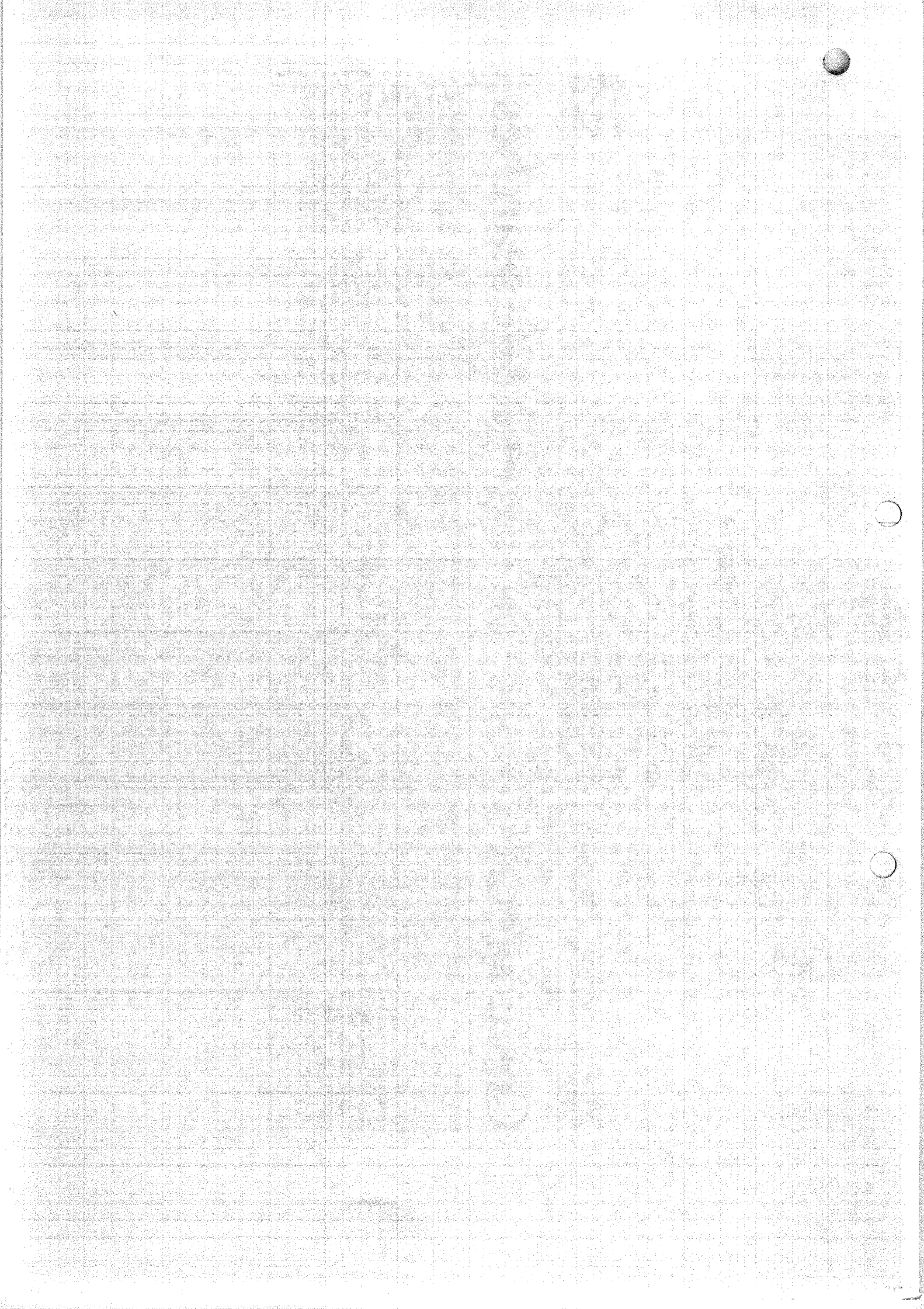
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I E A D I W H R O L W C I W D T H W T I W W T F B I A



Weighing true cost of violent robberies

By ANNA PATTY

Bad business

SMALL BUSINESSSES LOSE UP TO \$240 million a year as a result of violent robberies, according to a new report from the Australian Institute of Criminology.

The Australian Institute of Criminology (AIC) says that the cost of violent robberies to small businesses is estimated at \$240 million a year.

However, more losses were reported across the nation in 2007-08 than in 2006-07. The AIC says that the cost of violent robberies to small businesses is estimated at \$240 million a year.

Dr Natalie Taylor says that the small business crime statistics are the most comprehensive of crime statistics in Australia.

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Another small business crime statistics are the most comprehensive of crime statistics in Australia.

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Per cent of premises victimised by crime

Pharmacies: 67 per cent

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'I lock myself in now'

By ANNA PATTY

LANE Cove pharmacist Steve Mattani has been locking over his shoulder for months since his business was robbed.

An apparent customer walked into his business after closing hours, asking for a packet of Panadol. But instead of selling the man medication, Mr Mattani ended up being held at knifepoint.

"He came in asking for Panadol," Mr Mattani said. "But when I went to get it, he said, 'Forget the Panadol. I'll have your money.' It was pretty scary."

For a few months after that when I was walking back to my car, I was locking over my shoulder.

Since the robbery, Mr Mattani has im-

mediately drop sale.

He also makes a point of locking himself in the pharmacy after hours, instead of leaving the door unlocked as he used to.

"I'll always lock the doors now and I won't let anyone in that I don't personally know," he said.

The Australian Institute of Criminology found 58 per cent of robbery victims had experienced a fear of crime, not necessarily while at work.

Express security Steve Mattani in his Lane Cove pharmacy. Photo: MATTHEW WASELSON

ICAC to check on knife figures

The Independent Commission Against Corruption (ICAC) is to investigate the claims made by a former NSW Police officer that he was aware of a \$10 million worth of stolen goods.

The former NSW Police officer, who was dismissed in 2007, has claimed that he was aware of a \$10 million worth of stolen goods.

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Two cleared in Crowe case

Two men accused of the 2007 murder of a woman in a Sydney nightclub have been cleared of the crime by a jury.

The men, Phillip Anthony Cropper and Malcolm Brian Mercer, were found not guilty of the murder of a woman in a Sydney nightclub.

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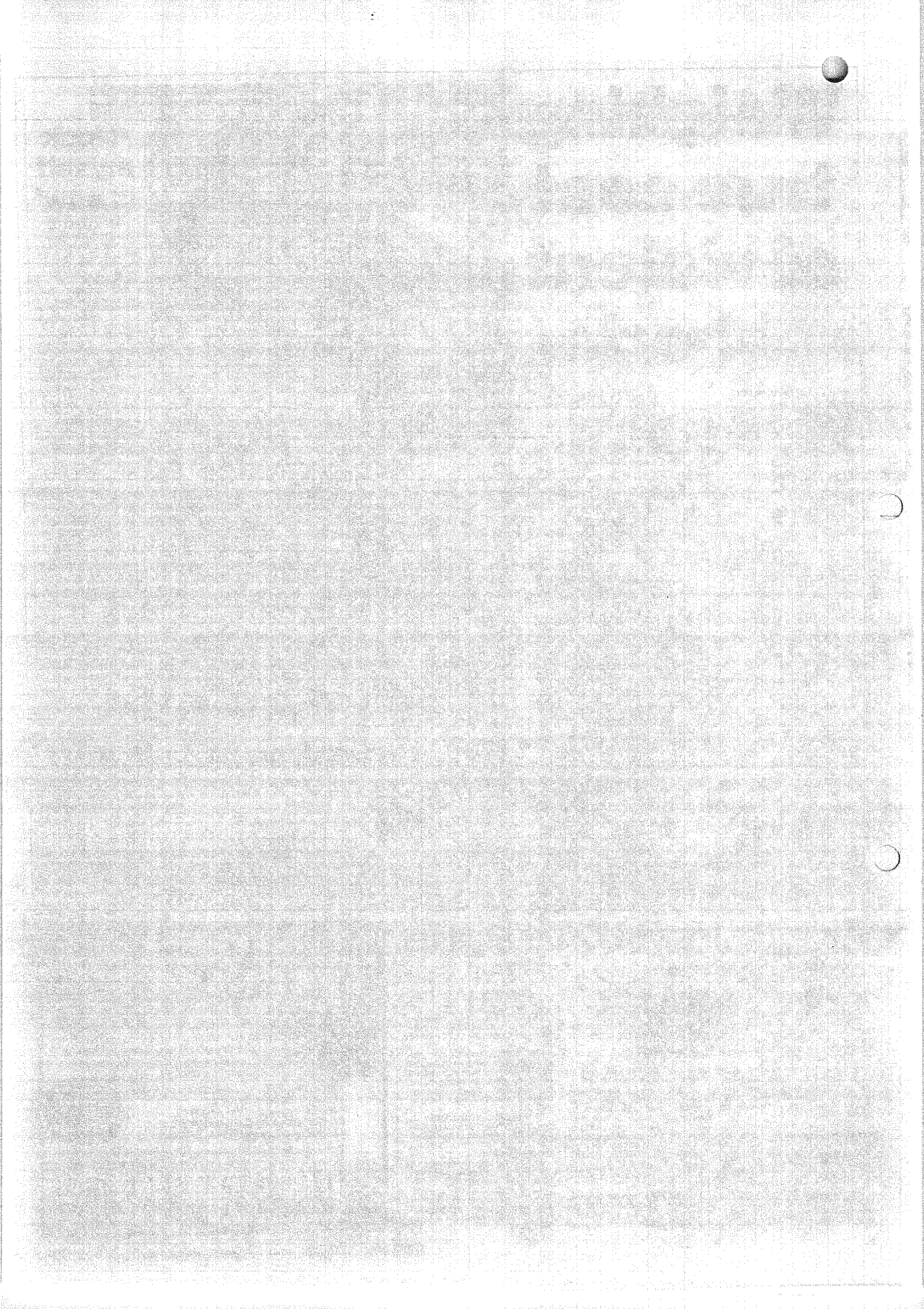
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Email puts Costa in the frame

Stephen Gibbs

Written evidence has emerged contradicting Michael Costa's claim he knew nothing about police falsifying crime statistics before the allegations became public.

As the Police Minister again denied being told six months ago that knife search figures were being inflated, correspondence from one of his own advisers suggests he was.

Police whistleblower Sergeant Mark Fenlon says he warned Mr Costa that knife search statistics were being "cooked" during a meeting on December 10 last year, and that the matter was raised again in January within the Police Minister's advisory council.

The former assistant commissioner, Geoff Schuberg, who is a member of that council, appears to confirm the allegations were discussed with Mr Costa.

In an email dated January 31, Sergeant Fenlon wrote: "Dear Geoff . . . I was wondering if you did raise the matter of 'cooked' statistics with the minister or commissioner during the advisory council meeting . . . and if you did what was the reaction?"

Two days later Mr Schuberg replied: "Yes, I did raise everything we spoke about at the council meeting . . . the minister suggested that the matters concerning 'cooked stats' should be dealt with by the commissioner."

On June 13, Liberal MP Mike Gallacher asked Mr Costa in Parliament: "Is the minister aware of an internal police complaint that senior police allegedly recorded searches in the computer-operated police system that never took place?"

Mr Costa replied: "I am not aware of what the Leader of the Opposition [in the upper house] is referring to".

Sergeant Fenlon has produced notes he says he took after his December 10 meeting with Mr Costa which say in part: "Crime stats complaint provided. Another example of the lies being told."

The Leader of the Opposition, John Brogden, said: "Mr Costa needs to come clean about what he was told."

False crime stats were 'the norm'

By JOHN KIDMAN
POLICE REPORTER

A POLICE officer has admitted falsifying knife-search statistics because of pressure from a commanding officer "on an almost daily basis".

The whistleblower is the second officer to come forward alleging that police records on knife searches have been inflated, as was revealed in *The Sun-Herald* last week.

It has also been revealed that the bogus recording of searches at some commands had become so farcical that officers drove past known offenders in patrol cars and recorded having frisked them for a weapon.

In other instances, beat police were allegedly sent out with instructions to meet a quota of 10 searches a shift.

Police Minister Michael Costa and Commissioner Ken Moroney issued a joint statement on Friday, saying they were dissatisfied with the time taken to investigate allegations of statistical fraud.

Fresh concerns have emerged over how senior police privately reacted to the allegations when they learnt of them four months ago.

Sergeant Mark Fenlon, the officer who first raised the allegations, said the NSW Ombudsman notified the NSW Police on February 12.

However, 18 attempts to get a response to the matter from police headquarters allegedly fell on deaf ears.

Following the stabbing of Man Wong, 32, as he walked home with his wife and baby daughter in Sydney's south on April 20, Deputy Commissioner Dave Madden said senior police were considering a range of options to control violent street crime.

These included proposing greater authority for police to stop and search people, but Mr Madden said NSW already had the strongest knife-search laws in Australia.

NSW Police reported 97,981 searches since July 1998 and said 15,706 knives were confiscated from people whose

Knife job on figures

Street cops accused of falsifying searches



Having a test for

SHARP END: From last weekend's *Sun-Herald*.

behaviour was "clearly suspicious and gave police reasonable cause", Mr Madden said.

"We will never know how many lives have been saved by police using these powers."

However, Sergeant Fenlon said he was told, less than 24 hours after Mr Madden made the remarks, that his complaint would be investigated by one of the State's most senior investigators, State Intelligence Commander Superintendent John Laycock.

But Sergeant Fenlon has not been interviewed.

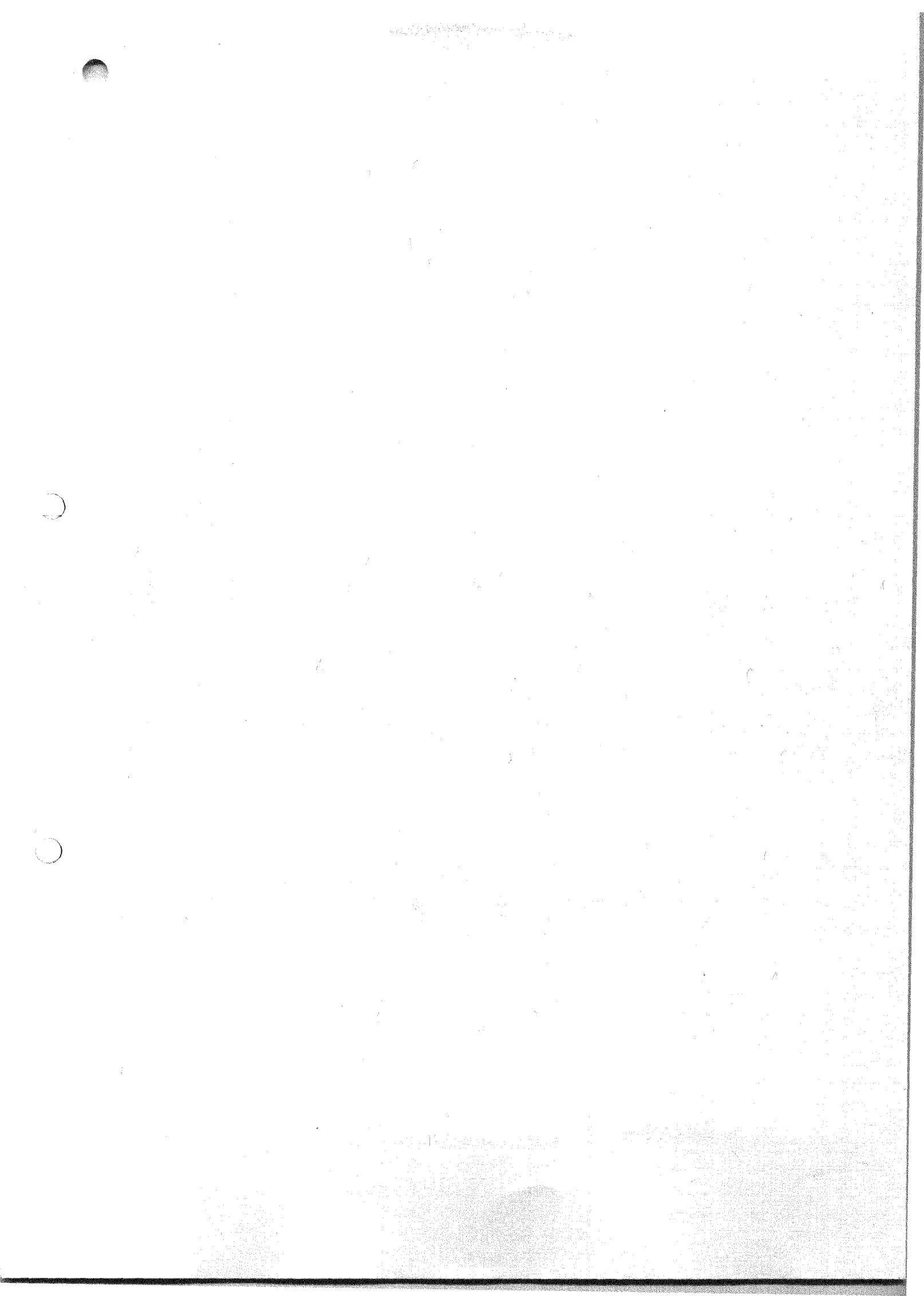
According to the second officer to come forward, who has asked not to be identified, the practice of completing fraudulent computer entries for knife searches, move-ons and intelligence reports was "commonplace and accepted as the norm".

"Other police records were used as a source of generating inappropriate and worthless intelligence reports" including next-of-kin documents, the officer said.

And one boss had pressed "junior members of his command to complete information reports which served little purpose other than drive up statistical returns".

The conduct was particularly prevalent just before official police performance meetings, known as Operational Crime Reviews, which were instituted by former commissioner Peter Ryan, the officer alleged.

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Mark Fenlon

From: Geoffrey Schuberg <gschuberg@hotmail.com>
To: <markfenlon@bigpond.com>
Sent: Saturday, 2 February 2002 8:03
Subject: Re: Latest information.

Dear Mark,

Despite what you may feel, I'm not that busy these days. Yes, I did raise everything we spoke about at the Council meeting. I also provided the Minister with a confidential briefing on other matters we spoke about on Tuesday. At the Council meeting the Minister suggested that the matters concerning 'cooked stats' should be dealt with by the Commissioner. The Minister also called for a briefing from the Commissioner on the role and value of Duty Officers. This information must be kept confidential as the Commissioner is paranoid about Council discussions being relayed to police, the community and the media. The Minister is right on side but Ryan isn't. He showed no interest in the matters I raised and gave no indication what, if anything, he was going to do about them. I have advised the Minister that he is being 'snowed' by experts. He knows that and wants to see me next week to discuss that and other changes he intends to make. I will go over the promotions situation again with him. The fact that we attended the OCR as observers was great as the Minister saw first hand what a farce the whole show is. I've never listened to so much bullshit in all my life, played out in front of a packed auditorium at the SPC. It was interesting to see Ryan's reaction later in the day when I raised the issues of 'The Sleeper', 'The Drinker', the 'Non Performer', the 'Crossword Player' and the 'Olympic Flame' (never goes out), all on \$100,000 a year. He just looked at the desk and showed no reaction - I think he just wants me to go away, like Richard and like AJ.

Best wishes, keep in touch.

Regards, Geoff.

Regards, Geoff Schuberg

>From: "Mark Fenlon" <markfenlon@bigpond.com>
 >To: "Geoff Schuberg" <gschuberg@hotmail.com>
 >Subject: Latest information.
 >Date: Thu, 31 Jan 2002 22:23:48 +1100

>
 >Dear Geoff, I must apologise for contacting you this way however I
 >neglected to get your phone number after the meeting on Tuesday.

>
 >Just a couple of things...

>
 >I was wondering if you did raise the matter of "cooked" statistics with the
 >Minister or Commissioner during the Advisory Council meeting..and if you
 >did what was the reaction? Also did you have time to ask the Minister if

>he had received any information from Brian Donovan as to when an interim
>PIC report on promotions could be expected.

>

>The second matter is quite important owing to information I received from
>Richmond (SCIA) this morning.

>

>He advised me that meetings had already taken place between representatives
>of Court and Legal Services and the HR Branch to discuss a management plan
>for the investigation/review of appointees to positions where a complaint
>had been received regarding their promotion.

>

>Given that Richmond advised me again this morning that there were literally
>hundreds of complaints on hand at SCIA concerning same, the significance of
>this action suggests the following:

>

>1) There are simply too many complaints for SCIA to handle and they are
>happy to relinquish responsibility for the matter.

>

>2) There is no intention on the part of the Police Service, to properly
>investigate those complaints (Court and Legal and HR dont have the
>resources or expertise).

>

>3) It can be sold to the Minister as a less radical and more cost effective
>approach to the problem and therefore is the most appropriate method of
>dealing with the issue.

>

>I am also very concerned in that it would undermine and make moot any
>recommendations that Donovan might make in his interim report regarding
>promotions.

>

>I have already spoken to Richard Kenna of the PIC and advised him of my
>concerns. He stated that he was not aware of this action by the Police
>Service and would bring it to the attention of Donovan today. To what end?
>who knows.

>

>If you have the opportunity to speak with the Minister let him know what is
>going on here..its important, I cant stress how important.. because if
>things are being handled by the Police Service as this suggests it will
>amount to a blatant cover up. The danger being that the Minister will
>again accept the path of least resistance based upon the worst advice.

>

>Ive discussed it with Richard and he agrees it cant be allowed to happen.

>

>By the way, you were right about Richmond...he told me himself. I think
>he's making the best of having the skids put under him but there was a hint
>of resentment along with the melancholy. He told me he planned on telling
>the Minister that the Police Service was not capable of policing itself and
>that he was sick of adverse findings against senior officers that end up
>going nowhere. Definately a disillusioned man and I cant help but wonder
>how the Minister might react to such a statement.

>

>I know you are busy but if you get the chance I'd appreciate a reply.

>

>Regards

>
>Mark.

