

24 January 2017

The Parliament of Australia

**Subject: Australian Criminal Intelligence Commission
/Australian Federal Police and Australian Border Force Corruption
/ Media Release**

Synopsis

Dear Honourable Member

In Operation Collage/ Bergonia and subsequent Brisbane Supreme case BS 864/11, some serious criminal acts were and still are being committed by the Governments policing institutions, Australian Federal Police, Australian Border Force and the Australian Crimes Commission.

I have attempted to bring these activities to the awareness of appropriate Government entities.

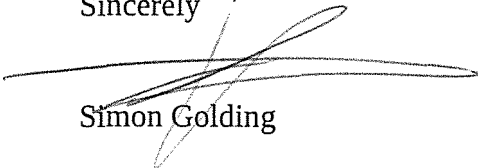
As no action has been forthcoming, I am left with no other option but to go public.

As a last attempt in bringing order and justice, I am addressing this letter to Parliament in the hope that there is still some integrity in the system for corrective action to be initiated by Parliament.

I hereby enclose transcripts and evidence of criminal acts that have been manipulated by the above mentioned authorities to cover their unlawful actions.

I trust that you will give serious attention to this matter as a corrupt law enforcing agency does not serve the public's interest.

Sincerely

A handwritten signature in black ink, appearing to read 'Simon Golding', with a long horizontal stroke extending to the left.

Simon Golding

Outline of Content

- Page 2 : Introduction to previous correspondence of corruption and Australian Crimes Commission crimes.
- Page 3 : **29/01/2013 Brisbane Supreme Court transcript** highlighting crimes by the ACC.
- Page 5 : Overview of Commonwealth Director of Public Prosecutions disobeyed direction of non publication order.
- Page 6 : Non Compliance of ACC secrecy order by Supreme Court Justice and subsequent covering of evidence. **17/09/2013 Brisbane Supreme Court transcript** of information replaced by ellipsis.
- Page 7 : Editing of court transcripts. **22/07/2015 Brisbane Supreme Court transcript**. Refusal to recuse by Justice Atkinson.
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- Page 14: **23/07/2015 Brisbane Supreme Court transcript** of Justice Atkinson denying she made the court order to disclose Customs officers. **29/07/2015 Brisbane Supreme Court transcript**. Non disclosure of Customs officers re: corruption.
- Page 22: **29/07/2015 Brisbane Supreme Court transcript (continued)**. Release of court transcript by Justice Atkinson of 9th June 2015 regarding court order to disclose all Customs officers in Operation Collage/Bergonia.
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- Page 29: **9/06/2015 Brisbane Supreme Court transcript**. Order and undertaking of ACBPS/CDPP to supply names of all Customs officers at Scarborough Marina on the 12 October 2010.
- Page 38: Failure to disclose, Perjury on subpoena, Freedom of Information and Media Response return. Relevance of Failure of Disclosure on Appeal.
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Dear Honourable Member

Previously, I raised profile into the symbiotic corruption of Australian Federal Police and Australian Border Force involved in Operation Collage/ Bergonia. Details of previous correspondence can be found on twitter **simonxgolding** via drop box.

This letter is somewhat lengthy but includes transcripts(around half the letter) and other documents to give context and proof of the crimes highlighted and the chronic failure to administer law by the relevant government agency.

Due to no serious actions being enforced by ACLEI for many years on both the above and the following serious crimes, I am left no other option but to raise to Parliament and others because of a complete disregard for law. I am forced to bring notice of these crimes because no one is doing anything about enforcing the law regardless of the evidence presented. I have no faith in the courts as they have shown to hide police corruption and pervert the course of justice. Why would I have faith in a system that has turned a blind eye to major corruption and non disclosure for 7 years now. I am seen as a trouble maker by some in the courts because I simply ask for all evidence to be produced in my charge and then question legal teams when they do not follow instruction to do so. I am left no choice but to keep raising awareness until someone listens to the laws that have been broken that seems only relevant to myself besides the many, many law enforcement officers that have broken serious laws.

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

... court order for an FSC variation to be able to use basic ...
... appeal, the FSC then blatantly refused, stated and finally ...
... variation was trying to deny me a fair appeals process. Right ...
... and another for the executive.

29/12/15 B.P. 1(1)/RTPW(BRIS) BRIS07 (A Lyons J)

... give the original order made on the ...

Mr SHINN: Your honour, if your honour turns to page 8, there ...

...

...

...

... just give somebody someone from the ...

...

Mr SHINN: Yes?

... each of those orders ...

Mr SHINN: Orders.

Mr HENCKS: ... and any variations, because as was explored ...
... and necessity

...

Mr HENCKS: ... they vary and it's very relevant as to what ...
... at the same.

... in the summons at ...
... direction about ...
... material was ...

Mr HENCKS: So there has to be a variation.

Mr SHINN: Were there some variations in this?

Mr HENCKS: Who were they made by?

...

...

[REDACTED]

MR BIRN: I'm happy when I have to debate the factual
[REDACTED]
[REDACTED] I'm personally worried, my
[REDACTED] the accept or reject approach is absent
[REDACTED] as a consequence of not, it's
[REDACTED] of the case, but if that approach is not adopted,
[REDACTED] any approach to see
[REDACTED] HER HONOUR: MICHIE, in fact

[REDACTED]

[REDACTED] and as the law currently stands, that would seem
[REDACTED]

MR BIRN: Well, not in Queensland, because Hamilton governs
[REDACTED]

HER HONOUR: [REDACTED] YES.

[REDACTED]

A [REDACTED]

[REDACTED] highly persuasive evidence
[REDACTED] of prejudice,
[REDACTED] was the mere fact of the summons
[REDACTED]

HER H [REDACTED]

* * *

[REDACTED] the subpoenaed transcripts and materials were then given to the very prosecution team in my case.
[REDACTED] Principle Legal Officer and case officer, Melanie Jane Ho (now a Brisbane Magistrate) perjured
[REDACTED] to the examination transcripts stating that she was unaware until she made enquiry
[REDACTED] by the fact of the case not state how, where or who with. The Ho continued as
[REDACTED]
[REDACTED] to presume that no information of the examination was spoken
[REDACTED] until this information only became evident on the 23 January 2018 when
[REDACTED] in

[REDACTED]
[REDACTED] the investigation and prosecution of a charge currently on foot against you'.