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Mark Fenlon

From: Mark Fenlon <markfenlon@bigpond.com>
To: Geoffrey Schuberg <gschuberg@hotmail.com>
Sent: Saturday, 2 February 2002 1:17
Subject: Re: Latest information.

Dear Geoff, thank you very much indeed for your reply. I appreciate the efforts you are making. I know the breadth of the problems facing the Minister and the associated political/operational difficulties he must somehow overcome.

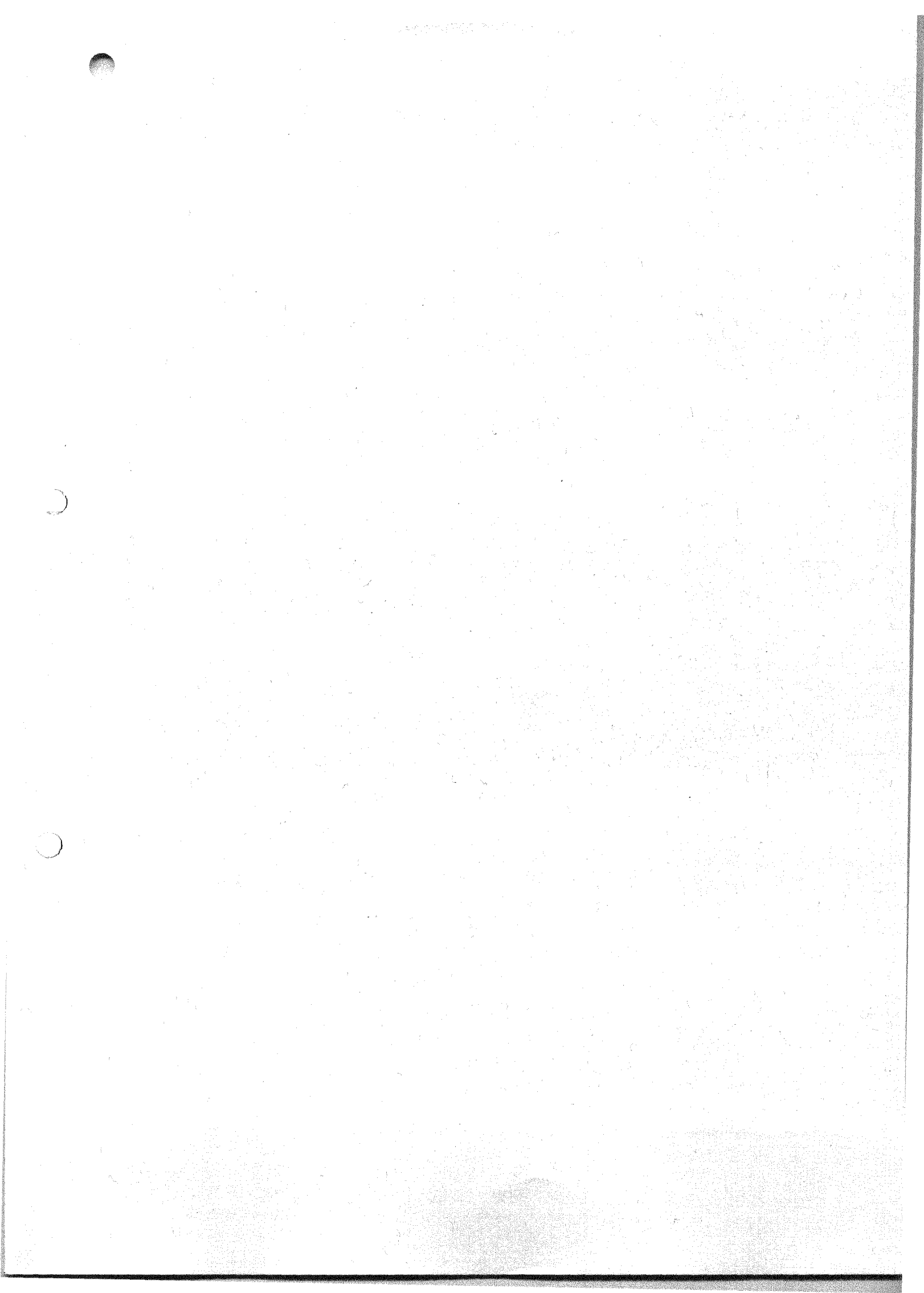
I truly am glad that he had an opportunity to see an OCR in operation and recognises what a farcical and worthless performance management tool it has been. Ryan must absolutely dread these meetings. I've no doubt that he must cringe inside everytime you have something to say..I can just imagine his reaction later at HQ in his efforts to seek out the "hienous individuals" responsible for leaking the information to you. He must absolutely be hating every minute of it..translating in his mind of course into a similar opinion of the messenger (you).

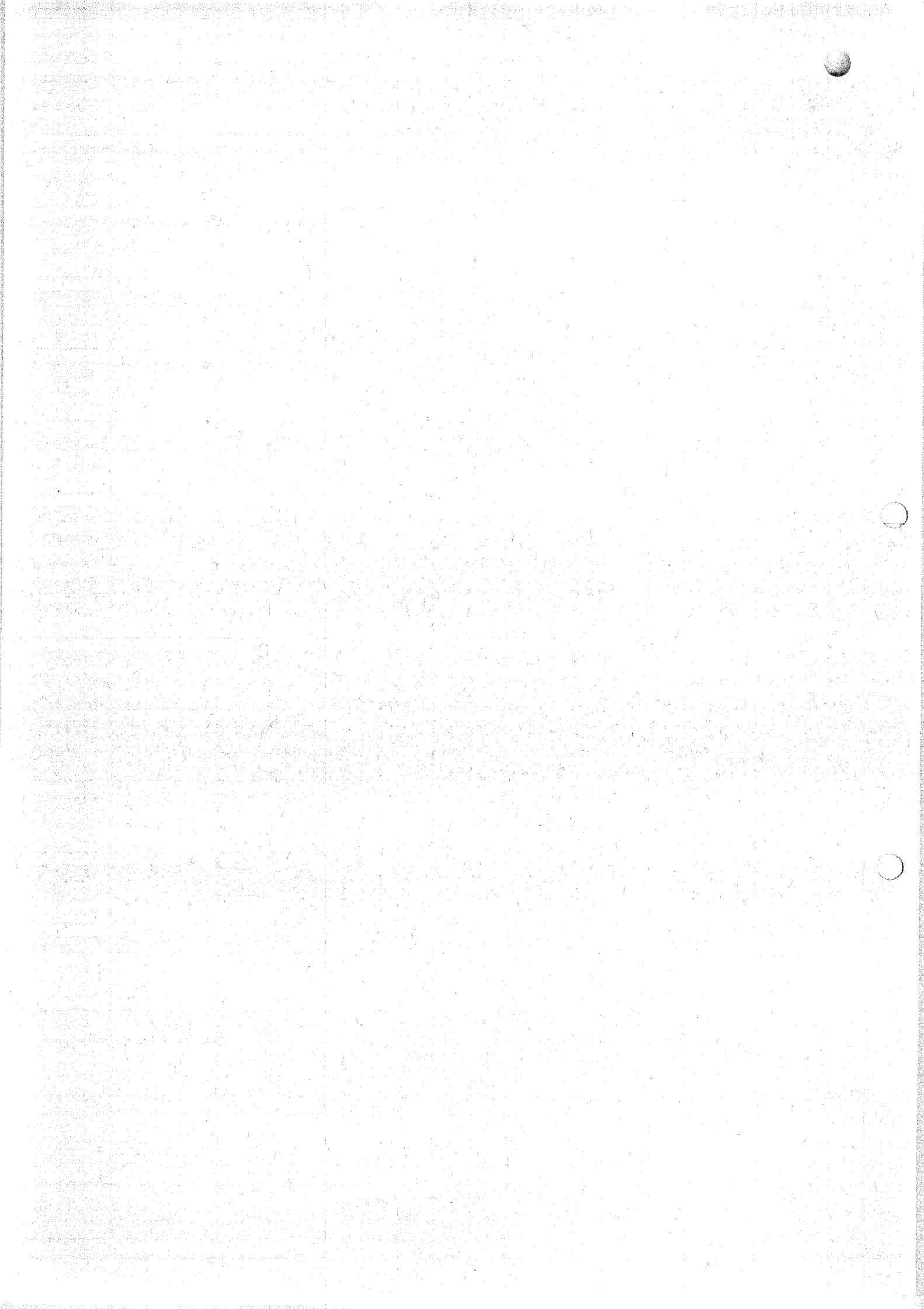
I will appreciate you raising the promotions issue again with the Minister next week. Its not too late for him to set things right but he is running out of time. I dont like playing politics...truth is I dont care who fixes the mess... just as long as someone does .. the half arsed measures taken so far just dont cut it for someone who's been pursuing the matter for over two years (me). You can only do your best, if he doesnt want to listen well..there's not much more you can do.

I meet the Ombudsman on Monday regarding the statistics matter, I will have to let Kinmond know that the Commissioner is now aware of it. I expect the investigation proper will start then. I'll let you know how it goes.

Thanks again for the reply and your continued efforts, they are very much appreciated.

Regards and best wishes, Mark.





Mark Fenlon

From: AUST, BERNARD <AUST1BER@POLICE.NSW.GOV.AU>
To: <markfenlon@bigpond.com>
Sent: Sunday, 8 September 2002 9:52
Subject: Disappointed

--- Received from NSWP.AUST1BER 0293395458

08/09/02 19:52 -----

Mark

Good evening. I am very sorry to hear about this and I must say that I do not know the result of the inquiry, I did not even know that it has been completed.

I shall show your e-mail to the CoP first thing tomorrow and no doubt shall be making certain inquiries. If you are correct it is even more astounding because the Ombudsman's

Office was a partner in this inquiry. Hopefully what you say is not correct - ever the optimist I suppose and if you are correct I will be disappointed yet again.

Try not to worry about all this, the quality of your life now is all important.

I shall be in touch again.

regards

Bernard Aust

From: markfenlon@bigpond.com
To: AUST1BER@POLICE.NSW.GOV.AU
Date: Sun, 8 Sep 2002 03:29:17 +1000
Subject: Disappointed

Dear Mr Aust, I received a telephone call earlier this evening advising me that personnel at Blacktown were already aware of the investigation outcome and recommendations arising from my complaint concerning the Police and Public Safety Act statistics. I am disappointed for a number of reasons not the least of which is that I had to find out from someone other than the investigator in charge.

I dont want to discuss what I've been told or how I feel about it (that is not the purpose of this email.) I just wanted to let you know that this is the sort of thing that sends a clear message to internal informants that there is little chance of change.

Mr Matthews contacted me three weeks ago to advise that he wanted to arrange a meeting involving the ombudsman to discuss the investigation outcomes personally with me as he refused to tell me over the telephone. I have waited patiently but without further contact from him. Now I find the information is already known to others, including the involved officers, yet

I have been told nothing.

I'm upside down at the moment. I've had to send an email to the ombudsman requesting information regarding the proposed meeting and a copy of the investigators report. I really dont know why because if it can be helped I dont want to involve myself any further in any of it. The truth is I just couldn't endure it again, it will destroy whats left of me. I'd been doing well and had started to put some of this nightmare behind me, then this happens and its like getting kicked when your down. Why?

I'm sorry to put this on your shoulders but this just isn't right. I hope you can assist me.

Regards,

Mark Fenlon

All mail is subject to content scanning for possible violation of New South Wales Police Service Electronic Mail Policy. All persons are required to familiarise themselves with the content of the policy located on the MEMO Bulletin Board and on the NSWPS Intranet.

----- 08/09/02 19:52 ----- Sent to
-> markfenlon@bigpond.com

This message and any attachment is confidential and may be privileged or otherwise protected from disclosure. If you have received it by mistake, please let us know by reply and then delete it from your system; you should not copy the message or disclose its contents to anyone.

Mark Fenlon

From: Mark Fenlon <markfenlon@bigpond.com>
To: Simon Cohen <scohen@ombo.nsw.gov.au>
Sent: Sunday, 8 September 2002 2:54
Subject: Complaint - Police & Public Safety Act

Dear Mr Cohen, I had telephone conversation with someone today who is apparently privy to both the findings and the recommendations arising from the investigation carried out by Insp Matthews concerning the statistics. This is alarming given that the source of the information is not an investigator on the task force. In fact the source of the information is located at Blacktown where both the outcome of the investigation and the manner in which it will be ultimately dealt with is apparently well known to all and sundry.

It has been 3 weeks since Mr Matthews spoke with me concerning the investigation. He told me that it was finished and was just waiting for some transcripts to be finished. He wanted to arrange a meeting involving your office as he wanted to discuss the investigation outcomes and recommendations with me in person. I pressed him of course but he refused. Yet apparently someone involved in the investigation has seen fit to disclose that information to personnel at Blacktown.

In brief, I've been advised that the complaint has been "blown out" as a cops system failure and it is being written off as such. Apparently everyone involved in the fraud will get to "walk" on that basis, including Mr Wales and Sims.

As I was expecting a meeting with Mr Matthews and yourself regarding this matter I would appreciate if you could advise me when it was likely to take place as you can no doubt understand my desire for the Police Force to confirm or refute the information I have received.

Prior to that meeting taking place I would like to be provided a copy of the investigation report and recommendations arising. I consider this most appropriate in order to ensure both transparency in the investigation and fairness to myself, in being afforded the opportunity to be fully conversant with the details of the matter prior to discussions.

I appreciate your assistance and await your response.

Regards,

Mark Fenlon

Mark Fenlon

From: Mark Fenlon <markfenlon@bigpond.com>
To: Simon Cohen <scohen@ombo.nsw.gov.au>
Sent: Thursday, 12 September 2002 1:45
Subject: Re: Complaint - Police & Public Safety Act

Dear Mr Cohen, I advised the Commissioner's office of my concerns also and received a telephone call from Mr Matthews as a result. He stated that with the knowledge and approval of your office, he had a meeting with Supt Wales, Sergeant Killen and the new crime manager at Blacktown. He stated that it was only to discuss the issue of future quality control of cops entries concerning the police and public safety act. He denied having discussed any of the investigative outcomes or proposed recommendations with any personnel at Blacktown.

Could you therefore advise me if your office was aware of that meeting taking place, whether approval was sought from and subsequently provided by, your office for that meeting to take place and whether a representative of your office attended the meeting or not.

I believe I have justifiable reason to remain concerned despite assurances by Mr Matthews. I have been advised (by my source) that a collective "sigh of relief" has been taken by a number of persons at Blacktown whom I nominated in my complaint.

My source indicated that

- 1) the issues of collusion/collaboration of parties at all levels of supervision/management to initiate and then maintain the fraud, will be avoided.
- 2) the poor supervisory practices will be attributed to incompetence of management rather than the unethical/corrupt behaviour of any individual or group.
- 3) involved persons will then be dealt with "managerially" for poor performance rather than face the prospect of more severe action.
- 4) inadequacies within the COP system will be determined as being the primary contributing factor which caused the problem.

Interestingly Mr Matthews during our conversation stated that some people, including myself, may well be dissatisfied with aspects of the investigation and its outcome. I will wait and see, however it appears at this time that I must prepare myself for the very outcome which I had predicted in my complaint in November last year.

As an aside, but equally disheartening, I see that Detective Sims has "walked" on his matters of unlawful access (latest police news). To me it is just another example of how ineffective the complaints and internal investigative systems are and simply re-inforces the beliefs of internal witnesses like myself.

I found your office's recent report to parliament on police complaints an interesting read also. I couldn't help but notice the absence of any reference to my complaints concerning police promotions and the police and

public safety act, despite their importance and their significance to the issues referred to in that report. To be honest though, at this stage of this personal nightmare of mine, I am neither surprised nor do I care much about it. I just want the nightmare to finish.

Thank you for your reply and I will await further advice in due course.

Mark Fenlon

----- Original Message -----

From: Simon Cohen <scohen@ombo.nsw.gov.au>

To: 'Mark Fenlon' <markfenlon@bigpond.com>

Sent: Wednesday, 11 September 2002 5:57

Subject: RE: Complaint - Police & Public Safety Act

> Dear Mr Fenlon

>

> I apologise for the delay in responding to your email. I note that you
> are concerned that the outcomes of the investigation are already well
> known within Blacktown LAC.

>

> At this time the Ombudsman has not been advised of the findings of the
> police investigation into your complaint. As you are aware, the
> Ombudsman has been monitoring the investigation, and my understanding
> was that the investigation is completed, but the analysis of all the
> material to arrive at findings and recommendations is presently in
> process.

>

> I have raised the concerns you outline in your email with Gary Parkin,
> the professional standards manager at Greater Metro Region. He has
> agreed to follow up your concerns and contact you directly with a
> response. Given that your concerns relate to the release of the
> investigation findings at this time, I think that Mr Parkin is well
> placed to discuss this matter with the investigators and respond to you.
> I have also asked Mr Parkin to contact me following his inquiries.

>

> This should ensure a quick and appropriate response. However, if there
> are further matters you wish to raise after speaking to Mr Parkin,
> please contact me, by email or by telephone on 9286 0953.

>

> Yours faithfully

>

> Simon Cohen

> Solicitor

> for the Ombudsman

>
>
>

> -----Original Message-----

> From: Mark Fenlon [mailto:markfenlon@bigpond.com]

> Sent: Sunday, 8 September 2002 1:55

> To: Simon Cohen

> Subject: Complaint - Police & Public Safety Act

>
>

> Dear Mr Cohen, I had telephone conversation with someone today who is

> apparently privy to both the findings and the recommendations arising

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> the investigation carried out by Insp Matthews concerning the

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> appropriate in order to ensure both transparency in the investigation

> and

> fairness to myself, in being afforded the opportunity to be fully

- > conversant
- > with the details of the matter prior to discussions.
- >
- > I appreciate your assistance and await your response.

- >
- >
- > Regards,
- >
- > Mark Fenlon

#####

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#####

Mark Fenlon

From: Mark Fenlon <markfenlon@bigpond.com>
To: Simon Cohen <scohen@ombo.nsw.gov.au>
Sent: Friday, 4 October 2002 6:10
Subject: Re: Update

Dear Mr Cohen,

It appears that you have misunderstood the purpose of my email. I am prepared to wait for the final investigation report. It was merely my intention to place on record concerns I entertain regarding the propriety of the police investigation should the information I have been provided prove substantially correct.

Since it is the responsibility of the NSW Ombudsman to oversight this investigation (to enure it is carried out with probity and integrity), I would expect your office to appreciate the impact this information may have upon one's perception of that investigation's integrity.

Should the information I have received from my sources prove to be incorrect or misleading then I would expect nothing further to be done.

If on the other hand, the information I have been provided does prove to be substantially correct, then it is not unreasonable to expect your office to take some action (at least by raising the issue) for it would clearly be the responsibility of the Ombudsman to do so.

At this time I do not wish to dwell further on the possibility of a breakdown in security surrounding the investigation or what that might entail regarding its impact upon the propriety of the investigation itself. As I said above, I am prepared to wait and see.

I do hope however, that given the circumstances, you can understand my degree of scepticism (misplaced though it may turn out to be). I don't trust the Police Force and for that express reason, I did not want them to conduct the inquiry in the first place.

Thank you for your response and advice but I consider it will serve little purpose to speak further on the matter with Mr Matthews until I have had an opportunity to read the final report myself.

Regards

Mark Fenlon

Police jobs inquiry points at top officers

By JOHN KIDMAN
POLICE REPORTER

A NUMBER of senior police officers have been implicated in the scandal that is engulfing the NSW Police Service.

The full extent of the allegations over the police promotion system can be revealed, as investigators prepare to begin NSW Police Minister Michael Costa's year-long inquiry.

More than 400 internal complaints of widespread corruption of the system are being investigated by a task force of detectives. A number of the State's senior officers have been named in the claims.

They relate to virtually every area of policing including the service's headquarters in College Street, Sydney.

Some of those identified are said to have passed on classified information to favoured job candidates. Others blocked the promotion of police who were not their friends.

Investigators are understood to have interviewed complainants in NSW, in connection with more than 300 such matters.

But concerns over whether they would ever be properly addressed prompted Mr Costa to launch a ministerial inquiry.

A range of documents, copies of which have been obtained by *The Sun-Herald*, allege that:

■ One of the service's best known commanders installed a family member in a sought-after posting.

■ Up to 10 officers under his command and known to have enjoyed close friendships with their superiors were also fast tracked into senior appointments.

■ Several of the State's most respected detectives were "tutored" by an officer who had inside knowledge of the

service's promotion assessment scenarios.

■ One high-profile officer attempted to bully and intimidate a detective who intended raising allegations of impropriety against a superintendent during a promotions appeal hearing.

A *Sun-Herald* investigation has also found that the relative of a senior commander allegedly used her maiden name during an interview at which he was a member of the selection panel.

Elsewhere, mid-ranking officers have been improperly appointed to better-paying, more prestigious administrative roles according to senior police sources.

One well-connected inspector was "plonked in the position of commander" - no advertisement, no expressions of interest, just good old mateship," one source said.

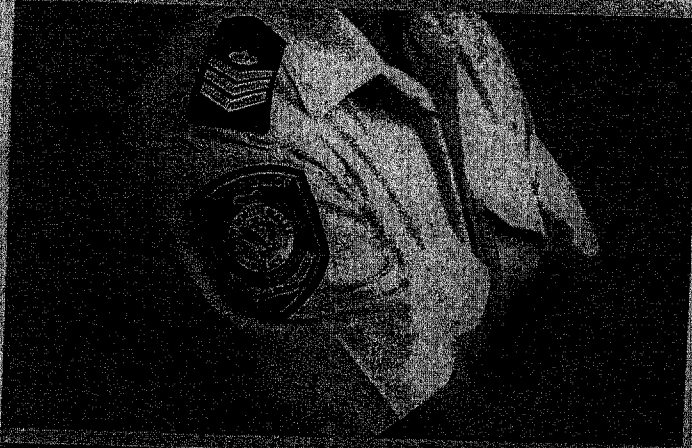
Other concerns have arisen about the career paths of at least two female employees said to be romantically linked to senior officers.

From all that, Police Union investigators are examining 420 complaints. One details the "preferential" appointment of six superintendents. Some jumped several ranks and pay rises in one hit.

"Evidence suggests that this not only happens [at this command], it happens at all of the regions and at all levels of promotion," the complaint author writes.

The inquiry committee will be chaired by former assistant police commissioner Geoff Schuberg. Officers aware of misconduct or corruption associated with police promotions will be urged to approach Mr Schuberg personally in a move designed to have him act as an investigative watchdog during the inquiry.

PROMOTING SELF-INTEREST



CASE ONE

TAKING CARE OF FRIENDS AND FAMILY

THE NSW Police Service has a long history of promoting officers based on their connections with senior officers. One such case is that of a superintendent who was promoted to a senior position in the service's headquarters in Sydney. The promotion was controversial because the officer had no significant experience in the area and was considered to be a "plonk" into the position. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

CASE TWO

THE RULEY ON THE PANEL

THE NSW Police Service has a long history of promoting officers based on their connections with senior officers. One such case is that of a superintendent who was promoted to a senior position in the service's headquarters in Sydney. The promotion was controversial because the officer had no significant experience in the area and was considered to be a "plonk" into the position. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

CASE THREE

THE DISGUISED WIFE

THE NSW Police Service has a long history of promoting officers based on their connections with senior officers. One such case is that of a superintendent who was promoted to a senior position in the service's headquarters in Sydney. The promotion was controversial because the officer had no significant experience in the area and was considered to be a "plonk" into the position. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

CASE FOUR

FORGER IN UNIFORM

A female officer who went for promotion to a senior position in the NSW Police Service was found to have falsified her academic record and presented it as her own. The officer was caught out by another candidate for the same job. The officer is then said to have submitted the false credentials to the Government and Related Employees Appeal Tribunal.

...the senior commander who had a strong influence over the promotion process. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

...the senior commander who had a strong influence over the promotion process. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

When the officer attempted to take the matter further during the hearing, the commander refused to give evidence. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

Repeated attempts to have the matter considered for promotion were rejected.

...the senior commander who had a strong influence over the promotion process. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

When the officer attempted to take the matter further during the hearing, the commander refused to give evidence. The officer's promotion was based on his close relationship with a senior commander who had a strong influence over the promotion process.

The matter was reported to Police Internal Affairs. Although she was found to have repeatedly lied about the apparent fraud, her punishment was a return to general duties rather than a position in a specialist area.

An investigative recommendation to dismiss her from the service was rejected for unexplained reasons.

Worst is over

SYDNEY has seen the worst of the current cold snap, weather experts predicted last night.

The Bureau of Meteorology's five-day forecast for NSW said the howling south-westerly winds would ease today.

Most areas would remain dry but temperatures would not rise above 17C until Tuesday.

By Wednesday, the majority of the State could expect fine weather with temperatures back up to a healthy 19C.

Snow was continuing to fall in most NSW snowfields last night. All lifts were open and resorts expect a bumper week when the winds die down.

Weather: Page 67

Boy, 3, mauled

A TODDLER suffered severe lacerations to his face when he was attacked by a dog in a public park yesterday.

Liam Baxter, 3, was playing in the park near his house in Willoughby, near St Mary's in Sydney's west, when the attack occurred about 3pm.

"I heard Liam screaming," his grandmother, Isabel Simpson, said last night.

"When I ran out I saw him covered in blood."

The boy was rushed to Nepean Hospital where he underwent surgery late last night.

Mrs Simpson said she had not seen the attack but believed a bull terrier was responsible.

Spit chaos

SPIT Bridge refused to close properly yesterday afternoon, causing traffic chaos on both sides of Middle Harbour.

Traffic was diverted on both sides of the bridge for more than two hours as electricians tried to fix an engine which allows the bridge to open and close for water traffic.

The Spit Bridge, which opens 11 times a day on week-ends, opened normally about 2pm yesterday but witnesses said it took more than 30 minutes for the upright section to come down to within a few metres of its usual place.

The PDA, which is responsible for the operation of the Spit Bridge, will investigate the cause of the failure.

Band setback

DANIEL Johns's battle with reactive arthritis has forced Silverchair to further delay the release of its latest album *Diorama* in the US.

Despite cancelling live shows in Sydney, New York and London earlier this month due to Johns's inability to play or even hold his guitar, a statement at the time from Silverchair's local label Eleven/EMI said plans for *Diorama*'s global release in July "remain unchanged".

However, the band's US record label Atlantic has now rescheduled the album's release from July 9 to August 27 to allow Johns more time to recover.

More benefits,
not less.

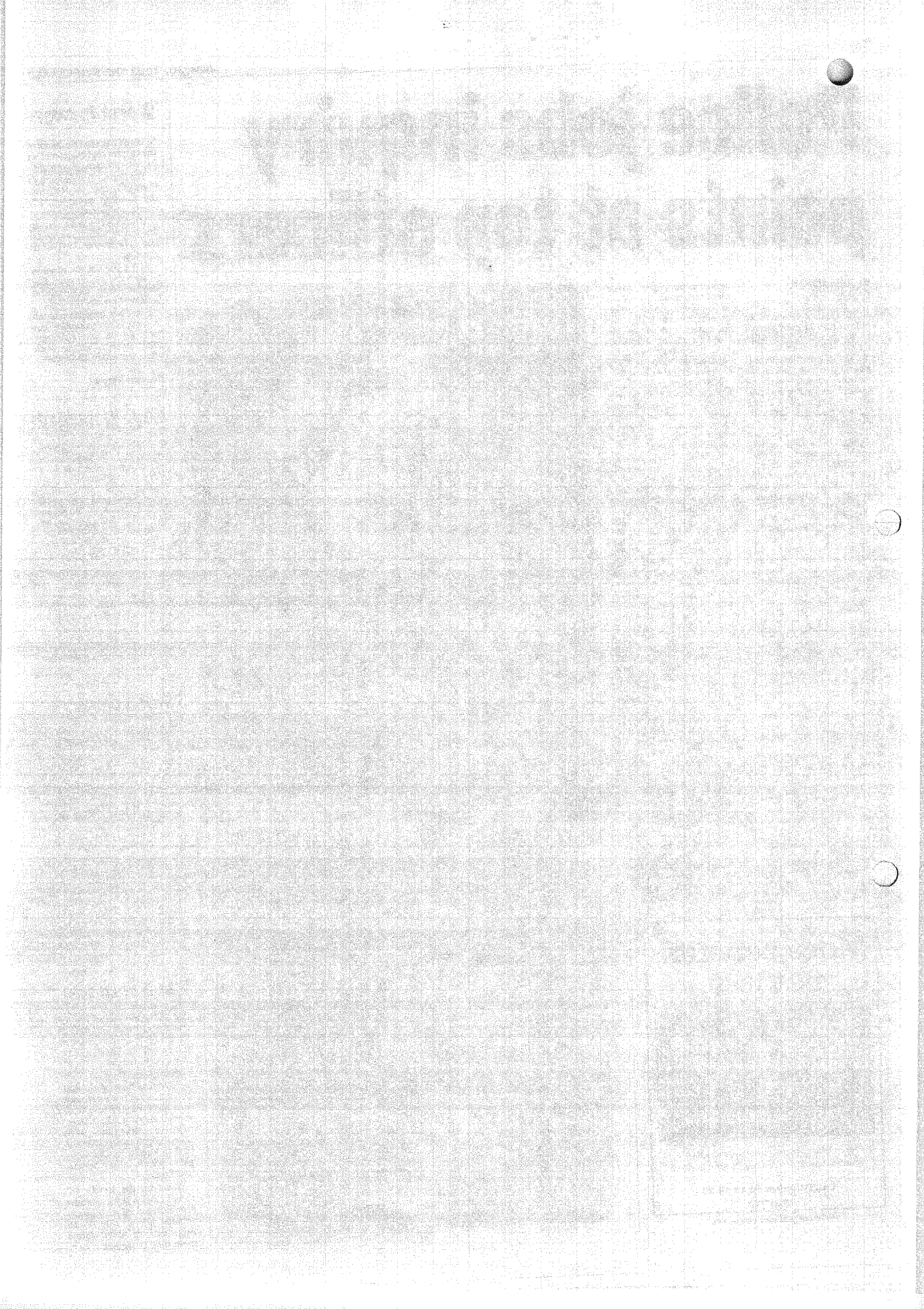
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The Chairman
Committee for the Police Integrity Commission and the NSW Ombudsman
Parliament House
Sydney

Dear Sir,

You would be aware of current investigations being undertaken by the Police Integrity Commission regarding the Police Service promotion system, referred to by the Commission as Operation JETZ.

Whilst it may appear that the actions of the Commission are appropriate and timely, documentation I have on hand establishes beyond doubt that the Commission was aware of fundamental integrity failings of the Police promotion system as early as June 2000 and did nothing.

I can prove beyond doubt that the Police Integrity Commission had information at that time concerning promotions corruption which it failed to act upon. I can prove that by failing to act upon the material provided, the Commission allowed the corruption of Police promotions to continue unhindered when it clearly had the opportunity and an obligation under Section 3 of the Police Integrity Commission Act, to prevent such corruption from continuing.

I recently met with both the Minister of Police, Michael Costa and Mr Brian Donovan of the Commission and discussed my concerns regarding the current inquiry into the Police promotion system. One of those concerns being the failure of the Commission to act upon my complaint of June 2000 and the consequences arising from that failure to act. The significance of the issue was no doubt appreciated by both gentlemen as one of real and potential public embarrassment for both Government and the Commission.

Some years ago the Police Royal Commission identified that the future integrity of the Police Service relied upon a corruption resistant promotion system. Clearly the promotion system that was introduced and continually endorsed by the Police Service not only failed to satisfy this fundamental reform, it has had the opposite effect, providing a perfect environment for corruption to flourish within the Police Service.

It was incumbent upon the Police Integrity Commission to ensure that this could not happen, however it chose to ignore the matter. It chose to dismiss the risk and to dismiss the consequences for the future integrity of the Police Service. It has failed in its responsibility to the community of this State and it now must be held accountable.

2.

There can be little doubt, given the evidence revealed at public hearings at the Commission, that the practice of promotion corruption within the NSW Police Service exists, is widespread and dates as far back as 1998. It should be further enlightening to your Committee that the type and form in which the corruption of the promotion system has taken place, was identified and brought to the attention of the Commission by myself in June 2000. The evidence revealed at those hearings provide irrefutable and direct evidence supporting my allegations concerning the Police Integrity Commission in this matter.

I am further disturbed that the current inquiry into police promotions corruption was announced as being the result of a joint investigation involving the Police Integrity Commission, the NSW Crime Commission and the NSW Police Special Crime and Internal Affairs (S.C.I.A.) Branch. Of particular concern is that the S.C.I.A. investigation into police promotions corruption, code named ORWELL, did not commence until April, 2001, confirming that the Police Integrity Commission did not entertain any interest in the matter before that time, as indeed was the case.

It should be noted here that the S.C.I.A. investigation was undertaken by the Police Service only as a consequence of pressure from myself through the NSW Ombudsman. It was in fact as a result of a meeting between myself and Mr Gary Richmond of S.C.I.A. at the Ombudsman's office in April, 2001, together with media attention regarding the matter, which provided the catalyst to commence ORWELL and the subsequent announcement of a joint investigation involving the Police Integrity Commission.

Further, the dates of the video evidence presented at the Commission's JETZ hearings suggests that the evidence obtained regarding promotions corruption was in fact obtained by chance rather than design. In fact I strongly suspect that it was merely "happened upon" during covert investigations into allegations of drug and extortion rackets involving Police. It is clear that there was in fact no investigation, ongoing or otherwise into police promotions corruption by the Police Integrity Commission prior to April 2001 and the current investigation only eventuated as a consequence of the Commission being confronted with this unexpected but irrefutable evidence of its existence.

My efforts to have the corruption of the police promotion system investigated appropriately and in detail by those agencies legislatively responsible for such investigations, commenced in August 1999 with a formal complaint through S.C.I.A.

The Police Service sought to ignore the issue and the complaint was not appropriately investigated. This led to my reporting the matter to the Police Integrity Commission in June 2000 where it was again ignored until circumstances beyond the control of the Commission made it necessary to reluctantly commence an inquiry some ten months later.

3.

Given that I have been advised by the Commission that I will not be called to give evidence regarding the failure of the Police Service to act appropriately in response to the concerns I raised in 1999 regarding promotions corruption, I must view this position as an attempt by the Commission to protect members of the senior executive of the Police Service from public exposure of their gross mal-administration in the matter, in particular the Commissioner of Police.

I am concerned regarding the relationship between the Commissioner of Police and some members of the Police Integrity Commission, which given recent circumstances could be perceived as mutually supportive and protective.

As a member of the Police Service and as a member of this community, I have certain expectations regarding the functions of the Police Integrity Commission, primary among them is that the Commission will investigate matters of significant systemic corruption, effectively, without delay and without fear or favour.

The Police Integrity Commission has failed to do so in this instance and those ultimately responsible must be brought to account.

When one considers the impact that a corrupted police promotion system has had upon the effectiveness and well being of the Police Service since its introduction, the gravity of this complaint should be quite apparent. When one considers that such damage could have been minimized or indeed avoided had the Commission acted appropriately, the degree of culpability of the Commission in the matter cannot be overlooked.

I understand that the function of your Committee is to oversight the operation of the Police Integrity Commission and conduct inquiries regarding that organization's operation. I submit that this is a matter of such gravity that it calls for such an inquiry and request that urgent action be taken to initiate same at the earliest opportunity.

I am of course prepared and expect to be called as a witness during such an inquiry and will make available all information concerning the matter within my ability to provide.

Mark Fenlon
Sergeant
NSW Police Force
30 January, 2001

Home Contact:
9 Welland Close,
Jamisontown NSW 2750
02 47312684
0422059465



COMMITTEE ON THE OFFICE OF THE OMBUDSMAN
AND THE POLICE INTEGRITY COMMISSION

11 April 2002

Mr Mark Fenlon
9 Welland Close
Jamisontown 2750

Dear Mr Fenlon

I refer to your correspondence dated 30 January 2002.

The Committee considered your correspondence at its last deliberative meeting and resolved to refer it to the PIC Inspector, in accordance with s.89(2) of the *Police Integrity Commission Act 1996*, requesting him to investigate the matters you have raised concerning the conduct of the Police Integrity Commission and its officers.

The Committee will review your allegation in light of the Inspector's inquiries and write to you again.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Lynch'.

Paul Lynch MP
Chairperson



**Inspector
of the
Police Integrity Commission**

17 April 2002

RefNo. C08/02AC

Sergeant Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

Dear Sergeant Fenlon,

RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

I have today, 17 April 2002, received a letter from Mr Paul Lynch, the Chairman of the Committee on the Office of the Ombudsman and the Police Integrity Commission, dated 11 April 2002, referring a complaint by you against the Commission with a request that I exercise my powers to investigate your allegations concerning the Commission and the conduct of its officers.

The Committee's letter enclosed your three page letter to the Committee dated 30 January 2001 (I shall assume unless you advise otherwise that this was a typographical error and that it was intended to be dated 30 January 2002).

I would like you to understand the statutory role of this office. For this purpose I enclose a copy of a brochure entitled "*Making A Complaint To The Inspector*". You will see that the Inspector's role, as there described, is as follows:

"The position of the Inspector of the Police Integrity Commission (the Inspector) derives its authority from the Police Integrity Commission Act 1996 (the Act). However, the role of the Inspector is quite separate from that of the Police Integrity Commission.

The Police Integrity Commission (the Commission) is a statutory body primarily responsible for the detection, investigation and prevention of serious police misconduct and corruption in New South Wales and to complete the work of the Royal Commission into the NSW Police Service.

On the other hand, the Inspector's duty is 'to investigate complaints against the Commission's staff, to audit its operations, effectiveness and compliance with the law' and to report to the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission.

The Act provides that 'the Inspector is not subject to the Commission in any respect'. The Inspector is required to report annually to Parliament and make Special Reports on any matters affecting the Commission or on any administrative or general policy matters relating to the functions of the Inspector."

You will also see the reference to one of the principal functions of the Inspector being (Section 89(1)(b)):

"to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission".

You will note the postal and email addresses, and phone and facsimile numbers of this office, also appear at the bottom of the front page of this letter. You will see that the brochure includes the paragraph:

"Complainants should state clearly the complaint being made and be as detailed as possible. Copies of all relevant correspondence and documents in support of the complaint should be attached."

Whilst I am forwarding a copy of your letter of 30 January 2001 (sic) to the Commission for its response, I shall also advise the Commission that I am seeking from you the further and better particulars below.

To ensure that I fully understand the gravamen of your complaint please provide me with the following further and better particulars:

1. State precisely what are your complaint of *"abuse of power, impropriety or other forms of misconduct on the part of the Commission or any identified officer of the Commission"*?
2. What are the facts and circumstances relied upon by you in support of each complaint stated by you in answer to the request in 1. above?

I would ask that you supply such further and better particulars within 14 days of this date. Please note however that I shall readily extend the time for such reply on any reasonable request you may find necessary to make.

On receipt of such particulars I shall seek the Commission's response to your complaints. I shall also access the electronic records of the Commission as may be necessary. Should you be relying upon any conversation you say you have had with an officer of the Commission, kindly identify precisely the date, time, and place of such alleged conversation, identify those present, and set out in full the conversation you allege there took place.

On receipt of the Commission's response to your allegations I shall forward a copy to you so that you in turn may have the opportunity to reply to any material in that response.

I shall also advise you at that stage how I propose to proceed with my preliminary investigation.

Yours sincerely,

The Hon M D Finlay QC
Inspector of the Police Integrity Commission

Encl. Copy of brochure entitled "Making A Complaint To The Inspector".



NEW SOUTH WALES

**Inspector
of the
Police Integrity Commission**

6 May 2002

Ref No. C08/02AE

Sergeant Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

Dear Sergeant Fenlon,

RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

By my letter of 17 April 2002 I advised you that, at the request of the Committee on the Office of the Ombudsman and the Police Integrity Commission, I was exercising my powers to investigate your allegations concerning the Police Integrity Commission (the Commission) and its officers.

Your enclosed three page letter to the Committee dated 30 January 2002 appeared to call for an investigation of the alleged failure of the Commission to appropriately investigate your complaint of *"the corruption of the police promotion system"*. To ensure that I fully understood the gravamen of your complaint I asked that you provide me with further and better particulars including:

1. **State precisely what are your complaint(s) of "abuse of power, impropriety or other forms of misconduct on the part of the Commission or any identified officer of the Commission"?**

In your recent reply, dated 23 April 2002 and received in this office on 1 May 2002, you set out 13 paragraphs of allegations in your response to that particular request.

It is essential for an investigation to have a clearly identifiable issue.

You will understand that open ended and imprecise complaints do not lend themselves to be dealt with by constructive and helpful investigations under Section 89(1)(b) of the *Police Integrity Commission Act 1996* (the Act). An example of such an imprecise complaint is your first allegation which reads:

"I allege that the Police Integrity Commission failed to take appropriate and timely action to prevent the emergence of serious systemic corruption within the NSW Police Service".

On the other hand, several of your paragraphs focus appropriately on what I understand to be central to your complaint. For example, paragraph 4 refers to:

"The substance of my complaint dated 1st June 2000, demonstrated evidence of a failed policing reform (the promotion system) introduced by the then Police Commissioner Mr Ryan (in response to a Royal Commission recommendation) ...".

In turn, your original complaint to which you refer dated 1 June 2000, and which you helpfully annex as Annexure 59, commences:

"I request that a thorough and independent investigation be carried out under Section 14(A) of the Police Integrity Commission Act into the processes and procedures concerning the promotion system for duty officer positions currently in place within the NSW Police Service.

Of concern is that the system in place has, by its nature, failed to provide a corruption resistant process for promotion ...".

And again at page 5:

"I have done all that is possible within the legal constraints placed upon me thus far and now I must entrust to you my faith in conducting a thorough investigation into the issues I have raised regarding the Police promotional system so that some meaningful change will be brought about" (emphasis added).

Paragraph 7 of your allegations refers to *"Promotions corruption"*.

Paragraph 8 of your allegations refers to *"Further investigations of corruption and impropriety concerning the Police promotions system"*.

Paragraph 9 of your allegations refers to certain investigative methods not being employed against senior police nominated *"as having engaged in corruption concerning the promotions system"*.

In Paragraph 10 you allege *"That the Police Integrity Commission has insistently and systematically failed to address evidence of systematic corruption concerning the Police promotions system and other matters through a process of continually declining to investigate allegations of promotions corruptions involving senior police"* (emphasis added).

Such references would appear to fall within the broad allegation of failure of the Commission to appropriately investigate your complaint of *"the corruption of the Police promotions system"*.

I also note that your 10 page written submission (helpfully annexed by you as Annexure 13) accompanying *"Interview with Police Integrity Commission on Monday 22 October 2001"* commences:

"I am aware that you are in possession of all relevant documentation surrounding my original complaint concerning the Police promotion system and further documents which demonstrate beyond doubt what can only be considered gross maladministration by Senior Executives of the Police Service in the matter" (emphasis added).

I note such written submissions conclude:

"CONCLUSION AND RECOMMENDATIONS"

It would appear that the final paragraph of my original complaint in 1999 has been prophetic. My complaint has indeed been subjected to neglect, incompetence and dishonesty by any number of individuals and authorities who have come into contact with it. All of which have only served to further my resolve not diminish it. Through their actions, those involved have simply exacerbated their culpability.

It should be quite apparent that this complainant and the issues being pursued will not be going away. I believe I have demonstrated a degree of patience and persistence which, although unusual, are appropriate given the seriousness of the subject matter. Furthermore I know I am right, regardless of how many or how powerful my detractors may be. More importantly I am gaining support.