[REDACTED]
[REDACTED] such as Melinda Mervin of AFP/ICD/DFAT Brisbane Brian McDonald was privy to information
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] proceedings eventually due to her hearing stay applications
[REDACTED] Justice Robinson heard stay applications and was privy to the
[REDACTED] but did not excuse herself from the trial.

[REDACTED] judge involved in the case had also unlawfully accessed the disseminated
[REDACTED] that had been made privy to the
[REDACTED] that was fundamentally inconsistent
[REDACTED] equally unlawful for embargoed material to have
[REDACTED]

[REDACTED] about the HCC examination transcript and
[REDACTED] is completely unsatisfactory.

[REDACTED] is a copy of transcript asking Justice Robinson to excuse herself just had Justice Lyons tell it
[REDACTED] of proceeding hearing in regard to the HCC. Interestingly
[REDACTED] notes also here that the prosecutor Glen Rice states the Crown doesn't have a problem with her
[REDACTED] proceeding over the trial but had previously stated the opposite to my counsel QC Robert
[REDACTED] highly inappropriate for Justice Robinson to preside over the trial after being
[REDACTED]

[REDACTED] Justice Robinson

HER HONOUR: Thank you. And can I thank you very much for your attendance
[REDACTED] y
[REDACTED] difficulty for you at any time, could you just raise your hand so that I can see, and
[REDACTED]

[REDACTED] you want to put it on the record that it's
[REDACTED] you want to put it on the record that you've been informed of that
[REDACTED]

HER HONOUR: Because.

[REDACTED] because you heard materials from the HCC examination
[REDACTED]

HER HONOUR: Why shouldn't I have heard them, if I did hear them?

[REDACTED] just put it on the record

[REDACTED] you're making an application, not
[REDACTED]

[REDACTED]

[REDACTED] making an application for me to recuse myself.

MS BERRON: That's correct, your Honour. If I am wrong - - -

MR HONORABLE: So I just want to know your full grounds.

MS BERRON: Your Honour, if I am incorrect and you did not hear the [REDACTED] [REDACTED] [REDACTED] in the HSC examination [REDACTED]

[REDACTED]

MS BERRON: End of exam.

MR HONORABLE: Thank you.

[REDACTED]

MR HONORABLE: you must have been here for any application of that type.

MR CHONDORNI: Yes. I confirm that is the date.

[REDACTED] (H. L. W. H. H. H.) - -

[REDACTED] of course, in camera.

[REDACTED] it was in camera.

MR CHONDORNI: Yes.

[REDACTED]

MR CHONDORNI: Yes.

MR HONORABLE: meaning that if there were any examination of your client, is [REDACTED]

MR CHONDORNI: Yes.

MR HONORABLE: So I can't really wouldn't be saying in open court whether or not there were any examination of your client.

[REDACTED]

[REDACTED]

MR CHONDORNI: No.

[REDACTED] THE COURT SAID: I am not saying in open court that there was an examination of Mr. Baker, are you?

[REDACTED] THE COURT SAID: I am not saying that there was

[REDACTED]

[REDACTED] THE COURT SAID: ... because I cannot confirm that, but I'm just saying if there was.

[REDACTED] THE COURT SAID: if there were such an examination. All right. Well, the question is when did you apply for me to release myself. Mr. Rice, you would

[REDACTED]

[REDACTED] THE COURT SAID: ... and she may not be present for any discussion of it, I would

[REDACTED] ... the question is if there is to be any discussion about consent.

[REDACTED]

[REDACTED] ... and the process and the fact that

[REDACTED] THE COURT SAID: All right.

[REDACTED] THE COURT SAID: your Honor heard an application which may have involved evidence which is not to be used in the trial.

[REDACTED]

[REDACTED] THE COURT SAID: Assuming all that to be true, there's no reason for your Honor not to

[REDACTED]

[REDACTED] THE COURT SAID: That's the Crown's position.

[REDACTED] THE COURT SAID: I think you might just look at the in-camera transcript,

* * *

[REDACTED] ... the question is if there is to be any discussion about consent. ... the subject matter of a ...

[REDACTED]

20150723/D2/BSD/SC/3/Atkinson J

HER HONOUR: Okay.

MS BURROWS: I'm aware that you made an order on the 9th of June concerning disclosure of all witnesses.

HER HONOUR: No. I – Ms Burrows, I regret to have to say this to you, but when you tell me things, they're not always – about orders I've made or things I've said or dates on which I've heard things, it's not always accurate, so if you want to refer to something, you must refer me to the court document rather than just making a submission about it. I'm sorry to have to say that.

MS BURROWS: [indistinct]

HER HONOUR: But for the purposes of accuracy, you'll need to refer me to precisely what happened on precisely what date, and I'll look at the court document that shows what occurred. So on what date?

MS BURROWS: The document I'm referring to is dated 11th of June from the – from Ms Ho - - -

HER HONOUR: Okay. Well, you - - -

MS BURROWS: - - - which - - -

HER HONOUR: You've raised it as an issue. Let's deal with it after we've dealt with the redacted document. That's a separate issue, is it?

MS BURROWS: Yes, your Honour.

HER HONOUR: Yes. Thank you. And, Mr Chowdhury

* * *

20150729/D6/BSD/SC/3/Atkinson J

HER HONOUR: And there's no need for the witness to be here, is there?

MR FOSTER: No, your Honour.

HER HONOUR: Thank you. And, Mr Burgess, I'll ask you to wait outside.

WITNESS LEAVES COURTROOM [3.05 pm]

HER HONOUR: Yes, Mr Foster.

MR FOSTER: Your Honour, there are some issues we would like the opportunity of considering further and investigating further in relation to some of the evidence

that this witness gave, in particular in relation to the statements that he says were provided of Customs officers.

HER HONOUR: I'm struggling to see the relevance. I can understand – it's very unusual to split a cross-examination. I can understand why you might want Mr Wynd to bring the video that he said had no evidentiary value: to have a look at it to see whether or not indeed it did have evidentiary value because it was actually video taken on the spot. But whether or not this person served statements by Customs – how is it relevant to the issues in this trial before the jury?

MR FOSTER: Well, your Honour, we've heard conflicting versions of what was taking place and – on the 12th of October. We've heard a varying range of Customs officers who were present - - -

HER HONOUR: This is all – this is the sort of thing you do at a committal. There's been a committal years ago.

MR FOSTER: There was.

HER HONOUR: There've been pre-trial hearings about this. Why is it a matter before the jury?

MR FOSTER: Well, because, your Honour, we haven't been privy to – when I say "privy", I don't mean – I'll withdraw the word "privy". We - - -

HER HONOUR: Who's we?

MR FOSTER: The defence.

HER HONOUR: Well, I don't think you speak for Mr Chowdhury.

MR FOSTER: No, the defence - - -

HER HONOUR: He's not speaking for you, is he, Mr Chowdhury?

MR CHOWDHURY: No, your Honour.

HER HONOUR: No. Okay. So when you say "we", you need to be precise. Because we've heard the evidence given by the police officer of what he did. So when you say "we", you probably need to be precise.

MR FOSTER: Yes. I'll be precise, your Honour.

HER HONOUR: Thank you.

MR FOSTER: I meant the defence for Mr Golding and Mr Elfar.

HER HONOUR: Yes.

MR FOSTER: In terms of Customs officer statements - - -

HER HONOUR: Sorry. What has the defence for Mr Elfar and Mr Golding – we – you were going to finish your sentence.

MR FOSTER: Yes. I was going to say, your Honour, we do not have copies of Customs agents' statements that deal specifically with Customs officers at the marina on the 12th of October 2010. There are - - -

HER HONOUR: I've dealt with all this at the pre-trial hearing.

MR FOSTER: Well, you - - -

HER HONOUR: If you want this to be a ground of appeal, it's already there. It's been dealt with by me.

MR FOSTER: Yes, your Honour.

HER HONOUR: It's been dealt with by Justice Ann Lyons. It's been dealt with. You have your ground of appeal about the Customs officers' statements. I can't see how it is relevant to an issue before the jury.

MR FOSTER: Well, because, your Honour, the Customs officers' statements may well support someone like Ms Holden who said she saw - - -

HER HONOUR: This is purely speculation.

MR FOSTER: Well, your Honour, it's evidence given by a witness called by the prosecution. It's not - - -

HER HONOUR: No, no. You're speculating there might be something, which there isn't, you say.

MR FOSTER: We don't know, your Honour, if the Customs officers have prepared statements of what took place on the 12th of October between, say, one - - -

HER HONOUR: Well, I've been satisfied and I have ruled that you have been served with everything relevant. So that's the ruling I have made. That's a legal ruling.

MR FOSTER: I understand that, your Honour.

HER HONOUR: So what are you trying to do now?

MR FOSTER: Well, your Honour, confirm whether or not this witness's records of whether he has statements that deal with the 12th match what – I'm not – your Honour, I'm not saying that there are in existence statements that have been served upon the CDPP which have not been served on us. I'm not saying that.

HER HONOUR: No.

MR FOSTER: But I'm looking - - -

HER HONOUR: So what are you saying?

MR FOSTER: We would like the opportunity, your Honour, of - - -

HER HONOUR: No, no. Just tell me what you are saying. Don't say what you want the opportunity to do. Just tell me what your submission is.

MR FOSTER: Our submission, your Honour, is to determine – we should be able to determine whether there are in existence statements which touch upon exactly what happened at the marina on the 12th of October. Whether or not they were served on the CDPP is another issue altogether. But – so that's what we want to do. Now, your Honour, we've heard, even as late as today, this witness saying up to 20 Customs officers were present on the 12th.

HER HONOUR: All right. I thought you might say that. No. He said he didn't know how many were there. He wasn't there.

MR FOSTER: I understand that, your Honour. But he - - -

HER HONOUR: You invited him to speculate.

MR FOSTER: And he gave an answer, your Honour.

HER HONOUR: And he accepted your invitation to speculate. But it's not evidence as to how many were there because he wasn't there. So he doesn't know.

MR FOSTER: Well, your Honour, as I understand the - - -

HER HONOUR: Unless you're saying he was lying and he was there.

MR FOSTER: No. I haven't put that - - -

HER HONOUR: But you haven't put that to him.

MR FOSTER: I haven't put that to him. I don't propose to put that to him.

HER HONOUR: No.

MR FOSTER: But he gave evidence about his role in gathering together statements. And that's what he said. Now, that's a matter that I'm looking at, your Honour, by way of submission, to ask your Honour for this witness to come back tomorrow to be able to gather up whatever statements that he says he received.

HER HONOUR: Well, you didn't ask him to gather up whatever statements he said he received.

MR FOSTER: Well - - -

HER HONOUR: You asked him to gather, as I recall, some evidence of what statements he served. That's what you asked him to do. And to find any receipts

that might exist about serving statements. That's what you asked him to do.

MR FOSTER: Well – well - - -

HER HONOUR: Are you changing now?

MR FOSTER: Yes. Well, your Honour, if he's going to investigate and contact his office – which I'd ask your Honour to allow him to do – then it's probably of little consequence. But that - - -

HER HONOUR: Well, you know, you don't want the whole investigation started again?

MR FOSTER: No, your Honour. No, with respect.

HER HONOUR: So you're now asking that the witness be asked to get something different?

MR FOSTER: Yes. Matters which he would be as easily, I would've thought, to get than the other material which I asked him to get. In other words, statements that he's prepared or served - - -

HER HONOUR: But if he's served statements, you have them. The defence – your defence team, whoever they existed of at the time they were served – who represented your clients, have them. So why would we be asking him to produce them?

MR FOSTER: Well, because we would like that opportunity to do that, your Honour.

HER HONOUR: To do what?