The Police Integrity Commission must include an additional term of reference within the current 'JETZ' inquiry.

That term of reference must be sufficiently broad to include a public examination of the promotional system, the circumstances surrounding my complaint, the examination of all parties involved regarding their knowledge and actions, the investigation codenamed 'Radium' including its findings and recommendations and all other related matters.

The aim of such inquiry being to expose the gross corrupt/unethical and/or incompetent management practices surrounding the issue, identify and attribute culpability to those individuals responsible and arrive at appropriate recommendations.

In regard to possible recommendations arising from a public inquiry into the promotion system, I re-iterate those made in previous correspondence to the Police Integrity Commission.

- 1) *To ensure the destruction of all corrupt/quasi-political networks established and entrenched since the introduction of this promotional system, all promotional appointments made must be immediately rescinded.*

Whilst this action will have both a de-stabilising effect on the Service and be accompanied by imminent civil litigation from persons affected, the potential risk to the Police Service and the community by allowing the status quo to be maintained, far outweighs these considerations. Whether such action would necessitate the introduction of a bill in Parliament then that action must also be taken.

- 2) *A promotional system incorporating written examinations, relevant experience and minimum tenures on rank, must be developed and operated by an agency external to the NSW Police Service.*

This process must be devoid of input and influence from the NSW Police Service and from the NSW Police Association. Self-serving individuals within both organisations must not be given another opportunity to influence decisions regarding appointments".

It appears to me that the allegations under these specific paragraphs which I have set out above would be most helpfully dealt with as an investigation **into the alleged failure of the Commission to appropriately investigate your complaint of "the corruption of the Police promotion system"** (emphasis added).

That is the issue which I propose this office investigate unless you can provide me with good reason otherwise.

Let me take up one other matter of concern to me. You write on page 5 of your letter, dated 23 April 2002:

"I have been advised by several other police officers (who have also reported matters concerning inaction by the Commission on their complaints to you), that your powers are apparently limited in terms of conducting investigations and that even should you establish adverse findings regarding particular complaints, any recommendations you may make to the Commission arising from an inquiry, may effectively be ignored by the Commission. I have in effect been advised that the Commission is a "law unto themselves" and is not accountable to anyone.

If this is true, then I regret that both my efforts in making this complaint and indeed yours in carrying out an investigation will ultimately prove pointless towards attributing some accountability for actions within the Police Integrity Commission or indeed effecting any worthwhile change to the Commission's operation."

First. Any belief that this office has inadequate powers to conduct investigations or that its ensuing recommendations may be ignored with impunity is erroneous and can only be made by someone without knowledge of the Part 6 and of Part 8, Division 2, and Part 9 of the Act.

Second. You refer to Police officers *"who have also reported matters concerning inaction by the Commission on their complaints to you"* (emphasis added). For this to make any sense to me please identify any such complaints to me as I am quite unaware of the matters to which you apparently refer.

You may be assured, Mr Fenlon, that the holder of this office shall carry out its legislative functions to the best of the Inspector's ability in dealing with your complaints.

In answer to my request for further and better particulars in the paragraph numbered 2, ie. *"what are the facts and circumstances relied upon by you in support of each complaint stated by you in answer to the request in 1. above, you provided your answers from page 3 of your letter of 23 April 2002 under the heading "In regard to Issue 2"*.

As to your answers *"In regard to Issue 2"* please provide me with the following:

- a) (i) You say that you have in your possession an audio recording of a meeting which took place between yourself and Mr Gary Richmond (then Commander of Special Crime and Internal Affairs) which took place in the NSW Ombudsman's office on 4 April 2001. You also made reference to some matters in that interview. Do you have a transcript of the audio recording of that meeting? If so, kindly provide a copy to me. I would wish to read this, and if necessary listen to the audio recording before determining what matters I may wish to ask of Mr Richmond.

(ii) Please advise the full name and present residential address of Mr Gary Richmond.

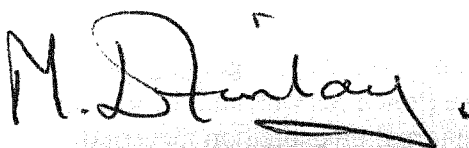
- b) You say *"I also wish to advise of a meeting which took place on 13 December 2001 at the Commission between myself, Mr Brian Donovan and Mr Richard Kenna. Both Mr Donovan and Mr Kenna made copious notes during that meeting which lasted almost two hours. During that meeting I made it quite clear that I held the Commission to be culpable as the New South Wales Police Service for the corruption occurring within the police promotion system"*. Notwithstanding your reference to "copious notes" taken by others, I ask that you provide me with a statement of your best recollection of what was said at this conference.

Further, did you make any contemporary notes yourself? If so, kindly identify such notes and provide me with a photocopy of them.

- c) At page 4 you write *"I state this having regard to a telephone conversation I had with Gary Richmond on his last day at SCIA (he has been transferred to the Firearms Registry)"*. Please identify the date of such telephone conversation. Do you have any contemporary notes of its contents? If so, kindly identify such notes, and provide me with a photocopy.
- d) You allege in paragraph 10 that the Commission continually declined *"to investigate allegations of promotions corruption involving senior police"*. Please identify clearly each such allegation, when was it made, by whom and to whom. Identify clearly the letter/document evidencing the declination of the Commission to investigate the particular allegation. In each case identify who is alleged to be the *"senior police"* involved.
- e) Finally, as to the central allegation that the Commission failed to appropriately investigate your complaint of *"the corruption of the police promotion system"*:
- (i) Where, when, and to whom was such complaint(s) made? If written, identify such writing and provide a copy thereof. If oral, what words were allegedly spoken, identify any contemporary notes and provide copies thereof.
- (ii) Identify the document(s) in which the Commission refused appropriate investigation and provide a copy thereof. If alleged to be oral, identify when, where, by whom, and to whom such refusal was conveyed and what were the terms thereof, and identify any contemporary notes and provide copies thereof.

I ask that you supply your response to the matters I have raised in this letter within 14 days of this date. Please note however, that I shall readily extend the time for such reply on any reasonable request you may find necessary to make.

Yours sincerely,



The Hon M D Finlay QC
Inspector of the Police Integrity Commission

23rd May, 2002

The Hon M.D. Finlay QC
Inspector
Police Integrity Commission

Dear Sir,

I received your letter of the 6 May, 2002 and offer the following information in response.

In paragraph 6 of page 1 of that letter you state, *"You will understand that open ended and imprecise complaints do not lend themselves to be dealt with by constructive and helpful investigations under section 89(1)b of the Police Integrity Commission Act 1966 (the Act). An example of such an imprecise complaint is your first allegation which reads" ..*

"I allege that the Police Integrity Commission failed to take appropriate and timely action to prevent the emergence of serious systemic corruption within the NSW Police Service"

You then quote further extracts of my letter which you have apparently considered appropriate in establishing grounds for the carriage of an investigation into my complaint which you go on to particularly state in paragraph 1 of page 4 of your letter, *"It appears to me that the allegations under these specific paragraphs which I have set out above would be most helpfully dealt with as an investigation into the alleged failure of the Commission to appropriately investigate your complaint of the corruption of the Police promotions system"*.

Your paragraph immediately following on the same page clearly establishes it as your focal investigative issue, *"That is the issue which I propose this office investigate unless you can provide me with good reasons otherwise"*

Whilst I welcome the "term of reference" you have established for your investigation of my complaint to the Parliamentary Committee for the NSW Ombudsman and Police Integrity Commission, I remain concerned given the discretionary powers conferred upon the Commission under Section 13 of the Police Integrity Commission Act.

To be succinct I am concerned that the Commission will argue that the allegations made in my complaint were determined as not allegations of "serious police misconduct" but rather "other police misconduct" and as such were appropriately referred to the Police Service for investigation under the provision of Section 13 (1) (c) of the Act.

It is my contention that the allegations contained in my complaint regarding the nature of the corruption, the associated integrity risks to the Police Service and the grossly inadequate response of the Police Service in terms of the internal investigation it carried out, provided more than sufficient grounds to warrant the carriage of an independent investigation of the matter by the Police Integrity Commission.

To support that contention I have read and taken into consideration the following sections of the Police Integrity Commission Act 1996;

Section 3 – Principal objects of Act

Section 5 – Police Misconduct, all sub-sections and in particular sub-section 4

Section 13 – Principal Functions, all subsections.

Section 14 – Other Functions etc, sub-sections (a) and (b) in particular.

My particular knowledge of the circumstances of the matter, and having regard to the above mentioned sections of the Police Integrity Commission Act, in my view supports to no small degree, my general complaint “*..that the Police Integrity Commission failed to take appropriate and timely action to prevent the emergence of serious systemic corruption within the NSW Police Service*”.

In effect, The Commission having been made aware of promotions corruption (through my complaint), failed to carry out an independent investigation (appropriate and timely action) which resulted in the widespread serious police misconduct (systemic corruption), and that corruption (promotions rorting), continuing unabated. That is the substance of my complaint.

I now turn to your request ((a) i.) for a copy of the audio recording of my meeting with Mr Gary Richmond of S.C.I.A. at the office of the NSW Ombudsman on 4 April, 2001.

I have included two audio tapes of that meeting, however the clarity of the recording leaves much to be desired. Whilst this made transcription difficult it was achievable and I have included a 20 page copy of that transcription for your information.

In reading that transcript I would draw your attention to the following key points.

1. numerous admissions by Mr Richmond (as the then acting Commander of Special Crime and internal affairs) of the failure of the Police Service to adequately investigate my original complaint.
2. the existence of the “Radium” Investigation into promotions corruption in the Hunter Region, which commenced on the 20th January, 2000
3. The attempted abrogation by Richmond, of responsibility for investigating promotions corruption away from SCIA
4. The attempted abrogation by Richmond, of responsibility for the debacle away from the senior executive of the Police Service, in particular his former SCIA Commander, Mr Mal Brammer and the then Commissioner, Peter Ryan.
5. The rhetorical question by Richmond regarding culpability of the Police Integrity Commission in failing to investigate the matter.
6. the involvement of SCIA staff in promotions corruption
7. numerous guarantees given by Richmond regarding the re-investigation of my complaint concerning the promotion system and the specific complaint I made against Chief Inspector Patricia Bourke regarding promotions corruption.

Whilst all of these key points are significant, of specific interest is point 6. The guaranteed re-investigations have never taken place. In the months following this meeting I was continually misled by Richmond in that he indicated that the matters were being investigated. In fact I later discovered from Richmond on the 11 October, 2001, that the only person interviewed was Myers and that he had been subsequently directed to cease the investigation.

The above matter refers to another request (c) you made of me to provide information concerning that conversation with Mr Richmond.

The telephone conversation took place on the morning of the 11 October, 2001 at approximately 7.10am. The call was initiated by Mr Richmond in response to an email I had sent him the previous day. I did indeed make some contemporaneous notes regarding that conversation as I recall Mr Richmond being quite irate regarding any suggestion (by myself) concerning any failings in his personal integrity.

A copy of the email and the contemporaneous notes I made were included as part of the previous submission and are marked as annexure No. 20.

In relation to your request for Mr Richmonds details ((a) ii). I can only offer the following information.

Gary Richmond, Commander, Firearms Registry, NSW Police Service.

Should you seek further information I would suggest attempting to contact the Firearms Registry through the NSW Police switch board operator in the first instance, thence S.C.I.A. Command.

In response to your request to present a statement regarding my recollection of the conference between myself, Mr Kenna and Mr Donovan at the offices of the Commission, I offer the following.

The meeting took place on the 13 December, 2001 at my request and arranged through Mr Kenna. The meeting was a rather one sided affair with little if any information being offered by either gentleman regarding the investigation being carried out by the Commission at the time, that being JETZ.

I recollect that I expressed grave concerns regarding the failure of the Commission to proceed further with the inquiry. I had been informed that no further police were to be called as witnesses and that the hearings were effectively ended. I expressed dismay in that I advised both that I had been made aware of serious allegations of corruption of the promotions system by very senior police. I wanted to know if those officers had also been subjected to the same investigative techniques (electronic surveillance) as Menzies et al had been. I wanted to know why they were not to be called to give evidence before the Commission. I wanted to know why there was no examination of my allegations of gross-mal-administration surrounding the introduction and continued use of the promotion system after I had made the Service aware through my complaint and after the Radium investigation findings.

I also mentioned my meeting with the Police Minister together with grave concerns I had regarding the effectiveness of his recently tabled Bill in Parliament regarding police promotions. I advised both that the Bill would not address the integrity shortcomings of the process.

I discussed the Police Service's handling of my complaint, the Ombudsmans handling of my complaint and the P.I.C.'s failure to conduct an independent investigation following my complaint to the Commission in June 2000. I told both that I held the Commission equally as culpable as the Police Service for the corruption of the promotion system as demonstrated in the Menzies hearings.

I told both gentlemen that Menzies' evidence revealed the existence of corruption of the process since 1998, with him gaining access to interview questions from a member of the Water Police. That Menzies had individually nominated about 28 other persons as being involved in his particular network. That this network was not the only one in operation within the service concerning corruption of the promotion system and that the Commission had an obligation to address those other networks rather than just make an example of Menzies et al.

I indicated that the risk to the Police Service remained in effect and would do so whilst the Commission refused to investigate the matter further.

I indicated that the only appropriate remedial action was the rescinding of all appointments made under the process and that I expected a recommendation from the PIC to that effect. I also recommended the introduction of an external promotion system free of influence from both the Police Service and Police Association.

I finally informed both that if the Commission lacked the courage or will to properly investigate all aspects of the police promotions system, or it transpired that there was some degree of political influence being brought to bear upon persons within the Commission to pre-maturely close the matter, that I would do everything in my power to ensure that the Commission and its officers were one day held accountable.

That basically represents the major topics discussed during my meeting with Mr Kenna and Mr Donovan to the best of my recollection.

In relation to your request for information (d) concerning the Commission declining to investigate allegations of promotions corruption involving senior police. I will require further time to consider this request given the specific details you have requested regarding the identity of the informants. I am prepared however to provide you with the identity of the senior officers and the nature of the allegations. This information should allow you to make requests of the Commission for the relevant documents.

1. Assistant Commissioner Clive Small - promotions rigging within Crime Agencies
2. Assistant Commissioner Lola Scott - promotions rigging within Endeavor Region and whilst a sitting member of G.R.E.A.T.
3. Assistant Commissioner Bob Waites - promotions rigging involving the appointment of his wife, also a serving officer
4. Superintendent Ron Sorrenson - promotions rigging within Traffic Services.

I have copies of documents relating to 1,2 and 4. Furthermore I am advised that copies of documents do exist relating to 3, as well as many others concerning promotions corruption involving lesser ranks, however I do not have immediate access to those documents.

In each of the cases specifically mentioned above, I am led to believe by the informants that each was declined by the Commission and referred to the Police Service for investigation. However in the case of 1, a decision was apparently only recently made by the Commission to review the matter.

Finally, in response to your request (e) (i) (ii) for the provision of details of my original complaint which the Commission refused to investigate. The relevant documents you seek are contained within the previous submission and can be found between annexures 56 – 72.

It should be further noted however, that a perusal of the later annexures will reveal that my subsequent attempts to have an investigation of the police promotion system carried by the Commission, again failed to solicit that action by the Commission on the matter.

To provide you with some additional insight, I have also included a further two page document for your information which comprises part of the transcript of the Cabramatta policing inquiry.

The document is particularly relevant in that it presents evidence given by the Deputy Commissioner Jarratt on the 14 May, 2001 regarding the police promotion system one month after my meeting with Mr Richmond at the Ombudsmans office.

Given Richmond's statements in that meeting, I can only conclude that Mr Jarratt's evidence to the Parliamentary Committee in response to questions concerning the integrity of the promotion system was deliberately misleading.

In conclusion I trust that my efforts in assisting you further in this matter have met reasonable expectations on your part. I apologise for any shortcomings in advance but I ask you to consider that my involvement in the pursuit of this matter over such an extended period, has not been without it's debilitating affects..

Yours Sincerely,

Mark Fenlon

Dear Mr Finlay,

Immediately prior to my intention to deliver this letter, I was made aware of a transcript of proceedings between members of the Police Integrity Commission and the Parliamentary Committee for the NSW Ombudsman and Police Integrity Commission which took place on 16 May, 2002.

I read the transcript and would draw your attention to the following excerpts which relate to comments made by the Commissioner, Mr Griffin concerning police promotions corruption and other matters, which disturb me greatly .

Mr GRIFFIN:

Operation Jets has also concluded its hearing. It may be useful to reiterate that Operation Jets is an inquiry with a very limited scope and purpose. That is to investigate whether or not Inspector Robert Gordon Menzies and other serving New South Wales police officers are involved in police misconduct with respect to the New South Wales promotional system. It is not, and never has been, an inquiry into the police promotions system per se and it should not be so represented. It is hoped that the report of Operation Jets will be finalised by around the end of the year.

And Later..

Mrs GRUSOVIN: *You made some comments about various operations, one of which was Operation Jets. You said that it was narrowly focused on the question of certain police officers in relation to the promotional system and not an investigation of the promotional system itself. Would you like to make some comments on the views of the commission with regard to the promotional system, because there are those who have very little confidence still in what is occurring within the force?*

Mr GRIFFIN: *I do not have a view that goes outside our investigation because it is the only matter that the commission has any knowledge of. I had noted as a matter of public knowledge that the promotional system has been altered recently. I do not know anything more about it than it has been altered. The fact that the Jets inquiry in relation to the individuals that we looked at exposed practices that nobody would have been comfortable with is regrettable, but to take it any further than that would be difficult from the commission's point of view.*

Mrs GRUSOVIN: *So there are no views held within the commission that perhaps there needs to be an assessment and review of the promotional system, even though some changes have been put in place?*

Mr GRIFFIN: *I do not know whether there are views held within the commission or not. The Jets report, which should be out at least by the end of the year hopefully, will cover the specific issues of the individuals concerned and if there is enough from that material to draw a slightly wider bow, then the commission would do it, but I do not think I am in a position to take it any further at this stage.*

These comments by Mr Griffin make it quite clear regarding the Commissions position regarding the Police promotion system. Quite obviously the risk to the integrity of the Police service as a consequence of adopting a corruptible promotions system, was not, never has been and will not, be a matter for the consideration of the Commission.

Quite clearly Mr Griffin does not view an examination of the promotion process "per se", appropriate for investigation by the Commission. Why is that? I would have thought that over 400 complaints regarding promotions corruption should have signalled to the Commissioner, the absolute need for such an inquiry to take place. I would have thought, that given the revelations of Menzies' evidence regarding the capacity for that type of corruption to grow exponentially within the Service, it should have signalled to the Commissioner the absolute need for such an inquiry to take place. Instead however, the Commissioner believes "...", *but to take it any further than that would be difficult from the commission's point of view*". Again I ask why? What difficulties were to be encountered by the Commission in pursuing the matter beyond Menzies which could possibly outweigh the Commission's charter within its legislative obligations.

Upon reading the transcript further I found evidence that would appear to confirm my assertion in earlier documents, that the Commission does consciously aid and abet the NSW Police Service in keeping evidence of corruption within the senior ranks, secret.

Case in point, Operation Mosaic. The findings have not been made public, with the matter referred to the Police Service for internal action. The result being, that those involved are permitted to retire, resign or indeed are terminated (again without any reasons being made public). The offences alleged are never prosecuted and the offenders never held accountable for their breach of public trust

I include the relevant excerpts for your information

CHAIR: *We will now turn to the first category of questions, "Investigations". Commissioner, I take you to some of the comments you make about Operation Mosaic, which is an investigation concerning Motorola. You comment in your answers that there will be no public report by the PIC in relation to its private hearings and investigations into the Motorola affair. Why is that, granted that the amounts of public money involved are quite substantial and it is clearly a matter of considerable community interest? There are ICAC precedents in that ICAC has held private inquiries and then released public reports. In that context I am interested in teasing out why there is no public report about Mosaic and perhaps the general principles that led you to that position.*

Mr GRIFFIN: *The basic issues that arise from the Motorola matter went to management issues within the New South Wales police. The Mosaic inquiry—and you will appreciate that it was before my time and, although I have read the report, I do not know the substance of the evidence except as it is caught by the report—did not seem to contain matters that could be usefully furthered by public debate. Yet there were clearly some areas where police management practices might benefit from having a report. As I understand it, the process that is followed is that it will go to the commissioner in a form and we are in a position to put requirements on his use and acceptance of what we say.*

If the commissioner or the service does not accept the process or the recommendations—if there are recommendations—about specific matters, we can then report to Parliament to have it dealt with in an appropriate way. Whilst it is a management issue going to past practices that have been fixed, the individuals concerned—I think almost to a person—are no longer in the service. It did not seem that it needed the added expense of a public report—which adds somewhat to the expense of the process.

Here at least is an attempt by the Commissioner, albeit grossly inadequate, at providing the rationale behind the decision not to make such a public report. His concern for the public purse in the production of same and the fact that "the individuals concerned" are no longer in the Police Service.

What a sterling example of cost effective corruption busting. The Commission's operational budget obviously extends only towards the pursuit of currently serving corrupt police officers. Should those police choose to resign/retire or have their contracts terminated, they are no longer of interest to the Commission.

The seriousness of the matter is also apparently not a factor. Obviously the receipt of tens of thousands of dollars by senior police in gratuities in exchange for the granting of a contract is not viewed as criminal conduct by the Commission.

Clearly "Mosaic" is an example of the abominable state of affairs which appears to encapsulate the modus operandi of the Commission. It is nothing if not contrary to the principles which brought about the creation of the Commission in the first instance. To expose corruption within the Police Service upon its discovery, not assist in its concealment.

I now find myself asking, if indeed the Commission had conducted a broad examination of the police promotion system, with what degree of confidence could I have expected public exposure by the Commission of managerial mal-administration within the NSW Police Service or indeed the attribution of any accountability arising from such an examination?

The answer, I fear, has already been provided.

At present I am searching for words that could adequately describe my feelings on the matter. I'm finding it quite impossible at this time.

The reality is the Commission is failing to meet the expectations of many, in particular, Police officers like myself who now apparently have nowhere to go and no one to whom we can report serious corruption or mal-administration involving senior police, with any expectation of an outcome from such action, other than exposure to retribution at some future time.

Yours sincerely and most respectfully,

Mark Fenlon

23 May, 2002



ABN 22 870 745 340

COPY

RECEIVED
11 JUL 2002
INSPECTOR, PIC

Our Ref: 10044/17

9 July 2002

The Hon M D Ireland QC
Inspector of the Police Integrity Commission
GPO Box 5215
SYDNEY NSW 2001

Dear Mr Ireland,

RE: COMPLAINT BY SERGEANT MARK FENLON

I refer to your letter dated 3 July 2002 enclosing a copy of Sergeant Fenlon's response to the Commission's letter of 25 June 2002.

Sergeant Fenlon opens his letter by indicating that he is *"still at odds with the Commission's handling of this matter"* and, in closing, remarks that the Commission has sought to justify its decision on legal grounds.

It was hoped that the Commission's detailed response to the matters alleged by Sergeant Fenlon might incline him to a broader perspective of the Commission's decision in relation to his concerns about the promotions system.

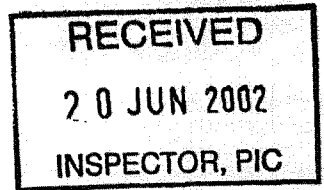
While that has not proved the case, there being no fresh issues arising from Sergeant Fenlon's response, the Commission does not wish to add to the matters previously outlined.

Yours sincerely

S A Robson
Commission Solicitor



ABN 22 870 745 340



COPY

Our Ref: 10044/11
Your Ref: C08/02AK

FAXED
18/6/02

18 June 2002

The Hon M D Ireland QC
Inspector of the Police Integrity Commission
GPO Box 5215
SYDNEY NSW 2001

BY FACSIMILE: (02) 9232 3983

Dear Mr Ireland,

RE: COMPLAINT BY SERGEANT MARK FENLON

I refer to previous correspondence by Mr Finlay QC concerning a complaint by Sergeant Fenlon, in particular Mr Finlay's letter to Sergeant Fenlon dated 27 May 2002, in which it was indicated that the complainant's failure to provide certain particulars might result in the Commission seeking "to defer its considered comprehensive response until [the supply of] such particulars or that issue is no longer required to be addressed".

While I note that Sergeant Fenlon is yet to respond to Mr Finlay's letter, the Commission is minded at this stage to reply as best it can to the relevant allegations. However, as a period of 21 days has elapsed since receipt of Sergeant Fenlon's letter containing further particulars dated 23 May 2002, I write to seek an extension of time to respond until this coming Friday, 21 June 2002.

Yours sincerely

S A Robson
Acting Commission Solicitor



NEW SOUTH WALES

COPY

*Inspector
of the
Police Integrity Commission*

20 June 2002

RefNo. C08/02AN

Mr Steve Robson
Acting Commission Solicitor
Police Integrity Commission
Level 3, 111 Elizabeth Street
SYDNEY NSW 2000

Dear Mr Robson,

RE: COMPLAINT BY SERGEANT MARK FENLON AGAINST THE POLICE
INTEGRITY COMMISSION

I have for acknowledgement you letter of 18 June 2002. I note the time frame you request for reply which I approve.

Please find enclosed a copy of my letter to Sergeant Fenlon of even date.

Yours sincerely,

The Hon M D Ireland QC
Inspector of the Police Integrity Commission

Encl. Copy of letter from Mr Ireland to Mr Fenlon, dated 20 June 2002.



**Inspector
of the
Police Integrity Commission**

27 June 2002

Ref No. C08/02AO

Sergeant Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

Dear Sergeant Fenlon,

RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

I refer to prior correspondence and, in particular, to my letter to you of 20 June 2002. Please find enclosed a copy of the Commission's response, dated 25 June 2002, over the signature Mr S.A. Robson, Commission Solicitor. Enclosed also please find a copy of Mr Robson's facsimile letter of the same date noting an oversight on page 10 of his letter under the heading "Conclusions".

I shall be grateful to receive your response within 14 days of the date of this letter. However, should you require an extension of time any reasonable request will be favourably considered.

Yours sincerely,

A handwritten signature in black ink, appearing to read "The Hon M D Ireland QC".

The Hon M D Ireland QC
Inspector of the Police Integrity Commission

Encl. (1) Copy of letter from Mr Robson to Mr Ireland, dated 25 June 2002.
(2) Copy of facsimile letter from Mr Robson to Mr Ireland, dated 25 June 2002.



ABN 22 870 745 340

COPY

Our Ref: 10044/2
Your Ref: C08/02AD

25 June 2002

The Hon M D Ireland QC
Inspector of the Police Integrity Commission
GPO Box 5215
SYDNEY NSW 2001

Dear Mr Ireland,

RE: COMPLAINT BY SERGEANT MARK FENLON

I write in response to Mr Finlay QC's letters dated:

- 17 April 2002, enclosing a letter of complaint by Sergeant Mark Fenlon (as referred to the office of the Inspector by Mr Paul Lynch MP);
- 1 May 2002 enclosing a five page letter by Sergeant Fenlon dated 23 April 2002 in elaboration of his complaint;
- 6 May 2002 enclosing a copy of his letter to Sergeant Fenlon of the same date, requesting further and better particulars of the complaint; and
- 24 May 2002 enclosing a five page response by Sergeant Fenlon dated 23 May 2002.

Sergeant Fenlon's letter dated 23 April set out 13 broad allegations against the Commission. In the first paragraph on the fourth page of his letter dated 6 May 2002 Mr Finlay identified the gist of the complaint to be *"the alleged failure of the Commission to appropriately investigate [Sergeant Fenlon's] complaint of 'the corruption of the Police promotion system'"* and proposed to focus on that allegation, to which paragraphs 4, 7, 8, 9 and 10 of Sergeant Fenlon's letter appeared to refer.

Before responding to the relevant allegations, it will be helpful to provide some background to Sergeant Fenlon's various representations concerning the NSW Police promotions system and the Commission's Operation Jetz investigation.

Sergeant Fenlon's representations concerning the NSW Police promotions process

The following is a summary (not necessarily exhaustive) of relevant written and oral representations by Sergeant Fenlon concerning the NSW Police promotions system, and the Commission's responses.

On 10 August 1999 Sergeant Fenlon telephoned the Commission to register concerns that the selection process for recently awarded Duty Officer positions lacked integrity. It was suggested that his concerns would more appropriately be directed to the Ombudsman, although he was invited to write to the Commission. A copy of the file note of the conversation is attached at "1".

On 14 August 1999 Sergeant Fenlon made a formal internal complaint to the Blacktown Local Area Commander concerning the matter.

By his letter dated 1 June 2000 Sergeant Fenlon, which constituted a complaint, requested that the Commission conduct an independent investigation into *"the processes and procedures concerning the promotional system for Duty Officer positions currently in place within the NSW Police Service"*. He referred to his earlier complaint to the NSW Police *"highlighting ... serious shortcomings in the promotional processes in terms of the system's susceptibility to corruption"*, and indicated that his complaint had not been adequately investigated and sufficient remedial action had not been taken within the NSW Police. The complaint related what Sergeant Fenlon considered to be *"significant circumstantial evidence that the system had been corrupted"*. That circumstantial evidence was in the form of *"the number of successful nominations for applicants from the Endeavour Region having regard to their relationship to the working location of the individuals who comprised the interview panels"*. Sergeant Fenlon had asked the NSW Police to provide him with statistical information concerning that particular issue, but the request had been declined. He also indicated that in 1999 *"there were a number of rumours circulating within the Service that the practice of pooling questions was occurring within some commands. Probability suggests that such rumours had some foundation in truth and that my concerns were and are still justified"*. A copy of the complaint, excluding its enclosures, is attached at "2".

On 18 October 2000 Assistant Commissioner Sage wrote to Sergeant Fenlon advising of the Commission's decision not to investigate his complaint and of its referral to the NSW Police and the Ombudsman to be dealt with pursuant to the requirements of s 131 of the *Police Service Act 1990*¹. A copy of Mr Sage's letter is attached at "3".

On 16 March 2001 Sergeant Fenlon made telephone contact with the Commission in reference to the Commission's investigation codenamed "Operation Malta", the purpose of which was essentially to inquire into allegations that senior police had attempted to block reform and had taken retributive action against certain members of a NSW Police reform unit. According to the Commission's file note, Sergeant Fenlon suggested that the scope and purpose of the public hearing announced for Operation Malta was too narrow, and should be broadened to encompass his concerns about the promotions system. Sergeant Fenlon requested that he be called to give evidence to the hearing, and was advised to outline the evidence which he would wish to give in order that its relevance to the inquiry might be assessed. He indicated that he had made contact with the media and was prepared to air his concerns through it, although he would prefer the Commission to examine the matters he had raised. A copy of the relevant file note is attached at "4".

On 26 March 2001 the Ombudsman wrote in reference to some additional information Sergeant Fenlon had provided in relation to his complaint of 1 June 2000. The additional information related to an NSW Police Internal Affairs investigation, Operation Radium, which had been carried out in February 2000. According to Sergeant Fenlon, it had identified "several persons" as having *"acted corruptly when attending the structured interview process"*. Sergeant Fenlon also raised concerns about denials by then Commissioner Ryan and Deputy Commissioner Jarratt of any knowledge of "question sharing" during interview

¹ See Detrak 6959/49 for a schedule of complaint matters determined on 18 October 2000.

processes, when his previous complaint and advice had raised the issue. A copy of the Ombudsman's letter and its enclosure is attached at "5".

The Commission considered the additional matters raised in Sergeant Fenlon's letter to the Ombudsman, but assessed them as providing little investigative opportunity². On 9 May 2001 it was decided to refer the matters to Operation Jetz investigators to assess whether there was anything of relevance to that investigation. On 27 June 2001 it was determined that the additional matters raised by Sergeant Fenlon were of no relevance to Operation Jetz, and that the initial decision not to investigate Sergeant Fenlon's complaint would stand. A copy of the Commission's letter dated 27 June 2001 advising Sergeant Fenlon of its decision is attached at "6".

By letter dated 15 August 2001 Sergeant Fenlon wrote again to the Commission, by way of a submission to the Operation Jetz inquiry. He urged the Commission to broaden its investigation to include an "examination of ... issues ... critically important" and indicated that he "would consider the absence of any comment on [those issues] during the public hearing ... a miscarriage of the entire matter". The issues identified by Sergeant Fenlon were:

- 1) *the examination of the entire promotional processes for not only Duty Officers but Crime Managers, specialist positions ..., all Senior Sergeant and Sergeant positions ...*
- 2) *the examination of the conduct of Deputy Commissioner Jarratt and others responsible for the introduction and continued use of promotion systems ...*
- 3) *the examination of the Government and Related Employees Appeals Tribunal as it relates to Police appointments. The integrity of that body ... Its lack of accountability regarding decisions arrived at and the absolute power which the finality of its decisions confers upon it*
- 4) *the examination of the complicity (by inaction) of the Police Association regarding promotions issues...*
- 5) *the examination of the use of the complaints management system to hinder promotional opportunities*
- 6) *the examination of Management culture ...*
- 7) *the examination of inequities in the provision of career development opportunities ...*
- 8) *the examination of the development of the 'Duty Officers Course' ..."*

The submission did not identify the information upon which Sergeant Fenlon was basing his views, other than to say that it was his understanding "that there is overwhelming evidence that the promotion system has been corrupted in every form that I predicted in 1999". A copy of the submission is attached at "7".

In October 2001 the Commission conducted a review of the complaint matters raised by Sergeant Fenlon to determine whether there was any relevant evidence he could give to the Operation Jetz hearing. As a result, it was decided that Sergeant Fenlon should be interviewed³. That interview took place on 22 October 2001, and was conducted by Mr Kenna, in the company of another Commission solicitor, Ms Alvos⁴.

The views of the Assistant Commissioner presiding over the Operation Jetz hearing, Mr Brian Donovan QC, and Counsel Assisting, Mr Chris Hoy, were also sought. The consensus

² Detrak 6551/9

³ 6551/22 & 24.

⁴ Record of interview at 6551/31. Material provided by Sergeant Fenlon at 6551/32 & 33.

was that the issues raised by Sergeant Fenlon were not within the Scope and Purpose of the hearing or the investigation at large, and should not be introduced into the hearing lest it become too broad and unmanageable. Consideration was given as to whether the Commission's final report on Operation Jetz could nonetheless refer to the matters raised by Sergeant Fenlon, by way of a general backgrounding of promotions system issues. Mr Donovan indicated that he was prepared to meet with Sergeant Fenlon to discuss matters⁵.

Mr Donovan and Mr Kenna met with Sergeant Fenlon on 13 December 2001. Sergeant Fenlon's account of the matters discussed during the meeting (pp 4-5 of his letter dated 23 May 2002) confirms that, while he again warned of the existence of other networks within the NSW Police "*concerning corruption of the promotion system*" and advised the Commission of its "*obligation to address those and other networks*"; he was unable to provide information concerning specific acts of alleged misconduct.

Operation Jetz

In January 2001 the Special Crime and Internal Affairs unit of the NSW Police ("SCIA") commenced an investigation, codenamed "Operation Orwell", as a consequence of telecommunications interception material obtained by the NSW Crime Commission which suggested that certain executive members of the Police Association of NSW and other police officers had been manipulating the appeals process before the Government and Related Employees Appeals Tribunal.

On 29 March 2001 the Commission commenced a preliminary investigation, codenamed "Operation Jetz", with the purpose to "*determine whether a more complete investigation should be conducted into allegations of New South Wales Police being involved in serious police misconduct arising from New South Wales Police Special Crime and Internal Affairs, Operation Orwell*".⁶

On the strength of the material initially provided by the NSW Police, the Commission did not assess the matter as warranting an investigation by it. In the Commission's view the material did not disclose evidence of criminality such as to amount to serious police misconduct, but rather misconduct of a kind that could properly be investigated by the NSW Police internally⁷.

Additional telecommunications interception material was subsequently provided to the Commission by SCIA. The Commission reconsidered its position and concluded that issues of serious police misconduct were identified. In the result, on 26 June 2001 Operation Jetz was declared a full investigation with the purpose of:

"Investigating whether or not Inspector Robert Gordon Menzies and other serving NSW Police Officers are involved in police misconduct with regard to the NSW Police Service promotional system".

On 20 August 2001 the Commission commenced a public hearing for the purposes of Operation Jetz, with an announced Scope and Purpose to investigate:

"... whether certain members of the New South Wales Police Service have been or are currently involved in police misconduct with respect to the New South Wales Police Service promotional system".

⁵ See file note and memo by Mr Kenna at 6551/41 & 43 respectively.

⁶ See generally Detrak 8474

⁷ See OAG report #1 at Detrak 8474/58.

In his opening to the inquiry Counsel Assisting, Mr Hoy, indicated that the hearing was "not intended to be an inquiry into the promotional system operating within the New South Wales Police Service"⁸, but in effect an investigation that:

"... may well suggest that a number of serving police officers have participated in conduct intended to thwart those fundamental principles of fairness and confidentiality [involved in a fair and equitable promotions system] by obtaining an advantage for colleagues by obtaining information concerning the questions to be asked during the interview process and conveying that information to those colleagues in order to enable them to better prepare themselves for their interviews"⁹.

The Operation Jetz public hearing has been concluded and the investigation is presently at the stage of receiving submissions from persons adversely affected by the evidence.

Other investigations into promotions system misconduct

Putting aside the Commission's Operation Jetz investigation, the general complaint of Sergeant Fenlon dated 1 June 2000 and past NSW Police investigations, at the present time there exist a large number of complaints of promotions system misconduct which are being assessed by NSW Police Task Force Uman. The Commission and Ombudsman are involved in that process by way of overlooking discrete aspects of the investigations¹⁰.

Sergeant Fenlon's complaint against the Commission

Turning now to the allegations raised in Sergeant Fenlon's letter of 23 April 2002 as identified by Mr Finlay:

4. ***"I allege that the substance of my complaint dated 1st June 2000, demonstrated evidence of a failed policing reform (the promotion system) introduced by the then Commissioner Mr Ryan (in response to a Royal Commission recommendation) and that the risk to Mr Ryan's credibility as Police Commissioner arising from an independent investigation of my complaint, provided that conflict of interest for Mr Sage."***

Pursuant to s 13(2) of the *Police Integrity Commission Act 1996* ("the Act") the Commission "as far as practicable, is required to turn its attention principally to serious police misconduct".

"Serious police misconduct" is defined in s 4 of the Act to mean:

- (a) *the conduct of a police officer that is the subject of a Category 1 complaint, or*
- (b) *the conduct of a police officer that would give rise to a Category 1 complaint if it were the subject of a complaint under the Police Service Act 1990."*

"Category 1 complaint" is relevantly defined by s 67(a) of the Act to mean a complaint "that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission". Pursuant to that provision an agreement exists between the Commission and the Ombudsman as to the criteria for identifying whether an allegation constitutes a "Category 1" matter, a copy of which is attached at "8".

⁸ PIC Transcript, 20 August 2001, p5.31.

⁹ p5.46.

¹⁰ A schedule of such complaints may be found at Detrak 9755/15.

Of course, police misconduct of an apparently insignificant kind when viewed in isolation can have broader deleterious consequences for the NSW Police and the community in general. It is not surprising therefore that the Commission can investigate alleged misconduct not amounting to "serious police misconduct", and that the Act makes no precise distinction between that and "other police misconduct": s 5(4). Further, the Commission can commence an investigation "even though no particular police officer ... has been implicated and even though no police misconduct is suspected": s 23(2).

The Act therefore gives the Commission a wide discretion as to the kinds of matters it may investigate. The Commission can, however, only do so much. Generally speaking, if it is to achieve the most from its limited resources, it must seek to judiciously devote them to matters involving identifiable police misconduct of the most serious kind.

Sergeant Fenlon's written complaint of 1 June 2002 did not "demonstrate evidence" of a failed policing reform. The matters raised did not constitute an identifiable allegation of police misconduct, serious or otherwise, on the part of any particular officer. Rather, Sergeant Fenlon outlined his concerns and observations in relation to the promotions system, based at best on "circumstantial evidence" concerning the demographics involved in the selection of successful applicants, and supported by rumours he had heard. As a complaint constituting a non-Category 1 matter, the Commission determined that it was more appropriately a matter for the NSW Police to deal with, under the supervision of the Ombudsman.

The Commission also carefully considered and weighed the additional matters raised by Sergeant Fenlon through the Ombudsman, and his submission to the Operation Jetz hearing.

In his letter dated 23 May Sergeant Fenlon states: "*I remain concerned given the discretionary powers conferred upon the Commission under Section 13 of the Police Integrity Commission Act... I am concerned that the Commission will argue that the allegations made in my complaint were determined as not allegations of 'serious police misconduct' but rather 'other police misconduct' and as such were appropriately referred to the Police Service for investigation under the provisions of Section 13(1)(c) of the Act*".

While Sergeant Fenlon's references to s 13 of the Act confuse the Commission's statutory functions with the powers and discretions by which they may be achieved, he correctly identifies the issues raised by him as coming down to a discretion. However, Sergeant Fenlon is concerned that this very fact might allow the Commission to argue that its decision was appropriately made. The Commission would hope that all its discretionary decisions are appropriately made and considers its decision not to investigate Sergeant Fenlon's complaint to have been entirely reasonable and appropriate in the circumstances. In so saying the Commission does not consider it to be a case of having to "argue" its view over Sergeant Fenlon's. Doubtlessly Sergeant Fenlon's opinions are fervently held, but he seems unable to accept that the Commission can properly make a decision which leaves room for others, including himself, to disagree.

The Commission is an independent body charged with important functions in the public interest. It alone must be able to determine which of the multitude of matters competing for its attention at any one time warrant the commitment of its limited resources. If it were otherwise the ability of the Commission to achieve its objectives would be subject to challenge at every turn, not only by persons whose interests stand to be adversely affected by an investigation but, as in Sergeant Fenlon's case, those having a keen interest to see that the Commission exercises its functions and powers as they would like. The Commission would cease having any real kind of independence or direction, but would be required to direct its activities according to the ideas of persons external to it.

It is well established that the *Wednesbury* principle of manifest unreasonableness provides the test for when an administrative discretion may appropriately be the subject of challenge. The principle was recently discussed by the Chief Justice of this State in *Attorney General v X* [2000] NSWCA 199, by reference to a frequently cited passage from the judgment of Mason J in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1985-1986) 162 CLR 24 at 40-41:

*"... It is not the function of the court to substitute its own discretion for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of that discretion, and a decision made within those boundaries cannot be impugned. It follows that, in the absence of any statutory indication of the weight to be given to various considerations, it is generally for the decision-maker ... to determine the appropriate weight to be given to the matters which are required to be taken into account in exercising the statutory power. ... The preferred ground on which [an administrative decision is set aside] ... is that the decision is 'manifestly unreasonable'. This ground of review was considered by Lord Greene MR in *Wednesbury Corporation* ([1948] 1 KB at 230, 233-234), in which his Lordship said that it would only be made out if it were shown that the decision was so unreasonable that no reasonable person could have come to it."*

There is nothing to suggest that the Commission's decision not to investigate Sergeant Fenlon's complaint was unreasonable. Nor is there any evidence to suggest the Commission did not act bona fide in coming to its decision, such that misconduct of the kind contemplated by s 89(1)(b) of the Act might exist.

While Sergeant Fenlon's complaint seems based on a preference for his views over the Commission's, in the hope that he might begin to see the matter from another perspective, let us assume that the Commission did decide to investigate his complaint.