MR FOSTER: He says he served them all - - -

HER HONOUR: Why don't you ask him to produce all the statements for the whole brief? I mean, it defies logic that a trial would be dealt with in this way. But perhaps I should stop asking you questions and I'll hear submissions - - -

MR FOSTER: Yes. Thank you, your Honour.

HER HONOUR: - - - from the other parties. Mr Chowdhury, is there anything you want to say?

MR CHOWDHURY: I don't have any complaint about disclosure, your Honour.

HER HONOUR: Mr Rice?

MR RICE: As I noted it, your Honour, my learned friend's objective was to determine whether there are statements in existence on a topic, the topic apparently being possible presence of Customs officers, and if so, what they were doing at the

marina. The way to do that, your Honour, is simply to research and take stock of what statements have been served for what they reveal on that subject, as one might research any factual matter of interest or any factual matter in issue when the Crown's material has been disclosed. One simply looks for the presence or absence of evidence on a particular topic and adjusts one's approach accordingly.

HER HONOUR: In the material that's been served.

MR RICE: Yes. That presumes, of course, that there has been disclosure, but that is a different question. It's – as your Honour points out, that's not a jury question, and there's no point or relevance really to Mr Burgess being questioned about the state of his records of service of statements or the state of receipts and so forth. That rather turns the trial into some kind of inquiry about disclosure, or perhaps more broadly about the state of AFP recordkeeping. Your Honour would be wishing, no doubt, to avoid this trial becoming an inquiry into the AFP. Of course, there's scope to question him about issues and problems and so forth, but it's – this is an instance where it's becoming rather more broad-ranging than that.

HER HONOUR: Yes. Mr Foster?

MR FOSTER: Well, your Honour, with the greatest of respect, I'm not – and I do say this with the greatest of respect, your Honour – this witness - - -

HER HONOUR: But that's what usually is said when someone's going to say something dreadfully insulting, Mr Foster, so - - -

MR FOSTER: Well, this is - - -

HER HONOUR: - - - I'll prepare myself for it.

MR FOSTER: I do not propose to be doing that, your Honour, but this witness is going to – is the case officer. As I understand it, he will be present. It's not as if he's going interstate and will have to come back or anything, as I understand it.

HER HONOUR: Yes, but you haven't yet convinced me that his cross-examination should be interrupted and that you should not just finish it and he not be required to go and get anything else, because I've – as I've said, I'm yet to be convinced of the utility of it to the trial, given that he has said that he served the material he had on the defence. You haven't put it to him that's not true, and as far as I'm concerned, it's a collateral matter that's – it's done with. He's answered it, and that is it. Unless you convince me to the contrary, you will be required by me to finish your cross-examination, and he will not be required by me to go and get anything else and give another lot of evidence.

MR FOSTER: Well, to that, your Honour, I simply say that there is evidence from a number of people that Customs officers were present on the 12th. We haven't been served with material. We don't know what those Customs officers would say if asked what they saw. We have missing – we have CCTV with two hours missing from the middle, which is – just coincides, your Honour, with what Ms Holden – partly what Ms Holden said – not everything she said.

HER HONOUR: All right. Well, no doubt you'll make quite a lot of this in your submission to the jury.

MR FOSTER: But your Honour, it would be, we say, potentially – potentially – and I can't take it higher than that, but potentially of some great utility. It could.

HER HONOUR: What would be of some utility, precisely?

MR FOSTER: If there were statements - - -

HER HONOUR: No, no. Just tell me what it is – again, precisely, because it seems to shift – what it is that you want this – to interrupt this witness's cross-examination for him to get.

MR FOSTER: Copies of receipts of all statements.

HER HONOUR: Receipts of service of statements.

MR FOSTER: Of Customs officers.

HER HONOUR: Well, since there's no reason for me to think that he didn't serve statements of Customs officers, for which he has receipts, on the defence, I won't allow that. Anything else?

MR FOSTER: Statements – all statements that he received from any Customs officer relevant to the 12th of October 2010.

HER HONOUR: And if he says that he – but have you examined all the statements that the defence has received in relation to Customs officers?

MR FOSTER: Yes, your Honour, and they don't appear to touch upon the 12th of October.

HER HONOUR: Right. Anything else?

MR FOSTER: Your Honour, while I'm on my feet, I will say something in addition which might bear upon this question. It might bear upon this question. I was proposing to raise it in any event, and it relates - - -

HER HONOUR: Well, only if it will bear upon this question, because I'd rather get this dealt with first - - -

MR FOSTER: Right.

HER HONOUR: - - - if you don't mind.

MR FOSTER: Yes. No, I don't mind, your Honour. No. That should be it, your Honour.

HER HONOUR: All right.

MR FOSTER: *That – that would be the only matter I'd be interested in pursuing with this witness.*

HER HONOUR: *Right. Okay. So, Mr Rice, we're now looking at Mr Foster's request for any statements held by – in the possession of Mr Burgess – they'd have to be in the present possession of Mr Burgess – that relate to – or were made by Customs officers that were present at the marina on the 12th of October 2010. Am I correct, Mr Foster?*

MR FOSTER: *Yes, your Honour.*

HER HONOUR: *Thank you. I'm not sure if you have the contents of every statement that's ever been made in your head, Mr Rice.*

MR RICE: *I'm – not entirely, your Honour, but I've got a pretty good knowledge. I - - -*

HER HONOUR: *Yes.*

MR RICE: *May I say, your Honour, that I understood that Mr Burgess had already addressed the question more broadly in his evidence by saying that he had received all such statements as had been submitted by Customs officers and served them. So within that, if there are any statements which touch upon the presence of Customs officers at the marina, then they will be included in that.*

HER HONOUR: *Yes.*

MR RICE: *So the question, as I understood Mr Burgess' evidence, has really already been addressed.*

HER HONOUR: *Yes. That's true. Unless I'm satisfied that there's any evidence that there's any – well, it hasn't been put to him that it's not true.*

MR RICE: *No.*

HER HONOUR: *So I don't think we're there yet, Mr Foster.*

MR FOSTER: *Well, I'm – your Honour, I'm not in a position to put that to him, and I - - -*

HER HONOUR: *Okay.*

MR FOSTER: *- - - won't be.*

HER HONOUR: *All right. Well, there'll be no need for him to retrieve any such documents, in the circumstances. All right.*

MR FOSTER: *Your Honour - - -*

HER HONOUR: *You want to raise another matter?*

MR FOSTER: Yes. Very briefly, your Honour. Your Honour, on the 9th of June, as I am instructed, your Honour did make a direction - - -

HER HONOUR: 9th of June.