There being no specific acts of misconduct identified to begin with, the investigation would have commenced with no particular direction. In the hope of gaining some direction, the Commission would have been required to undertake, in effect, a broad-reaching audit of interview procedures and processes to determine *whether* there were any identifiable acts of misconduct that might be investigated. In all likelihood Commission investigators would have had to interview potentially hundreds of persons to see whether they were able to give relevant *evidence*. Such inquiries may well have revealed many officers who, like Sergeant Fenlon, held concerns about the susceptibility of the promotions process to subversion, but the consensual nature of the kind of misconduct suspected would have relied to a large extent upon any perpetrators voluntarily inculcating themselves.

That the Commission subsequently come to investigate alleged misconduct in exploitation of shortcomings in the interview system similar to those identified by Sergeant Fenlon does nothing to suggest that it was unreasonable for the Commission not to have investigated his complaint. The Operation Jetz investigation came about because there was something tangible to investigate, and hard evidence in the form of intercepted telephone conversations disclosing misconduct and collusion on the part of identified officers.

The Commission readily accepts Sergeant Fenlon's views concerning the importance to a "corruption resistant promotion system".¹¹ It is important that each and every personnel, administrative and operational system within the NSW Police be corruption resistant. Fundamentally, they are matters for which the NSW Police must have first-line responsibility. The Commission should not be taken as saying that it would never be appropriate for it to examine systems and process issues – it has done so in the past. But in the Commission's view generous room must be left for the NSW Police to deal with such matters. If it were

¹¹ As expressed in his initial letter to Mr Lynch MP.

otherwise the Commission would as much as assume responsibility for the day-to-day administration of the NSW Police.

As to Sergeant Fenlon's assertion that *"the risk to Mr Ryan's credibility as Police Commissioner arising from an independent investigation of my complaint, provided [a] conflict of interest for Mr Sage"* which motivated the decision not to investigate his complaint, the Commission rejects it as baseless.

First, Mr Sage met with and spoke to Commissioner Ryan on no more than a few occasions during his tenure as Commissioner of Police. As such, there was no "relationship" between the two. That said, there is no "conflict of interest" inherent in any Commission officer having a professional relationship with a member of the NSW Police, and it would be naive to think so. Commission officers have cause to meet frequently with senior police to discuss policing and corruption related issues. It is entirely appropriate, and indeed necessary, for that to occur if the Commission is to effectively discharge its functions.

Second, assuming Sergeant Fenlon's reference to Commissioner Ryan's "advisory panel" to be to the former Commissioner's "Executive Advisory Group", that committee was formed in October 1997 with a view to advising the Commissioner's Executive Team in relation to the establishment of the Crime Agencies Command. As far as the Commission is aware, the Committee held two meetings. Only one of those meetings was attended by Mr Sage.

7. *"I further allege that the current operations JETZ investigation has by design, been purposely confined to Inspector Robert Gordon Menzies and his associates in order to prevent the full extent of promotions corruption to be made known."*

The Commission's Operation Jetz investigation has been designed to investigate discrete allegations of serious police misconduct concerned with the manipulation of the police promotions system. As indicated above, it has proceeded largely on the strength of intercepted telephone conversations, without which it would be difficult to investigate a matter of this nature.

To determine the possible "full extent" of promotions corruption beyond the present Scope and Purpose of Operation Jetz would, for reasons already explained, be subject to the law of diminishing returns. Unless any guilty officers were prepared to come forward and inculcate themselves, the Commission would have to conduct a somewhat rambling and directionless inquiry, at the expense of the Commission's other investigations and functions.

In his insistence that such an exercise is critical in the context of Operation Jetz, Sergeant Fenlon also seems to be unaware of the broader consequences that can flow from a Commission investigation. The recommendations of a report upon an investigation dealing with specific instances of misconduct may have the effect of putting a stop to or preventing similar misconduct at large. Under Part 5 of the Act the Commission may refer specific matters to the Commissioner of Police for further action and require the submission of a report on such action. Systemic or managerial failings identified during the course of an investigation may later be the subject of an audit by the Commission to ensure the problems have been eliminated.

Further, Sergeant Fenlon seems to be unaware of the full extent of the activity being devoted to dealing with allegations of police misconduct concerning the promotions system, as briefly touched upon earlier in this response.

8. *"I allege that the Police Integrity Commission's decision not to conduct further public hearings, call further witnesses or conduct further investigations of*

corruption or impropriety concerning the police promotions system has been unethically and unduly influenced by unidentified persons within and outside the Commission.

The Commission can do little but reject this general allegation of mala fides on the part of unspecified Commission officers.

Sergeant Fenlon was not called to give evidence in Operation Jetz because he was not in a position to give evidence relevant to the matters under investigation, nor it would seem evidence relating to any act of police misconduct concerning the promotions system.

Page 4 paragraph 8 of Sergeant Fenlon's letter dated 23 May 2002 carries implied criticisms of Mr Donovan and Mr Kenna in relation to their meeting of 13 December 2001. He states the meeting was *"a rather one sided affair with little if any information being offered by either gentleman regarding the investigation ... being JETZ"*. In the next paragraph Sergeant Fenlon recollects he expressed *"grave concerns regarding the failure of the Commission to proceed further with the [Operation Jetz] inquiry"*.

The purpose of the interview was to not to brief Sergeant Fenlon on the detail of the Commission's investigation. With respect to Sergeant Fenlon, he has no more entitlement to be informed of such matters than any other member of the NSW Police or the general public. Moreover, like any other interested person, Sergeant Fenlon is entitled to hold concerns about the scope of a Commission investigation. However, the statement of any such concerns is not determinative of how the Commission should go about its functions.

9. ***"I allege that investigative methods employed by the Police Integrity Commission and Special Crime and Internal affairs (electronic surveillance) were deliberately not employed against senior police nominated (in complaints made by other police) as having engaged in corruption concerning the promotions system, to avert the emergence of irrefutable evidence of such corrupt conduct."***

This allegation concerns a failure by the Commission and SCIA to employ certain investigative techniques in relation to *"complaints ... by other police"*, particulars of which have not been provided by Sergeant Fenlon. As such, it is difficult for the Commission to respond, although it could only make a sensible response if it investigated any of the matters Sergeant Fenlon has in mind. Given Operation Jetz is the only Commission investigation that has been concerned with misconduct in relation to the promotions system, that would not appear to be the case.

Assuming such complaints to have existed and to have been investigated, at least by the NSW Police, whether electronic surveillance techniques *could* have been employed would obviously depend on a range of factors. If the alleged acts of misconduct had already been completed at the time of the complaints there would have been no such opportunity. If they were continuing the existence of evidence sufficient to ground a listening device or telecommunications interception warrant would have been an obvious factor. Whether such techniques *should* have been deployed would depend on the circumstances of the particular investigation.

The Commission is unable to make any further response to this allegation.

10. ***"I allege that the Police Integrity Commission has consistently and systemically failed to address evidence of systemic corruption surrounding the police promotion system and other matters, through the process of continually declining to investigate allegations of promotions corruption involving senior police."***

Apart from the Commission's decision in relation to Sergeant Fenlon's complaint of 1 June 2000 and its responses to his various other representations, there is no factual basis offered for the assertion that the Commission "*consistently and systemically*" failed to take action in relation to the promotions system, or the "*other matters*" alluded to.

The Commission's declination to investigate Sergeant Fenlon's complaint did not beget a "*consistent and systemic failure*" to investigate promotions corruption. Moreover, the fact that the Commission *is* investigating allegations of corruption in relation to the promotions system, based on firm evidence, belies the allegation.

In his letter of 6 May 2002, Mr Finlay requested further and better particulars from Sergeant Fenlon in relation to his assertion that the Commission "*continually declined to investigate allegations of promotions corruption involving senior police*". Sergeant Fenlon was asked to "*identify clearly each such allegation, when it was made, by whom and to whom. Identify clearly the letter/document evidencing the declination of the Commission to investigate the particular allegation. In each case identify who is alleged to be the 'senior police' involved.*"

On page 5, paragraph 6, of his letter of 23 May 2002 Sergeant Fenlon declined to provide full particulars, but suggested the general information concerning the senior officers to whom the complaints apparently related would be sufficient for you to "*make requests of the Commission for the relevant documents*". Sergeant Fenlon went on to say that he was "*led to believe by the informants that each was declined by the Commission and referred to the Police Service for investigation*".

It is not clear whether by "*informants*" Sergeant Fenlon means the persons who made the complaints against the senior officers, or third persons who have simply suggested to him that there was something wrong with the Commission's decisions on the individual matters referred to. Were the course suggested by Sergeant Fenlon to be adopted, the Commission would be in the position of having to conduct an exhaustive search of its records to see whether it can identify the complaints, which may or may not exist in the form characterised by Sergeant Fenlon, and in relation to each such matter provide a detailed analysis of its decision, going through essentially the same process as it has in responding to Sergeant Fenlon's allegations concerning his own complaint. The vagueness of Sergeant Fenlon's allegation and the paucity of information provided in support demonstrate no good reason why the Commission should be required to undertake such a time consuming exercise.

Conclusions

In the second and third paragraphs of his letter dated 23 May 2002 Sergeant Fenlon encapsulates his complaint as follows:

"My particular knowledge of the circumstances of the matter, and having regard to the above mentioned sections of the Police Integrity Commission Act, in my view supports to no small degree, my general complaint '...that the Police Integrity Commission failed to take appropriate and action to prevent the emergence of serious systemic corruption within the NSW Police Service'.

In effect, The (sic) Commission having been made aware of promotions corruption (through my complaint), failed to carry out an independent investigation (appropriate and timely action) which resulted in the widespread serious police misconduct (systemic corruption), and that corruption (promotions rorting), continued unabated. That is the substance of my complaint."

The relevant facts and circumstances surrounding Sergeant Fenlon's complaint may be summarised as follows:

- (a) the Commission declined to investigate Sergeant Fenlon's "Category 2" complaint of 1 June 2000. The complaint did not suggest any particular police officers had been involved in misconduct concerning the promotions system, but warned of the potential failings in the system and pointed to "circumstantial evidence" and rumours, which in his view suggested the system had been corrupted;
- (b) the matters raised by Sergeant Fenlon would not have lent themselves to a focussed investigation, but rather a broad-reaching and rather directionless inquiry into whether there had been any misconduct of the kind suspected by him. The opportunity to gather relevant evidence of specific acts of misconduct would have been limited;
- (c) the issues raised by Sergeant Fenlon's complaint were referred to the NSW Police to be dealt with under the supervision of the Ombudsman;
- (d) once the Commission had tangible evidence of misconduct involving the promotions system, obtained through the NSW Police's investigation codenamed "Operation Orwell", it took decisive action to investigate the allegations, in the form of Operation Jetz;
- (e) further representations by Sergeant Fenlon, through the Ombudsman and to the Operation Jetz inquiry, were carefully considered but did not cause the Commission to change its decision not to investigate his complaint;
- (f) the Commission maintained the focus of the Operation Jetz hearing on specific matters in relation to which it had relevant evidence. Sergeant Fenlon was not called as a witness to the inquiry because he could give no relevant evidence;
- (g) there are a large number of allegations of police promotions system misconduct presently being investigated, or assessed for possible investigation, by the NSW Police. Both the Commission and the Ombudsman are involved in the oversighting process.

Sergeant Fenlon's claim that the Commission's decision not to investigate his complaint resulted in widespread serious police misconduct is a bold statement. It assumes that any police misconduct which may be uncovered by evolving NSW Police investigations will have occurred after his complaint of 1 June 2000, and in some way have been caused by a properly taken decision by the Commission not to launch an investigation into his concerns. It is an allegation which finds no support in a dispassionate consideration of the relevant facts.

Moreover, even if a causal connection between the Commission's decision and a flourishing of police misconduct could be established, it would not follow that the Commission's decision was improper. The propriety of any decision by the Commission stands to be assessed according to what was reasonably open to it at the time. The Commission assessed Sergeant Fenlon's complaint on its merits and remains confident that it took an appropriate course.

Although in responding to Sergeant Fenlon's allegations it has been necessary to make some firm points, the Commission has no doubt that his views are motivated by a genuine concern to ensure that the NSW Police promotions system is beyond reproach. The Commission does not in any way wish to sound critical of the dedication displayed by Sergeant Fenlon in putting his concerns forward. However, a shift of perspective on his part might allow him to derive some comfort from the fact that an appropriate and balanced

approach to alleged promotions system misconduct is being taken by the Commission, in concert with the Ombudsman and the NSW Police.

Should you require any additional matters raised by Sergeant Fenlon to be addressed, or submissions on discrete issues, the Commission would be happy to assist.

Yours sincerely

S A Robson
Commission Solicitor

Encl.

9 Welland Close
Jamisontown NSW 2750
23 June, 2002

The Hon M D Ireland QC
Inspector of the Police Integrity Commission

Dear Sir,

I must apologise for failure to respond to previous correspondence received from Mr Finlay regarding the provision of further information surrounding one specific issue of concern.

My attention was diverted to addressing a more pressing matter. A matter which again demonstrates gross mal-administration and unethical conduct within the senior administration of the NSW Police. A matter to which is attached significant public and political interest and a matter which once again (predictably), was ignored by the Commission when brought to its attention by myself in November, 2001.

I would therefore be pleased if you would advise the Acting Commission Solicitor, Mr Robson, he may proceed with his "comprehensive response" for what it will be worth.

I make no apology for the quip. One can only assume that if the responses of the Commissioner and others on the 16 May, 2002 are a measured indication of what to expect from the Commission generally, then one must feel equally confident that the "comprehensive response" will more than adequately explain why the Commission again is never responsible for failing to meet the expectations of police internal informants in matters surrounding the conduct of senior officers.

This lack of faith in the credibility of the Commission and its officers is not confined to myself or my circumstances. It is a view now shared by many others.

As for myself, I will never again trust anything to the Commission, the NSW Ombudsman or the NSW Police Service. I refuse to co-operate or assist those agencies any further. They have proven worthless entities, void of integrity, conscience and substance. Evidence in themselves of the failure of the Royal Commission.

I have been required to forfeit far too much already dealing with these malignant mis-representations, notably my career and health but they can be assured, I will continue to do all I can to ensure that my fate is not one shared by those who come after me.

Excuse the rhetorical question but isn't that what Wood was really on about?

I thank you for your correspondence and while I do not envy you in your position, I do wish you well.

Yours sincerely and most respectfully,

Mark Fenlon



**Inspector
of the
Police Integrity Commission**

3 July 2002

Ref No. C08/02AR

Sergeant Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

Dear Sergeant Fenlon,

RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

I have for acknowledgement your letter of 30 June 2002 responding to the Commission Solicitor, Mr S.A. Robson's letter of 25 June 2002. I acknowledge also your telephone call received by my Executive Assistant, Ms Kerrie Ratcliff, on 27 June 2002 in which you indicated that you would not be furnishing the further and better particulars previously requested by my predecessor, the Hon. M.D. Finlay QC. I enclose for your records a copy of the file note of your telephone call.

A copy of your letter of 30 June 2002 has been forwarded to the Commission inviting response.

I am far from insensitive to the frustration you obviously feel that the Police Integrity Commission has not seen fit to undertake a comprehensive investigation into the matters of which you complain. I find it a matter for regret that your endeavours have resulted in you feeling in the way expressed by you in your conversation with Ms Ratcliff.

Your awareness of the difficulties of proving the systemic corruption alleged by you is made plain in your earlier correspondence. You will be aware, I am sure, that the Police Integrity Commission has neither the funds, nor the human resources, to investigate all of the matters which are the subject of complaint.

The function of my Office as Inspector does not impinge upon operational decision making but is confined principally as defined by Section 89(1)(b) of the *Police Integrity Commission Act 1996* which provides:

"S.89(1) *The principal functions of the Inspector are:*

- (b) *to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commissioner or officers of the Commission."*

The discretion exercised by the Commission through its officers to assess whether or not it should conduct an investigation is an operational decision which is not open to challenge by me.

Such a consideration will only be within the legislative function of the Inspector's Office in a most extreme case, such as where no reasonable competent decision maker in the Commission's position would have declined to undertake further investigation of the matter complained of.

As I presently understand the circumstances attending the events of which you complain, this is not such a case.

Nevertheless, I should be pleased to consider any further aspect which you may care to address.

You are no doubt well aware of the article appearing in the Sun Herald on Sunday 30 June 2002. Lest that not be so, I enclose a copy herewith. I note the comments you have made regarding the problems generated by an in-house enquiry. You may nevertheless wish to lend this enquiry your support.

I shall forward to you the response of the Commission to your letter of 30 June 2002 when it is to hand.

Yours sincerely,



The Hon M D Ireland QC
) Inspector of the Police Integrity Commission

- Encl. (1) Copy of File Note by Ms Ratcliff, dated 27 June 2002, Ref. No. C08/02AP.
(2) Article from Sydney Morning Herald entitled "Police jobs inquiry fingers top officers", dated Sunday 30 June 2002.

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COPY

*Inspector
of the
Police Integrity Commission*

FILE MEMORANDUM

Ref No. C08/02AP

DATE: 27 JUNE 2002

RE: COMPLAINT BY SERGEANT MARK FENLON

At approximately 10:00am I received a telephone call from Sergeant Fenlon. He advised me that he had received a letter from the Inspector requesting the further and better particulars previously requested by Mr Finlay by letter dated 27 May 2002. He asked me to advise the Inspector that he would not be submitting any further and better particulars in this matter as he was *"tired, exhausted, fed up, and didn't have the energy to sit in front of a PC compiling hours of material for an adequate response"*. He stated that he would instead wait to receive the response from the PIC in this regard which was due by Friday 21 June 2002.

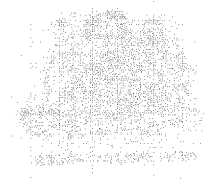
On completion of this telephone conversation I immediately advised the Inspector of the contents of this discussion and advised him that I would compile a file note for this file.

The Office of the Inspector received the abovementioned response from the Commission yesterday, 26 June 2002, a copy of which has now been posted to Mr Fenlon this day.

Kerrie Ann Ratcliff
Executive Assistant to the
Inspector of the Police Integrity Commission

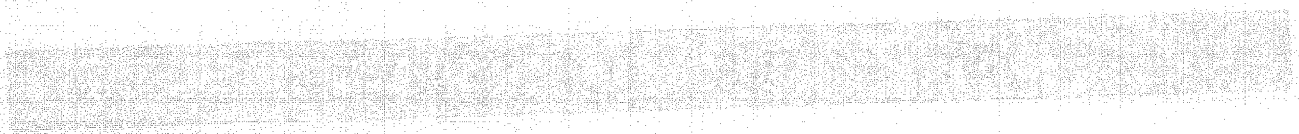
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DATE: 10/10/2002

CONFIDENTIAL - SECURITY INFORMATION

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Special Agent in Charge
Department of Justice

Police jobs inquiry fingers top officers

By JOHN KIDMAN
POLICE REPORTER

THE full extent of the allegations facing police over their promotion system can be revealed today as investigators prepare to begin NSW Police Minister Michael Costa's year-long inquiry.

More than 400 internal complaints of widespread corruption of the system are being investigated by a task force of detectives. A number of the State's senior officers have been named in the claims.

They relate to virtually every area of policing including the service's headquarters at College Street, Sydney. Some of those identified are said to have passed on classified information to favoured job candidates. Others deliberately blocked the promotion of police who were not their friends.

Investigators are understood to have interviewed complainants from across NSW in connection with more than 300 of the matters, but concerns over whether they would cooperate prompted Mr Costa to launch a ministerial inquiry.

A range of documents, copies of which have been obtained by *The Sun-Herald*, allege that:

- One of the service's best known commanders installed a family member in a sought-after posting.
- Up to 40 officers under his command are known to have enjoyed close friendships with their superiors, were also fast-tracked into senior appointments.
- Several of the State's most experienced detectives were promoted by an officer who had inside knowledge of the service's promotion assessment scenarios.

■ One high-profile officer attempted to bully and intimidate a detective who intended raising allegations of impropriety against a superintendent during a promotions appeal hearing.

A *Sun-Herald* investigation has also found that the relative of a senior commander allegedly used her maiden name during an interview at which he was a member of the selection panel.

Elsewhere, mid-ranking officers have been improperly appointed to better-paying, more prestigious administrative roles, according to senior police sources.

One well-connected inspector was "plucked" in the position of commander, no advertisement, no expressions of interest, just good old mateship, one source said.

Other concerns have arisen about the career paths of at least two female employees said to be romantically linked to senior officers.

In all, task force Urban investigators are examining 420 complaints.

One details the preferential appointment of six superintendents, some jumped several ranks and pay rates in one hit.

The evidence suggests that this not only happens at the command level but also at all levels of promotion, the complainant author writes.

The inquiry committee will be chaired by former assistant police commissioner Geoff Schuberg. Officers aware of misconduct or corruption associated with police promotions will be urged to approach Mr Schuberg personally, in a move designed to have him act as an investigative watchdog during the inquiry.

PROMOTING SELF-INTEREST



CASE ONE

TAKING CARE OF FRIENDS AND FAMILY

A high-profile commander is accused of playing a central role in police headquarter allegedly the (maiden name) of a detective who intended appealing against the promotion of a protégé.

According to a complaint to the NSW Ombudsman the officer was approached outside the appeals hearing room and "bullied and intimidated" into withdrawing his application.

When the officer attempted to take the matter further during the hearing, the commander, who was also one of the members of the selection panel, allegedly ignored and threatened him.

Repeated attempts to have the matter considered for investigation have so far failed.

CASE TWO

THE BULLY ON THE PANEL

A high-profile commander is accused of playing a central role in police headquarter allegedly the (maiden name) of a detective who intended appealing against the promotion of a protégé.

According to a complaint to the NSW Ombudsman the officer was approached outside the appeals hearing room and "bullied and intimidated" into withdrawing his application.

When the officer attempted to take the matter further during the hearing, the commander, who was also one of the members of the selection panel, allegedly ignored and threatened him.

Repeated attempts to have the matter considered for investigation have so far failed.

CASE THREE

THE DISGUISED WIFE

According to a number of senior police sources, a complaint was made about the wife of a commander who went for promotion under her maiden name when he was sitting as a member of the interview panel.

Allegedly, she was then appointed his personnel manager and later joined him

as a member of an executive human resources committee.

While police headquarters was apparently prepared to accept the arrangement, the officer was eventually forced to resign the positions on the basis that they constituted a serious conflict of interest.

CASE FOUR

FORGER IN UNIFORM

A female officer who went for promotion to inspector allegedly forged the partner's academic record and presented it as her own.

Despite being caught out by another candidate for the same job, the officer is then said to have submitted the false credentials to the Government and Related Employees Appeal Tribunal.

The matter was reported to police internal Affairs. Although she was found to have repeatedly lied about the apparent fraud, her punishment was a return to general duties rather than a position in a specialist area.

An investigative recommendation to dismiss her from the service was rejected for unexplained reasons.

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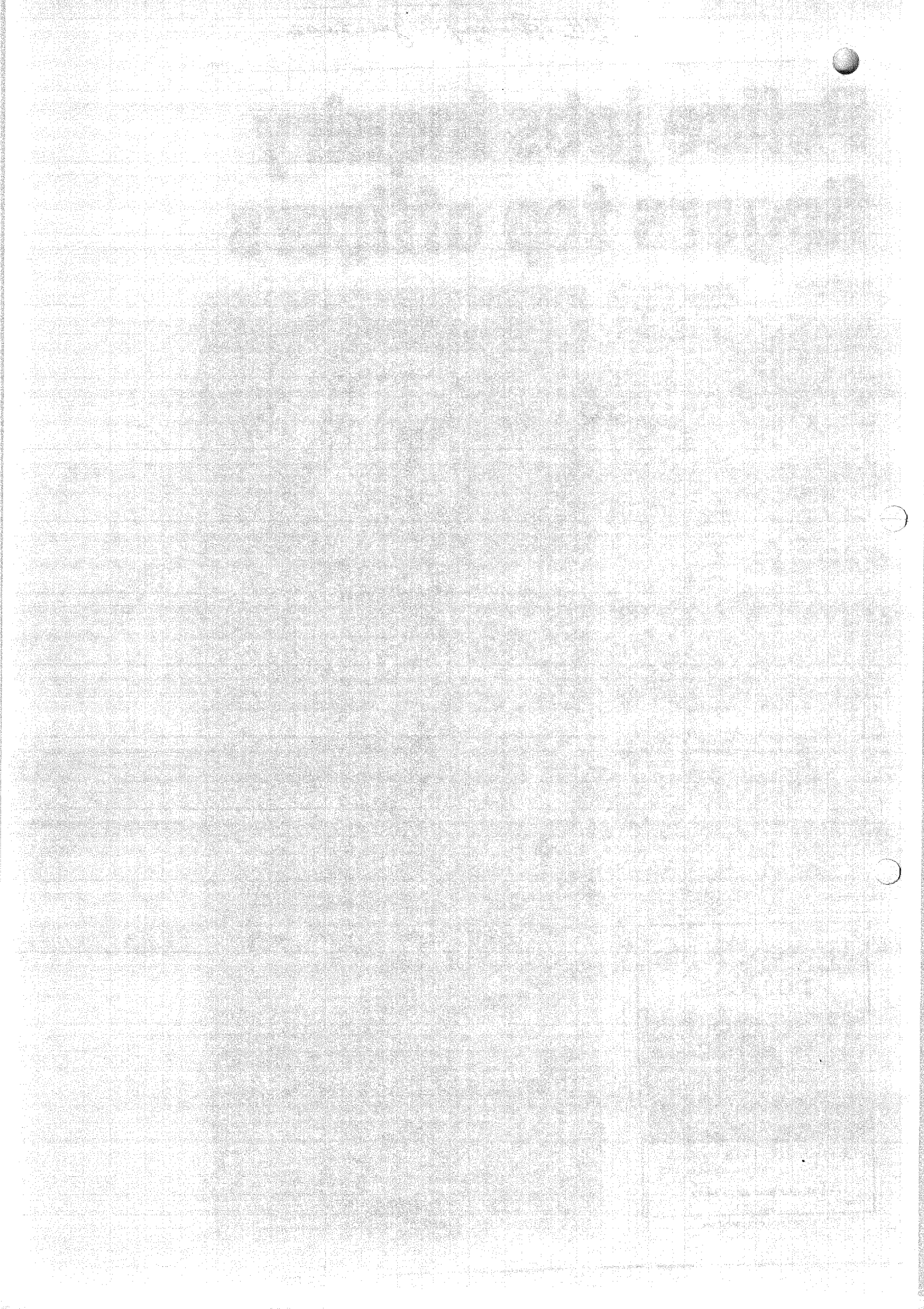
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NEW SOUTH WALES

**Inspector
of the
Police Integrity Commission**

23 July 2002

Ref No. C08/02AU

Mr Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

Dear Mr Fenlon,

RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

I refer to prior correspondence and in particular to my letter to you of 3 July 2002.

Enclosed please find a copy of the letter of 9 July 2002 from Mr S.A. Robson, Commission Solicitor, following receipt by the Commission of a copy of your letter to me, dated 30 June 2002.

I note Mr Robson states inter alia:

"... there being no fresh issues arising from Sergeant Fenlon's response, the Commission does not wish to add to the matters previously outlined."

Regarding the matters at issue between yourself and the Commission, which were the subject of your letter of 30 January 2002 (corrected from 2001), the position appears to me to be as follows:

- (a) By letter dated 6 May 2002 the then Inspector (the Hon. M.D. Finlay QC) sought certain particulars of the matters alleged by you in addition to the further and better particulars sought by him in his letter to you of 17 April 2002. You responded by letter dated 23 April 2002 annexing thereto 72 documents totalling 207 pages.
- (b) The additional particulars sought on 6 May 2002 included on page 5 at sub-paragraph (d) the following:

"(d) You allege in paragraph 10 that the Commission continually declined 'to investigate allegations of promotions corruption involving senior police'. Please identify clearly each such allegation, when was it made, by whom and to whom. Identify clearly the letter/document evidencing the declination of the Commission to investigate the particular allegation. In each case identify who is alleged to be the 'senior police' involved."



COPY

**Inspector
of the
Police Integrity Commission**

Ref No. C08/02AY

REPORT

25 SEPTEMBER 2002

COMPLAINT BY SERGEANT MARK FENLON

AGAINST THE POLICE INTEGRITY COMMISSION

REPORT BY INSPECTOR OF PRELIMINARY INVESTIGATION

By letter bearing date 11 April 2002, directed to the Hon. M.D. Finlay QC, (former Inspector of the Police Integrity Commission), the Hon. Paul Lynch MP, Chairman of the Committee on the Office of the Ombudsman and the Police Integrity Commission (the Joint Parliamentary Committee) informed as follows:

"At a deliberative meeting held on 10 April 2002, the Committee considered correspondence from Mr Mark Fenlon, 9 Welland Close, Jamisontown 2750, concerning the Police Integrity Commission.

Mr Fenlon has alleged that the Police Integrity Commission delayed commencing an investigation into NSW Police's promotional system for a period of 10 months from the lodgment of a protected disclosure he made to the Commission, thereby breaching its statutory obligations under s.3 of the Police Integrity Commission Act 1996 and allowing corruption to continue in the system during this period.

The Committee resolved to formally refer Mr Fenlon's correspondence to you, in accordance with s.89(2) of the Police Integrity Commission Act 1996, and requests that you exercise your powers to investigate Mr Fenlon's allegations concerning the Commission and the conduct of its officers. The Committee intends to review Mr Fenlon's allegations in light of the outcome of any inquiries you may make.

A copy of Mr Fenlon's correspondence to the Committee is attached for your information."

Enclosed was a letter from Sergeant Mark Fenlon to the Committee, dated 30 January 2001 (later corrected to 2002) in which reference is made to "... current investigations being undertaken by the Police Integrity Commission regarding the Police Service promotion system, referred to by the Commission as Operation Jetz", outlining a series of complaints concerning the Commission which may be summarised as follows:

- that although the actions of the Commission may appear appropriate and timely, it was allegedly aware of *"fundamental integrity failings of the Police promotion system as early as June 2000 and did nothing"*;
- the Commission allowed the corruption to *"... continue unhindered" contrary to "an obligation under Section 3 of the Police Integrity Commission Act (the Act) to prevent such corruption from continuing"*;
- the promotion system allegedly introduced following the Police Royal Commission failed to effect reform and on the contrary provided *"a perfect environment for corruption to flourish within the Police Service"*;
- the Police Integrity Commission ignored the risk of corruption of the promotion system occurring and *"chose to dismiss the risk and to dismiss the consequences for the future integrity of the Police Service"*;
- the *"type and form in which the corruption of the promotion system has taken place"* was brought to the attention of the PIC by Sergeant Fenlon in June 2000;
- the NSW Police Special Crime and Internal Affairs (SCIA) Branch investigation into police promotion corruption; code named ORWELL, did not commence until April 2001, *"confirming that the Police Integrity Commission did not entertain any interest in the matter before that time"*;
- the efforts of Sergeant Fenlon to have the *"corruption of the police promotion system investigated appropriately and in detail"* commenced in August 1999 with a formal complaint through SCIA which was ignored leading to reporting of the matter to the Police Integrity Commission in June 2000 where *"circumstances beyond the control of the Commission made it necessary to reluctantly commence an inquiry some ten months later"*;
- the Police Integrity Commission has failed to investigate matters of significant systemic corruption, effectively and without delay, fear or favour.

By letter, dated 17 April 2002, Mr Finlay wrote to Mr Lynch advising that letters had been forwarded on that day to Sergeant Fenlon and to the Commissioner of the Police Integrity Commission and that, at the conclusion of the investigation upon which he proposed to embark pursuant to Section 89(1)(b) of the Act, he (or his successor) would certify that it is necessary in the public interest that the Report of the Preliminary Investigation be distributed to the Joint Parliamentary Committee.

By letter, dated 17 April 2002, Mr Finlay informed Sergeant Fenlon of the statutory role of the Inspector as embodied in the Act and requested of him certain particulars of his complaint directed towards identifying and confirming the issues which the Commission would be called upon to address.

On 1 May 2002, this Office received a ring-binder from Sergeant Fenlon containing the following documentation:

- A five page letter furnishing particulars;
- A copy of Mr Finlay's letter of 17 April 2002;
- A copy of a letter from Mr Lynch advising of the reference of Sergeant Fenlon's letter of complaint to this Office;
- An index;
- Seventy two annexures (some 192 pages) in support.

In response to the request *"to state precisely what is my complaint of 'abuse of power, impropriety or other forms of misconduct on the part of the Commission or any identified officer of the Commission"*, Sergeant Fenlon set out the following:

"In response to issue 1:

I allege that the decision to refuse to investigate a complaint made to the Commission by myself dated 1 June, 2000 was unethically made by Mr G.E. (Tim) Sage or others within the Commission, having totally disregarded obvious, serious and real integrity risks to the NSW Police Service outlined in that complaint (which have since been proven.)

I allege that a conflict of interest existed for Mr Sage at the time of his decision in this matter, owing to a previous relationship with the then Commissioner of Police, Peter Ryan as a former member of the Commissioners advisory panel.

I allege that the substance of my complaint dated 1st June, 2000, demonstrated evidence of a failed policing reform (the promotion system) introduced by the then Police Commissioner Mr Ryan (in response to a Royal Commission recommendation) and that the risk to Ryan's credibility as Police Commissioner arising from an independent investigation of my complaint, provided that conflict of interest for Mr Sage.

I allege that events surrounding the highly irregular release of information to the ABC Four Corners program concerning operation Florida, involving both Mr Sage and another former member of the Commissions advisory panel, journalist, Mr Chris Masters, further supports my allegations concerning the existence of a mutually supportive relationship between Mr Sage and Peter Ryan.

I allege that this relationship presented an obvious conflict of interest for Mr Sage in his capacity as an officer of the Police Integrity Commission and as a consequence has compromised the Commissions role to investigate allegations of corruption, unethical conduct or serious mal-administration involving senior police within the NSW Police Service.

I further allege that the current operations JETZ investigation has by design, been purposely confined to Inspector Robert Menzies and his associates in order to prevent the full extent of promotions corruption to be made known.

I allege that the Police Integrity Commission's decision not to conduct further public hearings, call further witnesses or conduct further investigations of corruption or impropriety concerning the police promotions system has been unethically and unduly influenced by unidentified persons within and outside the Commission.

I allege that investigative methods employed by the Police Integrity Commission and Special Crime and Internal Affairs (electronic surveillance) were deliberately not employed against senior police nominated (in complaints made by other police) as having engaged in corruption concerning the promotions system, to avert the emergence of irrefutable evidence of such corrupt conduct.

I allege that the Police Integrity Commission has consistently and systematically failed to address evidence of systemic corruption surrounding the police promotion system and other matters, through a process of continually declining to investigate allegations of promotions corruption involving senior police.

I allege that the Police Integrity Commission in referring such allegations of misconduct by senior Police (vide the NSW Ombudsman or directly) to the NSW Police Service, has knowingly placed at risk of retribution, the police internal informants reporting such misconduct.

I allege that the Police Integrity Commission in referring such allegations of misconduct by senior Police (vide the Ombudsman or directly) to the NSW Police Service, does so in the knowledge that the NSW Police Service will fail to appropriately investigate such allegations.

I allege that the Police Integrity Commission has failed and is continuing to fail in it's statutory obligation to investigate serious and widespread systemic corruption within the Police Service. That such failure has arisen from unethical decisions made by its officers regarding complaints which have attached risks to the credibility of the management of the New South Wales Police Service and Government".

On 6 May 2002, Mr Finlay wrote to Sergeant Fenlon seeking further and better particulars of certain discrete aspects of the matters complained of, identifying the issue to be investigated by this Office as follows:

"It appears to me that the allegations under these specific paragraphs which I have set out above would be most helpfully dealt with as an investigation into the alleged failure of the Commission to appropriately investigate your complaint of 'the corruption of the Police promotion system' (emphasis added).

That is the issue which I propose this office investigate unless you can provide me with good reason otherwise."

A further request was made as follows:

- "d) You allege in paragraph 10 that the Commission continually declined 'to investigate allegations of promotions corruption involving senior police'. Please identify clearly each such allegation, when was it made, by whom and to whom. Identify clearly the letter/document evidencing the declination of the Commission to investigate the particular allegation. In each case identify who is alleged to be the 'senior police' involved."

In his response, dated 23 May 2002, Sergeant Fenlon welcomed the "term of reference" set out above, at the same time expressing his concern that the allegations he makes will be determined by the Commission not as "serious police misconduct" but rather "other police misconduct" and as such "were appropriately referred to the Police Service for investigation under the provision of Section 13(1)(c) of the Act".

Further time was requested in which to furnish the particulars sought concerning "senior police officers" (referred to as (d) above), although the names of four senior police officers allegedly involved were provided.

On 27 May 2002, Mr Finlay replied extending the time for furnishing particulars of paragraph (d) in the following terms:

"At your request I extend the time for you to supply such particular for a further 14 days from this date. Absent the receipt of such full and proper particulars, or a reasoned application by you for the further extension of time to supply them, I shall assume that you abandon the allegation to which it refers.

It is likely in the above circumstances that the Commission shall seek to defer its considered comprehensive response until you supply such particulars or that issue is no longer required to be addressed."

On 18 June 2002, Mr S.A. Robson, Acting Commission Solicitor, informed this office that notwithstanding the outstanding particulars "the Commission is minded at this stage to reply as best it can to the relevant allegations".

By letter dated 25 June 2002 the Commission responded to Sergeant Fenlon's allegations which were encapsulated as "the alleged failure of the Commission to appropriately investigate (Sergeant Fenlon's) complaint of 'the corruption of the Police promotion system'".

The history and background of events relied on by the Commission included the following:

- On 10 August 1999 Sergeant Fenlon (the Complainant) telephoned the Commission to register concerns that the selection process for recently awarded Duty Officer positions lacked integrity. It was suggested that his concerns would more appropriately be directed to the Ombudsman, although he was invited to write to the Commission.
- On 14 August 1999 the Complainant made a formal internal complaint to the Blacktown Local Area Commander concerning the matter.
- On 1 June 2000 the Complainant requested that the Commission conduct an independent investigation into "the processes and procedures concerning the promotional system for Duty Officer position currently in place within the NSW Police Service". The complaint related what the Complainant considered to be "significant circumstantial evidence that the system had been corrupted" and "there were a number of rumours circulating within the Service that the practice of pooling questions was occurring within some commands. Probability suggests that such rumours had some foundation in truth and that my concerns were, and are, still justified".

- On 18 October 2000 Assistant Commissioner Sage wrote to the Complainant advising of the Commission's decision not to investigate his complaint and of its referral to the NSW Police and the Ombudsman to be dealt with, pursuant to the requirements of Section 131 of the *Police Service Act 1990*.
- On 16 March 2001 the Complainant made telephone contact with the Commission in reference to the Commission's investigation, codenamed "*Operation Malta*", the purpose of which was essentially to inquire into allegations that Senior Police had attempted to block reform and had taken retributive action against certain members of a NSW Police Reform Unit. The Complainant suggested that the scope and purpose of the public hearing announced for Operation Malta should be broadened to encompass his concerns about the promotions system. He requested that he be called to give evidence at the hearing and was advised to outline the evidence which he would wish to give in order that its relevance to the inquiry might be assessed. He indicated that he had made contact with the media and was prepared to air his concerns through it, although he would prefer the Commission to examine the matters he had raised.
- On 26 March 2001 the Ombudsman wrote to the Commission with reference to some additional information the Complainant had provided in relation to the NSW Police Internal Affairs investigation "*Operation Radium*" which had been carried out in February 2000. This information identified "*several persons*" as having "*acted corruptly when attending the structured interview process*". The Commission considered the additional matters raised in the Complainant's letter to the Ombudsman but assessed them as providing little investigative opportunity. However, it was decided to refer the material to the officers of the Commission who were investigating "*Operation Jetz*" to assess whether there was anything of relevance to that investigation. On 27 June 2001 it was determined that the additional matters raised by the Complainant were of no relevance to Operation Jetz and the initial decision not to investigate the Complainant's complaint would stand.
- On 15 August 2001 the Complainant wrote again to the Commission by way of a submission to the Operation Jetz inquiry. Once again he urged the Commission to broaden its investigation to include an examination of the issues "*critically important*" and indicated that he "*would consider the absence of any comment on (those issues) during the public hearing ... a miscarriage of the entire matter*". The issues identified by the Complainant were:
 - "(1) *the examination of the entire promotional processes for not only Duty Officers but Crime Managers, specialist positions ..., all Senior Sergeant and Sergeant positions ...*
 - (2) *the examination of the conduct of Deputy Commissioner Jarratt and others responsible for the introduction and continued use of promotion systems ...*
 - (3) *the examination of the Government and Related Employees Appeals Tribunal as it relates to Police appointments. The integrity of that body ... its lack of accountability regarding decisions arrived at and the absolute power which the finality of its decisions confers upon it.*
 - (4) *the examination of the complicity (by inaction) of the Police Association regarding promotions issues ...*

- (5) *the examination of the use of the complaints management system to hinder promotional opportunities.*
- (6) *the examination of Management culture ...*
- (7) *the examination of inequities in the provision of career development opportunities ...*
- (8) *the examination of the development of the 'Duty Officers Course' ...".*

The submission did not identify the information upon which the Complainant was basing his views, other than to say that it was his understanding "*that there is overwhelming evidence that the promotions system has been corrupted in every form that I predicted in 1999*".

- In October 2001 the Commission conducted a review of the complaint matters raised by the Complainant to determine whether there was any relevant evidence he could give to the Operation Jetz hearing. As a result, it was decided that the Complainant should be interviewed. The interview took place on 22 October 2001 and was conducted by Mr Kenna in the company of another Commission Solicitor, Ms Alvos.

The views of the Assistant Commissioner presiding in the Operation Jetz hearing, Mr Brian Donovan QC, and Counsel Assisting, Mr Chris Hoy, were also sought. The consensus of opinion was that the issues raised by the Complainant were not within the scope and purpose of the hearing of the investigation and should not be introduced into the hearing lest it become too broad and unmanageable.

Consideration was given as to whether the Commission's final report on Operation Jetz could nonetheless refer to the matters raised by the Complainant, by way of a general backgrounding of promotions system issues. Mr Donovan indicated that he was prepared to meet with the Complainant to discuss these proposals. A meeting was held between Mr Donovan, Mr Kenna, and the Complainant on 13 December 2001 during which the Complainant warned of the existence of other networks within the NSW Police "*concerning corruption of the promotions system*" and advised the Commission of its "*obligation to address those and other networks*", however, he was unable to provide information concerning specific acts of alleged misconduct.

Operation Jetz

- In January 2001 the Special Crime and Internal Affairs (SCIA) Unit of NSW Police commenced an investigation codenamed "*Operation Orwell*" as a consequence of telecommunication interception material obtained by the NSW Crime Commission which suggested that certain executive members of the Police Association of NSW and other Police Officers had been manipulating the appeals process before the Government and Related Employees Appeals Tribunal.
- On 29 March 2001 the Commission commenced a preliminary investigation codenamed "*Operation Jetz*" to "*determine whether a more complete investigation should be conducted into allegations of NSW Police being involved in serious police misconduct arising from NSW Police Special Crime and Internal Affairs, Operation Orwell*".

The strength of the material provided, in the view of the Commission, did not disclose evidence of criminality such as to amount to serious police misconduct, but rather, conduct of a kind that could properly be investigated by the NSW Police internally.