MR FOSTER: 9th of June this year.

HER HONOUR: 2015. Yes.

MR FOSTER: A direction as to disclosure of all witness statements by Australian Customs and Border Patrol Service control. That's the general topic. My instructing solicitor, your Honour, has - - -

HER HONOUR: Have you got a copy of that?

MR FOSTER: No. No. My instructing solicitor, your Honour, has endeavoured to obtain a copy of that direction, but it hasn't been released, I'm instructed, your Honour, so we're really asking your Honour to release, I suppose, a copy of that direction in order that we may carefully look at - - -

HER HONOUR: All right. Well, I'll have my Associate search for it and see - - -

MR FOSTER: Thank you, your Honour.

HER HONOUR: - - - if there's any such direction and what it was. All right. Well, apparently it's all been dealt with five minutes ago by emails, but not from Ms Burrows to my Associate, but with TCT. So if she wants to place an order for it, she can place an order and it'll be released, I'm told by my Associate.

MR FOSTER: Right. Thank you, your Honour. And just one very quick final matter, your Honour, in relation to the subpoena material which we were looking at late yesterday. Your Honour [indistinct] granted leave to the parties, but I'm instructed that there were - or there is material produced by the marina which is apparently not on the system, and it has to be placed on the system before it will be released. So I'm instructed - - -

HER HONOUR: What do you want me to do? Some typing?

MR FOSTER: No, your Honour. A very - - -

HER HONOUR: What do you want me to do, Mr Foster? Don't just raise things for the - - -

MR FOSTER: No, no, no.

HER HONOUR: - - - sake of raising them. You know, there has to be some purpose - - -

MR FOSTER: There is, your Honour.

HER HONOUR: - - - in my hearing about it.

MR FOSTER: It needs to be placed on the system.

HER HONOUR: Good. Okay.

MR FOSTER: And - - -

HER HONOUR: That's not usually my role.

MR FOSTER: Well, I have to raise it with someone, your Honour - - -

HER HONOUR: All right.

MR FOSTER: - - - because we're not getting anywhere.

HER HONOUR: Well, what do you want me to do?

MR FOSTER: Grant leave for the parties to inspect specifically documents produced under subpoena from the marina.

HER HONOUR: As I said, that is a matter for the criminal registry. I've given you leave, and that's, as far as I can see, all I can do.

MR FOSTER: Yes. Well, we did have a problem in spite of advising the registry that your Honour granted leave, but nevertheless, there it is.

HER HONOUR: Well, if they have systems, they comply with their systems. Whether they have systems or not is not a matter within my knowledge, Mr Foster. Presumably – I don't know; I'm speculating – they need to make a record of what has been produced on subpoena prior to allowing parties to see it, perhaps. I don't know. But if they do, that's a system that is a registry system, and I wouldn't instruct them not to comply with any system that they have to require – so that they know what documents are in existence and who has looked at them. Do you want me to order them to do something different?

MR FOSTER: Well, your Honour granted leave. I'm assuming now they will be on the system and that we will be able to look at them. We had a problem; that's all I can tell your Honour.

HER HONOUR: Okay. Well, you haven't asked me to do anything that's specifically different from what I have done. I don't intend to.

* * *

ACBPS/Border Force had lied and previously not supplied information on Customs officers present at Scarborough Marina on the 12th October 2016 in subpoena, Freedom of Information requests and media enquiry. Much of this information is on twitter drop box: **simonxgolding** but also outlined in the below CUSTOMS Internal Minute. As you will see on initial reading that this document does not read as a factual document. Most notably are at **point 5** “**ACBPS is likely to respond to the**

subpoena on the basis that there are no documents held within the scope of the subpoena” and point 9 “no ACBPS officers were present in Scarborough Marina precinct at the relevant time” being on the 12th October 2010 which are very clear lies. Other Customs officers ran off when this officer was arrested. Other Customs officers are involved. This has been hidden and is why ACBPS/ Border Force made the huge unlawful decision to lie in subpoena, FOI and media enquiry return. Customs state that the officer involved was no where near seized cocaine? So why the big cover up then? Who are the other officers involved?

INTERNAL MINUTE

Deputy Chief Executive Officer Border Enforcement
Acting Deputy Chief Executive Officer Border Management
cc National Manager, Parliamentary and Executive Coordination

SUBJECT: MEDIA ENQUIRY: AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE OFFICER'S INVOLVEMENT WITH DRUGS OFFENCES

Recommendation

It is recommended that you note:

- Talking Points prepared by the Integrity and Professional Standards Branch in response to a Media Enquiry about a former Australian Customs and Border Protection Service (ACBPS) officer's involvement in drugs offences and a joint operation resulting in a narcotics seizure; and
- The Ministerial Submission advising the Minister of Immigration and Border Protection of the media interest.