- Additional telecommunication interception material was subsequently provided to the Commission by SCIA. The Commission considered its position and concluded that issues of serious police misconduct were identified. In the result, on 26 June 2001 Operation Jetz was declared a full investigation for the purpose of:

"... investigating whether or not Inspector Robert Gordon Menzies and other serving NSW Police Officers are involved in police misconduct with regard to the NSW Police Service promotional system".

- On 20 August 2001 the Commission commenced a public hearing for the purposes of Operation Jetz, with an announced Scope and Purpose to investigate:

"... whether certain members of the NSW Police Service have been or are currently involved in police misconduct with respect to the NSW Police Service promotional system".

In his opening to the enquiry Counsel Assisting, Mr Hoy, indicated that the hearing was "not intended to be an enquiry into the promotional system operating within the NSW Police Service", but in effect an investigation that:

"... may well suggest that a number of serving police officers have participated in conduct intended to thwart those fundamental principles of fairness and confidentiality [involved in a fair and equitable promotions system] by obtaining an advantage for colleagues by obtaining information concerning the questions to be asked during the interview process and conveying that information to those colleagues in order to enable them to better prepare themselves for their interviews".

- The Operation Jetz public hearing has been concluded and the investigation is presently at the stage of receiving submissions from persons adversely affected by the evidence.

The submission is made on behalf of the Commission that:

"Putting aside the Commission's Operation Jetz investigation, the general complaint of Sergeant Fenlon dated 1 June 2000 and past NSW Police investigations, at the present time there exist a large number of complaints of promotions system misconduct which are being assessed by NSW Police Task Force Uman. The Commission and Ombudsman are involved in that process by way of oversighting discrete aspects of the investigations".

The Complainant does not take issue with this statement and I have no reason to doubt its veracity.

Of the 13 complaints alleged by the Complainant in his letter of 13 April 2002, the Commission identifies paragraphs numbered 4, 7, 8, 9, and 10 as going to the gist of the issue enunciated by Mr Finlay in his letter to the Complainant of 6 May 2002 as *"... the alleged failure of the Commission to appropriately investigate your complaint of the 'corruption of the police promotion system'"*. No issue is taken by the Complainant with this approach.

Paragraph 4 states:

"I allege that the substance of my complaint dated 1st June 2000, demonstrated evidence of a failed policing reform (the promotion system) introduced by the then Commissioner Mr Ryan (in response to a Royal Commission recommendation) and that the risk to Mr Ryan's credibility as Police Commissioner arising from an independent investigation of my complaint, provided that conflict of interest for Mr Sage."

The Commission's submissions in this regard may be summarised as follows:

- Pursuant to s 13(2) of the *Police Integrity Commission Act 1996* ("the Act") the Commission *"as far as practicable, is required to turn its attention principally to serious police misconduct"*.

"Serious police misconduct" is defined in s 4 of the Act to mean:

- "(a) the conduct of a police officer that is the subject of a Category 1 complaint, or*
- (b) the conduct of a police officer that would give rise to a Category 1 complaint if it were the subject of a complaint under the Police Service Act 1990."*

"Category 1 complaint" is relevantly defined by s 67(a) of the Act to mean a complaint *"that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission"*. Pursuant to that provision an agreement exists between the Commission and the Ombudsman as to the criteria for identifying whether an allegation constitutes a *"Category 1"* matter, which is set out in the following schedule:

*"SCHEDULE TO THE AGREEMENT MADE ON 15 JANUARY 1998
PURSUANT TO S 67(a) OF THE POLICE INTEGRITY COMMISSION ACT
1996 BETWEEN THE COMMISSIONER FOR THE POLICE INTEGRITY
COMMISSION AND THE OMBUDSMAN*

- A. A complaint that a police officer has or may have sought or may seek to pervert the course of justice by giving false evidence, by destroying or interfering with evidence, by withholding or refraining from giving evidence, by fabricating evidence or by influencing another so to act.*
- B. A complaint that a police officer has or may have committed or may commit*
 - (i) an assault which has caused or may cause a serious injury and which could lead to a charge of maliciously wounding or inflicting grievous bodily harm upon a person pursuant to section 35 of the Crimes Act 1900; or*
 - (ii) an offence (including larceny) relating to property where the value exceeds \$5000; or*
 - (iii) any offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more.*

- C. *A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duties.*
- D. *A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence.*
- E. *A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation.*
- F. *A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or a prohibited plant, unless the amount or number of such drug or plant is less than the indictable quantity therefor as specified in the Drug Misuse and Trafficking Act 1985."*

- The Commission can investigate alleged misconduct not amounting to *"serious police misconduct"*.
- The Act makes no precise distinction between *"serious police misconduct"* and *"other police misconduct"*.
- The Commission may conduct an investigation even though no particular police officer or other person has been implicated and even though no police misconduct is suspected (S.23(2)).
- The Act accordingly affords a wide discretion as to the matters which the Commission can investigate, however, the Commission has limited resources and *"must seek to judiciously devote them to matters involving identifiable police misconduct of the most serious kind"*.
- The matters raised by the Complainant did not constitute an identifiable allegation of police misconduct, serious or otherwise, on the part of any particular officer.
- The Complainant relied upon *"circumstantial evidence"* derived from the demographics associated with the selection of successful applicants and *"rumours"* of which he was aware.
- As a complaint constituting a non-category 1 matter the Commission, having *"carefully considered and weighed the additional matters raised by the Complainant through the Ombudsman, and his submission to the Operation Jetz hearing"*, in the exercise of its discretion, determined that it was more appropriately a matter for the NSW Police to deal with under the supervision of the Ombudsman.
- The Commission is an independent body charged with important functions in the public interest. It must be able to determine which of the multitude of matters competing for its attention warrant the commitment of its resources.

- If it were otherwise, the ability of the Commission to achieve its objectives would be subject to challenge, not only by persons whose interests stand to be adversely affected by an investigation, but, as in the Complainant's case, those devoted to seeing the Commission exercise its functions and powers in the causes they espouse.

I accept the force of these arguments. It must be recognised that the function of this Inspectorate does not extend to participation in the day-to-day operations of the Commission. A discretionary decision made in a case such as the present cannot be the subject of challenge unless it is one that no competent authority with the legislative responsibility of the Commission could have arrived at.

Nothing by way of evidence or submission placed before me would indicate this to be such a case.

On the contrary, the parameters of an inquiry of the breadth contemplated by the Complainant, touching as it does the promotion system affecting almost all serving Police Officers, encompass potentially a substantial allocation of resources together with a very large number of individuals. This fact is clearly recognised by the Minister for Police in the implementation of the Ministerial Inquiry to which I shall later refer.

The difficulties of proof of the general allegations of misconduct alleged by the Complainant were recognised by him. These difficulties are exemplified by the need to have persons who have engaged in consensual misconduct voluntarily inculcate themselves as well as others.

The allegation that Mr Sage, by virtue of his presence on the former Commissioner Ryan's Executive Advisory Group, said to have met on two occasions, one of which was attended by Mr Sage, gave rise to a conflict of interest founded upon a "*relationship*", is unsupported and untenable and is rejected. The complaint set out in paragraph 4 is not made out.

Paragraph 7 states:

"I further allege that the current operation JETZ investigation has by design, been purposely confined to Inspector Robert Gordon Menzies and his associates in order to prevent the full extent of promotions corruption to be made known".

The Commission submissions in this regard may be summarised as follows:

- The Commission's Operation Jetz investigation was designed to investigate discrete allegations of serious police misconduct concerned with the manipulation of the police promotions system. It proceeded largely on the strength of intercepted telephone conversation without which it would have been difficult to investigate.

The difficulties previously referred to, associated with the consensual nature of the misconduct in question and the need to rely, to a large extent, upon perpetrators voluntarily inculcating themselves, militated strongly against widening the Scope and Purpose of Operation Jetz to embrace the general allegations made by the Complainant in the absence of specific instances and credible evidence.

The Commission makes the further point that the Complainant is apparently unaware of the full extent of the activity which has been devoted to dealing with allegations of police misconduct concerning the promotions system, as briefly touched upon above.

I do not accept that the declinature on the part of the Commission to widen the Scope and Purpose of Operation Jetz so as to encompass a full enquiry into promotions corruption is a matter justifying complaint.

Paragraph 8 states:

"I allege that the Police Integrity Commission's decision not to conduct further public hearings, call further witnesses or conduct further investigations of corruption or impropriety concerning the police promotions system has been unethically and unduly influenced by unidentified persons within and outside the Commission".

The Commission's submissions in this regard may be summarised as follows:

- The Commission rejects the general allegation of mala fides on the part of unspecified Commission officers.
- The Complainant was not called to give evidence in Operation Jetz because he was not in a position to give evidence relevant to the matters under investigation, nor was he able to give evidence relating to any specific act of police misconduct concerning the promotions system.
- The Complainant, at paragraph 8 on page 4 of his letter of 23 May 2002, in referring to the interview in which he participated with Mr Donovan of Counsel and Mr Kenna, Solicitor, complained of the fact that *"little, if any, information"* was offered by either of these gentlemen regarding Operation Jetz. It seems to me that this comment misconceives the purpose of the interview. Counsel Assisting and his instructing Solicitor were there to elicit such evidence as the Complainant was able to give, and not there for the purposes of providing to him, the information which the Commission had in its possession.
- It is not possible to deal with the contention associated with *"unidentified persons within and outside the Commission"*.

There is no substance in this ground of complaint.

Paragraph 9 states:

"I allege that investigative methods employed by the Police Integrity Commission and Special Crime and Internal affairs (electronic surveillance) were deliberately not employed against senior police nominated (in complaints made by other police) as having engaged in corruption concerning the promotions system, to avert the emergence of irrefutable evidence of such corrupt conduct".

The Commission's submissions in this regard may be summarised as follows:

- The imprecise and unspecific nature of this allegation makes it difficult for the Commission to respond. The basis upon which the Complainant contends that there was deliberate non-employment of electronic surveillance by the Police Integrity Commission and the SCIA is not made plain.

- Given that Operation Jetz is the only Commission investigation that has been concerned with misconduct in relation to the promotions system it is not clear how electronic surveillance could have been employed with regard to the unspecified senior police nominated.

As I understand the Commission's submissions, for electronic surveillance to have been of assistance, it would have been necessary to know in advance of the likelihood of inculpatory comments or activity taking place. If the conduct in question had already taken place, electronic surveillance would almost certainly have been unproductive.

I am unable to glean from the material before me a justifiable basis for this complaint.

Paragraph 10 states:

"I allege that the Police Integrity Commission has consistently and systemically failed to address evidence of systemic corruption surrounding the police promotions system and other matters, through the process of continually declining to investigate allegations of promotions corruption involving senior police".

This complaint was the subject of a request for further and better particulars by Mr Finlay in his letter of 6 May 2002 although further time was requested by, and granted to, the Complainant, in which to furnish the particulars, they were not forthcoming.

On 27 June 2002 the Complainant telephoned this office and advised my Executive Assistant that he did not propose to furnish the particulars sought but would await the response of the Police Integrity Commission (to those aspects of his complaint which were adequately particularised).

On 27 June 2002 I forwarded to the Complainant a copy of the Commission's response (dated 25 June 2002).

In his communications to this Office, the Complainant accepted that absent the particulars requested this aspect of the complaint would be regarded as not pressed.

The Commission, in its response of 25 June 2002 to the Complainant's allegations, put its position as follows:

"In the second and third paragraphs (on page 2) of his letter dated 23 May 2002 Sergeant Fenlon encapsulates his complaint as follows:

'My particular knowledge of the circumstances of the matter, and having regard to the above mentioned sections of the Police Integrity Commission Act, in my view supports to no small degree, my general complaint '... that the Police Integrity Commission failed to take appropriate and (timely) action to prevent the emergence of serious systemic corruption within the NSW Police Service'.

In effect, The (sic) Commission having been made aware of promotions corruption (through my complaint), failed to carry out an independent investigation (appropriate and timely action) which resulted in the widespread serious police misconduct (systemic corruption), and that corruption (promotions rorting), continued unabated. That is the substance of my complaint.'

The relevant facts and circumstances surrounding Sergeant Fenlon's complaint may be summarised as follows:

- (a) the Commission declined to investigate Sergeant Fenlon's 'Category 2' complaint of 1 June 2000. The complaint did not suggest any particular police officers had been involved in misconduct concerning the promotions system, but warned of the potential failings in the system and pointed to 'circumstantial evidence' and rumours, which in his view suggested the system had been corrupted;*
- (b) the matters raised by Sergeant Fenlon would not have lent themselves to a focussed investigation, but rather a broad-reaching and rather directionless inquiry into whether there had been any misconduct of the kind suspected by him. The opportunity to gather relevant evidence of specific acts of misconduct would have been limited;*
- (c) the issues raised by Sergeant Fenlon's complaint were referred to the NSW Police to be dealt with under the supervision of the Ombudsman;*
- (d) once the Commission had tangible evidence of misconduct involving the promotions system, obtained through the NSW Police's investigation codenamed 'Operation Orwell', it took decisive action to investigate the allegations, in the form of Operation Jetz;*
- (e) further representations by Sergeant Fenlon, through the Ombudsman and to the Operation Jetz inquiry, were carefully considered but did not cause the Commission to change its decision not to investigate his complaint;*
- (f) the Commission maintained the focus of the Operation Jetz hearing on specific matters in relation to which it had relevant evidence. Sergeant Fenlon was not called as a witness to the inquiry because he could give no relevant evidence;*
- (g) there are a large number of allegations of police promotions system misconduct presently being investigated, or assessed for possible investigation, by the NSW Police. Both the Commission and the Ombudsman are involved in the oversighting process.*

Sergeant Fenlon's claim that the Commission's decision not to investigate his complaint resulted in widespread serious police misconduct is a bold statement. It assumes that any police misconduct which may be uncovered by evolving NSW Police investigations will have occurred after his complaint of 1 June 2000, and in some way have been caused by a properly taken decision by the Commission not to launch an investigation into his concerns. It is an allegation which finds no support in a dispassionate consideration of the relevant facts.

Moreover, even if a causal connection between the Commission's decision and a flourishing of police misconduct could be established, it would not follow that the Commission's decision was improper. The propriety of any decision by the Commission stands to be assessed according to what was reasonably open to it at the time. The Commission assessed Sergeant Fenlon's complaint on its merits and remains confident that it took an appropriate course.

Although in responding to Sergeant Fenlon's allegations it has been necessary to make some firm points, the Commission has no doubt that his views are motivated by a genuine concern to ensure that the NSW Police promotions system is beyond reproach. The Commission does not in any way wish to sound critical of the dedication displayed by Sergeant Fenlon in putting his concerns forward. However, a shift of perspective on his part might allow him to derive some comfort from the fact that an appropriate and balanced approach to alleged promotions system misconduct is being taken by the Commission, in concert with the Ombudsman and the NSW Police."

In my opinion, having reviewed the material which the parties have placed before me in support of, and in response to, the Complainant's complaint, a number of conclusions are patently clear:

1. The Complainant is genuine in his consuming and assiduous endeavours to expose and put to rights the wrongs and injustices, of which he is aware, within the NSW Police promotions systems.
2. The efforts of the Complainant to achieve his aims, in his assessment, have been frustrated and unproductive by virtue of the declination of the NSW Police SCIA, the NSW Ombudsman, and the Police Integrity Commission, to undertake an inquiry into, and review of, the Police promotions system, of the scope and magnitude he considers warranted.
3. The motivation and dedication of the Complainant, and his genuineness in the pursuit of his cause is recognised, at least by the Police Integrity Commission.
4. The generality of the complaints made and their provenance is not such as to warrant a broad spectrum enquiry under the auspices of the Police Integrity Commission to the exclusion or relegation of other instances of serious police misconduct which are capable of producing results with more judicious outlay of resources.

The Complainant's detectable air of resignation is no doubt referable to the fact that his grievances, it is to be hoped, have been overtaken by events.

On 3 July 2002 I wrote to the Complainant in the following terms:

"RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

I have for acknowledgement your letter of 30 June 2002 responding to the Commission Solicitor, Mr S.A. Robson's letter of 25 June 2002. I acknowledge also your telephone call received by my Executive Assistant, Ms Kerrie Ratcliff, on 27 June 2002 in which you indicated that you would not be furnishing the further and better particulars previously requested by my predecessor, the Hon. M.D. Finlay QC. I enclose for your records a copy of the file note of your telephone call.

A copy of your letter of 30 June 2002 has been forwarded to the Commission inviting response.

I am far from insensitive to the frustration you obviously feel that the Police Integrity Commission has not seen fit to undertake a comprehensive investigation into the matters of which you complain. I find it a matter for regret that your endeavours have resulted in you feeling in the way expressed by you in your conversation with Ms Ratcliff.

Your awareness of the difficulties of proving the systemic corruption alleged by you is made plain in your earlier correspondence. You will be aware, I am sure, that the Police Integrity Commission has neither the funds, nor the human resources, to investigate all of the matters which are the subject of complaint.

The function of my Office as Inspector does not impinge upon operational decision making but is confined principally as defined by Section 89(1)(b) of the Police Integrity Commission Act 1996 which provides:

'S.89(1) The principal functions of the Inspector are:

- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commissioner or officers of the Commission.'*

The discretion exercised by the Commission through its officers to assess whether or not it should conduct an investigation is an operational decision which is not open to challenge by me.

Such a consideration will only be within the legislative function of the Inspector's Office in a most extreme case, such as where no reasonable competent decision maker in the Commission's position would have declined to undertake further investigation of the matter complained of.

As I presently understand the circumstances attending the events of which you complain, this is not such a case.

Nevertheless, I should be pleased to consider any further aspect which you may care to address.

You are no doubt well aware of the article appearing in the Sun Herald on Sunday 30 June 2002. Lest that not be so, I enclose a copy herewith. I note the comments you have made regarding the problems generated by an in-house enquiry. You may nevertheless wish to lend this enquiry your support.

I shall forward to you the response of the Commission to your letter of 30 June 2002 when it is to hand."

The newspaper article, above referred to, was generated as a result of the announcement by the Minister for Police on 27 June 2002 of an enquiry into the NSW Police promotions system. The Minister advised that:

"The inquiry is chaired by Mr Geoff Schuberg, a member of the Police Minister's Advisory Counsel and comprises Senior Members of NSW Police, the Police Association, the Ministry for Police, and my Office.

The inquiry will:

- *Review legislation governing police promotions;*
- *Review internal Police practices and policies, relating to Police promotions including the collection of statistics as it applies to promotions;*
- *Develop plans to ensure the integrity of Police promotions system;*
- *Examine Police promotions systems in other Australian jurisdictions;*
- *Consider any relevant reports on Police promotions.*

The inquiry has commenced its review and will provide me with a Final Report by 30 June 2003. An Interim Report will be provided by 30 September 2002."

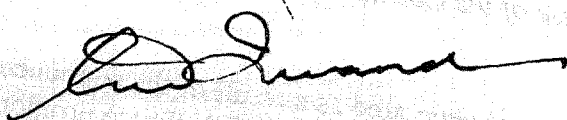
It is self-evident that the situations in which evidence is availability, and prospects of successful investigation are apparent, will logically warrant the expenditure of resources with priority over those where:

- it is common ground that the basis of a complaint is anecdotal;
- there is no hard factual evidence, and
- the misconduct is consensual with the strong likelihood that no party will have any incentive to provide, by way of sworn testimony, the necessary evidentiary basis for a punitive action.

Conclusion

In conclusion, to the question whether there has been a failure on the part of the Police Integrity Commission to appropriately investigate Sergeant Fenlon's complaint of 'the corruption of the Police promotions system' I answer "No" and I so report. The complaint is dismissed accordingly.

I certify, pursuant to Section 56(4)(c) of the *Police Integrity Commission Act 1996*, that it is necessary in the public interest to divulge copies of this Report to the Hon. Paul Lynch MP, Chairman of the Committee on the Office of the Ombudsman and the Police Integrity Commission, and to the Members of the Committee, the Hon. Michael Costa, Minister for Police, Mr Les Tree, Director-General of the Ministry for Police, the Police Integrity Commission, and Sergeant Mark Fenlon. I do not publish this Report to the media.



The Hon M D Ireland QC
Inspector of the Police Integrity Commission



NEW SOUTH WALES

**Inspector
of the
Police Integrity Commission**

26 September 2002

Ref No. C08/02BA

Sergeant Mark Fenlon
9 Welland Close
JAMISONTOWN NSW 2750

Dear Mr Fenlon,

RE: YOUR COMPLAINT AGAINST THE POLICE INTEGRITY COMMISSION

I enclose herewith a copy of my Report of Preliminary Investigation, dated 25 September 2002, for your information.

You will see that the penultimate paragraph of my Report states:

"In conclusion, to the question whether there has been a failure on the part of the Police Integrity Commission to appropriately investigate Sergeant Fenlon's complaint of 'the corruption of the Police promotions system' I answer 'No' and I so report. The complaint is dismissed accordingly."

Please also note, as stated in the final paragraph of my Report, that I do not divulge this Report to the media.

I now propose to close this file.

Yours sincerely,

per. 

The Hon M D Ireland QC
Inspector of the Police Integrity Commission

Encl. Copy of Inspector's Report of Preliminary Investigation, dated 25 September 2002.



COMMITTEE ON THE OFFICE OF THE OMBUDSMAN
AND THE POLICE INTEGRITY COMMISSION

15 November 2002

Sergeant Mark Fenlon
9 Welland Close
Jamisontown 2750

Dear Sergeant Fenlon

I refer to my letter dated 11 April 2002 in which I advised that the Committee had resolved to refer your correspondence of 30 January 2002 to the PIC Inspector, in accordance with s.89(2) of the *Police Integrity Commission Act 1996*, requesting him to investigate the matters you raised concerning the conduct of the Police Integrity Commission and its officers.

The Inspector's report has been received and was considered at the Committee's last deliberative meeting. The Committee noted the conclusions drawn by the Inspector and does not propose to take any further action in relation to this matter.

I note that you have been provided with a copy of the Inspector's report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Lynch'.

Paul Lynch MP
Chairperson