Noted

Please discuss

Key Points

- 1 On 2 September 2014 Customs Media received a Media Enquiry from journalist Ross Coulthart, Sunday Night program, Channel 7 (“the Media Enquiry”).
 - 2 The Media Enquiry was made following the release of a decision by the Australian Customs and Border Protection Service's (ACBPS) under the *Freedom of Information Act 1982* (FOI Act) to a private individual, Mr Simon GOLDING.
 - 3 The Media Enquiry seeks information regarding reports that an ACBPS officer was arrested on 16 October 2010 for drugs offences at the Vinyl Room Nightclub in Cronulla, New South Wales. That officer was involved in the joint agency operations involving ACBPS and the AFP that resulted in a narcotics seizure in Queensland on 12 October 2010.
 - 4 Mr GOLDING is himself a Defendant in criminal proceedings which are currently on foot in the Queensland Supreme Court (“the Golding proceedings”). Those proceedings are the result of a joint Australian Crime Commission and Australian Federal Police (AFP) operation and relate to the seizure of drugs in October 2010. The Legal Services Branch has consulted the AFP about these issues in light of the Media Enquiry. The AFP has advised that the Golding proceedings are set down for trial in November 2014. The AFP view is that no comments should be made publicly about these issues given that it is an ongoing criminal proceeding.
- Additional Requests**
- 5 The Legal Services Branch is processing Subpoenas in relation to the Golding

proceedings from Mr GOLDING and . The Golding Subpoena requests all documents relating to any involvement of a representative of ACBPS in relation to the seizure of drugs at Scarborough Marina, Queensland on 12 October 2010 including documents relating to misappropriation of evidence relating to that seizure. **ACBPS is likely to respond to the Subpoena on the basis that there are no documents held within the scope of the Subpoena.**

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6 On 2 September 2014 ACBPS received a further FOI request from Mr GOLDING in relation to these issues. That request is being processed.

7 ACBPS is also processing a related FOI request from , which the Legal Services Branch understand to be a further individual involved in the criminal proceedings.

Background to FOI Decision

8 On 24 July 2014, Mr GOLDING sought access to the following documents held by ACBPS:

"1) a document that identifies the name of the Customs Officer or Officers, arrested, questioned, investigated or made subject of any allegations at the Vinyl Room nightclub in Sydney on or about 14/15 October 2010, and a document relating to the names of others that were/may have also been involved;

2) a document that identifies names of all/any Customs staff disciplined, questioned, investigated, charged, or made the subject of allegations in any way as regards claims of the quantities of confiscated cocaine stolen from the Mayhem of Eden and/or Operation Collage/Bergonia at Scarborough in October 2010; and

3) a document that identifies names of all/any Customs officers present at Scarborough Marina (28 Thurecht Parade, Scarborough QLD 4020) for Operation "BERGONIA" and/or OPERATION "COLLAGE" on the 12th October 2010".

9 ACBPS undertook reasonable searches in relation to this request. No documents were in the possession of the Service in relation to parts 2 and 3 of the request. This is on the basis that no allegations related to ACBPS officers were received by Integrity and Professional Standards in relation to the seizures at Scarborough Marina in October 2010 and **no ACBPS officers were present in the Scarborough Marina precinct at the relevant time.**

10 ACBPS identified one document as falling within the scope of part 1 of the request relating to the arrest of an ACBPS officer at the Vinyl Room nightclub in October 2010. The decision-maker decided to release that document in part under the FOI Act. Exemptions were applied to part of the document mostly on the basis that the information was either irrelevant to the request or it would unreasonably disclose the personal information of an individual. In the notice of decision the decisionmaker also decided to provide further background material in response to the request. A copy of the decision on access, together with the documents being released, is at Attachments A and B for your reference.

Media Enquiry

11 The Media Enquiry now seeks further details of the relevant incidents, including the identity of the ACBPS officer. What further material, if any, is to be provided in response to the Media Enquiry is now a question involving the Privacy Act 1988 ("the Privacy Act") and not the FOI Act. It also involves a consideration of the current criminal proceedings on foot.

12 The Legal Services Branch has advised that the relevant considerations under the Privacy Act are:

- (a) Personal information means information or opinion about an identified individual or an individual who is reasonably identifiable.
- (b) Under Australian Privacy Principle 6 in the Privacy Act, personal information about the ACBPS officer cannot be disclosed unless an exception applies.
- (c) One relevant exception is where ACBPS reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by ACBPS as an enforcement body.

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(d) Given that the both the criminal and Code of Conduct actions in relation to this ACBPS officer have been completed, a disclosure of personal information about the ACBPS officer to the media would not be reasonably necessary for an enforcement related activity as defined in the Privacy Act. This is because the disclosure would not be for the prevention, detection, investigation, prosecution or punishment of a criminal offence nor the prevention, detection, investigation or remedying of misconduct of a serious nature.

13 Bearing in mind these considerations, together with the policy issues regarding the integrity measures of ACBPS officers and the criminal proceedings on foot, the decision-maker has decided to respond to the Media Enquiry as follows (in part):

- (a) Not to release the name of the ACBPS officer involved;
- (b) To note that the ACBPS officer is not currently employed by ACBPS;
- (c) To not comment further given the ongoing criminal proceedings

14 Whilst not relevant to the application of the Privacy Act it is expected that there will be media attention around ACBPS's failure to be fully forthcoming with the details around this matter. However, this is not unreasonable given the ongoing criminal proceedings on foot.

15 A copy of the Talking Points that have been prepared by Integrity and Professional Standards in relation to the Media Enquiry are at Attachment C for your reference.

16 A Ministerial Submission for the Minister for Immigration and Border Protection has also been prepared (Attachment D).

Consultation

Legal Services Branch and the Australian Federal Police.

Steve Hayward

A/g National Director, Integrity Security & Assurance Division

September 2014

Attachments

- A. Notice of FOI Decision
- B. Document released to FOI applicant
- C. Talking Points

D. Ministerial Submission

AUTHOR: Elizabeth Hampton

POSITION: National Manager, Integrity and Professional Standards

DOC DATE: Wednesday, 3 September 2014

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MEDIA ENQUIRY

LEAD AGENCY: ACBPS

Subject: Customs Officer charged with drug related offences

Deadline:

Journalist: Ross Coulthart **Outlet:** Sunday Night (Ch 7)

Phone: **Mobile:** **Email:**

Enquiry Received (Time & Date): 2:17 2/09/14

Media Officer: **Media Ph:**

ISSUE

Following enquiry received from Ch 7:

Hello there,

Further to a conversation with in your office earlier today, I would be very grateful if you could help us with the following inquiry. I'm following up on a news story which appeared on Channel Seven in December 2010, reporting that a Customs officer had been arrested and charged with selling cocaine at the Vinyl Room Nightclub in Sydney's Cronulla. The story, at the time, alleged (on information received from NSW Police) that the Customs officer was involved in the interception of a huge haul of cocaine in Brisbane, at the Scarborough Marina on or about the 12th October that year. We are also aware of the response by Customs to an FOI request made by a Mr Simon Golding dated 29 August 2014, file reference: 2014/025342.

We are aware (from that FOI response) that the Customs officer was arrested on 16 October 2010, several days after the Scarborough Marina bust, after he offered cocaine to patrons of the nightclub. He was charged by NSW Police under the Drug Misuse and Trafficking Act 1985 with Possession of Prohibited Drugs and with Self-Administration of a prohibited drug. We understand also that the officer was bailed to appear at Downing Centre Local Court on 9 December 2010. Significantly, we are now also aware from that FOI response that the Officer was involved in the joint agency operations involving ACBPS and the AFP that resulted in the narcotics seizure in Brisbane on 12 October 2010. We understand also that ACBPS maintains that the arrested officer did not have

access to the seized Scarborough narcotics. For obvious reasons, this admission raises very grave and major issues in the public interest on which we now seek answers.

Customs has declined to provide Mr Golding with the name of the Customs officer. Yet we are mindful that Customs has always previously been very forthcoming and mindful of the public interest in acknowledging the public's right to report the outcome of criminal charges against any Commonwealth employee; and past practice has always been that when the officer has appeared in court that officer's name is released and can be reported. The public will no doubt also seek some strong reassurance that in an operation of the magnitude and significance of the Qld interdiction at Scarborough, that corruption by an individual Customs officer has not jeopardised what was hailed at the time as one of the most significant drug arrests in Qld history.

With that strong public interest in mind, what we would like to know is:

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- 1. What is the name of the Customs officer who was arrested and charged in December 2010?*
- 2. Anticipating that Customs might elect not to name the officer, as has already happened in an FOI application response to a Mr Simon Golding dated 29 August 2014, on what legal basis does Customs decline to identify him?*
- 3. If, as Customs has already acknowledged, the officer has made an appearance in the NSW Local Court, does Customs recognise the public interest in allowing the media to report the outcome of such criminal charges against a Commonwealth officer by providing his/her name to the media?*

4. If not, why not?
 5. If Customs takes the view that disclosure of the name of an officer arrested and charged with possession of cocaine would be unreasonable, can it please explain its reasoning? (IE: Isn't there an extreme public interest in seeing the name of this officer disclosed, and in the public being reassured that the Department's response according to proper procedure has been heeded? If not, why not?)
 6. Is that Customs officer still working for the Customs service?
 7. When did the arrested officer first acknowledge his arrest and charging to Customs' Regional Security Advisor? (a document [I&PS Reference 2010/287] disclosed by Customs to Mr Golding, dated June 2011, suggests that the accused officer had not advised the RSA of the charges laid by NSWSP)
 8. How soon after Customs became aware of his arrest and charging of its officer did it take any action against him?
 9. When was that?
 10. What action was taken by Customs, and at what date, in response to the revelation that one of its officers was in possession of and offering for sale a substantial amount of cocaine just a few days after a major cocaine bust?
 11. Can Customs categorically assure Sunday Night that the cocaine seized from its officer did not come from the Scarborough Marina operation bust?
 12. If so, how? (IE: has DNA testing been done to ensure that the cocaine was not from the same haul?)
 13. Is the Customs service aware of allegations that the Customs officer was offering cocaine for sale to patrons of the Vinyl Room the night he was arrested?
- Best wishes and thanks for your prompt attention to this matter. Our programme is scheduled for imminent broadcast and we would be very grateful to know the Department's position as early as possible for incorporation into our broadcast.

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QUESTIONS & RESPONSES

GENERAL RESPONSE

The Australian Customs and Border Protection Service (ACBPS) is aware of a matter involving an ACBPS Officer being arrested and charged by New South Wales (NSW) Police in 2010 with charges relating to the possession and self-administration of a prohibited drug. The charges did not relate to the selling of prohibited drugs. The matter was finalised in 2011. The Officer subsequently resigned and is not currently employed by ACBPS.

Further questions regarding charges or court proceedings should be directed to the NSW Police. ACBPS will not be providing additional information on the circumstances relating to the former Officer as it may prejudice unrelated proceedings which are currently underway.

BACKGROUND (*not for public release*)

On Saturday 16 October 2010, an off-duty ACBPS Officer was observed self-administering white powder through a rolled up five dollar note from the bonnet of a vehicle outside a night club in Gympie, NSW. These observations were made by plain clothes NSW Police Officers. The Officer was arrested and charged with offences relating to the possession and use of a prohibited drug. At the time of the arrest, the person **identified himself as an ACBPS Officer and the fact that he was celebrating after being involved in a significant operation and major bust.**

CLEARANCE:

Drafted by Title Time/Date
04/09/2014

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Cleared by Title Time/Date

Integrity and Professional Standards 04/09/2014
04/09/2014
Integrity, Security and Assurance 04/09/2014
Border Management 04/09/2014

AFP 5/09/2014
 NSW Police 5/09/2014
 For info copies Title Time/Date
 Date and time provided to journalist: 12:03, 5 September 2014

* * *

Justice Atkinson is obviously evasive and also curiously mentions she thought that the claim of public immunity interest would apply to this information so she clearly knew of the corruption involved by Customs officers. Justice Atkinson also attempts to distance the Customs officer who was part of the Operation caught freely handing out cocaine, but who were the other Customs officers who ran off when police appeared at the nightclub? It is obvious cover ups of corruption.

Justice Atkinson says it is irrelevant of a Customs agent handing out free cocaine at a nightclub that was part of the Operation because he was supposedly in Port Macquarie but does not allow access to his disciplinary files. It is not irrelevant at all. That is why it has been hidden. That is why Border Force have attempted to hide all staff at the Marina and lied in subpoena and FOI return. That is why Border Force were fighting the subpoena in this court hearing on the 9th June 2016 (transcript below). Border Force says the officer was in Port Macquarie? But they lied before so why wouldn't they lie about this also? Who were the other Customs agents who ran off when police turned up at the Sydney nightclub where the cocaine was being freely handed out? There are many, many unanswered questions here which have also been put in previous correspondence to Parliament dated 11 December 2016 which is on the latest drop box twitter account **simonxgolding**.

20150609/D1/BS/SC/17/Atkinson J

HER HONOUR: Thank you. No other change? No. Thank you. And the advantage of the adjournment was I was able to read your affidavit, Ms Elamrousy, and all its annexures. So that makes me much better informed. So this is the hearing of an application to set aside a subpoena. I started hearing from Mr Foley for the Chief Executive of Customs and Border Protection Service. He mentioned, Mr Rice, that the DPP obviously has an interest in proper disclosure of documents. And that's a matter we mentioned in the case management of the criminal case. So subject to any submissions you might have, what I propose to do is hear from Mr Foley, perhaps give you the opportunity to add anything else.

MS ELAMROUSY: Well, your Honour, I'd say – I'd submit that the fact that he was involved – we don't know the boundaries of what his involvement was.

HER HONOUR: Well, we do. From the material, it's fairly obvious what his involvement was. And there's no suggestion that he was involved in any way with any – any – even possibility of being physically – having any physical access to the cocaine. He wasn't even in the same state.

MS ELAMROUSY: Yes. That's my understanding as well.

HER HONOUR: So it's irrelevant. If it had been a – it's as irrelevant as if it was a cannabis importation and some customs officer who'd never been near the cannabis had used cocaine somewhere else – nothing to do with it. It's irrelevant. It's interesting and it's important. It's important that that person be prosecuted and dealt with.

MS ELAMROUSY: Yes.

HER HONOUR: But it's nothing to do with this case.

MS ELAMROUSY: Well, your Honour, that attachment would go to item 7 in the subpoena just to show that in terms of the disciplinary files, an officer who had involvement with this matter - - -

HER HONOUR: [indistinct] had no involvement with the cocaine. So it's completely irrelevant.

MS ELAMROUSY: Well, I hear what your Honour says. I can't - - -

HER HONOUR: So that one's completely out, obviously, and that's what the affidavit deals with. So then I'm left with, I guess, your oral submissions. Now, I've read the written submissions by the - by Customs. So I guess I need to know your answer to that - what they've said. Why are these things - why should the subpoena not be set aside? I haven't read any outline from you, so I don't - apart from anything in your affidavit - and we've dealt with that - I don't have a clue to what your argument might be.

MS ELAMROUSY: I appreciate that, your Honour.

HER HONOUR: So perhaps if you would tell me.

MS ELAMROUSY: Well, your Honour, the documents sought would likely reveal some additional facts which aren't in the possession of the defence.

HER HONOUR: Okay. Likely to reveal - I'll write it down since - likely to reveal?

MS ELAMROUSY: Additional facts not in the possession of the defence.

HER HONOUR: Likely to reveal additional facts not in the possession of the defence. Yes.

MS ELAMROUSY: The documents may likely give rise to avenues for further investigation.

HER HONOUR: Documents - the documents?

MS ELAMROUSY: Will likely give rise to avenues - - -

HER HONOUR: Will likely give rise to avenues - - -

MS ELAMROUSY: - - - of further investigation - - -

HER HONOUR: - - - of further investigation - - -

MS ELAMROUSY: - - - and the identification of additional potential witnesses.

HER HONOUR: - - - and the identification of additional of – what was it?

MS ELAMROUSY: Additional potential witnesses.

HER HONOUR: Additional – yes.

MS ELAMROUSY: The material is likely to assist in the formulation of cross examination.

HER HONOUR: Yes. Likely to assist in the formulation of cross-examination.

MS ELAMROUSY: And the documents are in the possession, custody and control of the Australian Customs and Border Protection Service.

HER HONOUR: Possession, custody and control. That's it?

MS ELAMROUSY: That's all.

HER HONOUR: Okay. So – well, let's deal with the issue of those four statements in turn: the documents are likely to reveal additional facts not in the possession of the defence. Well, which documents and what additional facts? And are you able to say they're not in the possession of the defence?

MS ELAMROUSY: Well, additional documents being items 1, 2, 3 and 4.

HER HONOUR: Right. What additional facts are they likely to reveal?

MS ELAMROUSY: Well, additional facts arising from officers who haven't provided statements yet. My friend's conceded that there are officers who had involvement that have not provided statements. There may or may not - - -

HER HONOUR: So this is – so this is rather narrower than what you've got there.

MS ELAMROUSY: I'm sorry?

HER HONOUR: Well, you're now saying – what are you precisely saying now? Are you saying any notes made by officers who have not given statements?

MS ELAMROUSY: Yes.

HER HONOUR: Any notes made of this operation?

MS ELAMROUSY: Yes.

HER HONOUR: By which – officers who boarded a particular ship or something?

MS ELAMROUSY: Who were involved in boarding the vessels that have not – that have not yet provided statements.

HER HONOUR: Involved in – and do you know how many officers that is?

MS ELAMROUSY: I don't know how many precisely.

HER HONOUR: The two vessels – so is this contemporaneous notes?

MS ELAMROUSY: Yes.

HER HONOUR: Okay. Any contemporaneous notes – right – who have not – and you know that they haven't been disclosed and you know that they exist?

MS ELAMROUSY: That is my understanding.

HER HONOUR: Not disclosed and exist. Okay. Right.

MS ELAMROUSY: Number 2, the – any diary entries taken by members of Customs.

HER HONOUR: Well, they'd be contemporaneous, wouldn't they?

MS ELAMROUSY: Well, they can be encompassed under "contemporaneous notes".

HER HONOUR: Right. So would email communications, wouldn't they? It's contemporaneous - - -

MS ELAMROUSY: Yes.

HER HONOUR: - - - emails you're interested in.

MS ELAMROUSY: Yes, your Honour.

HER HONOUR: And 4 was just a catch-all. And letters – I presume, if they were boarding boats, they weren't sending letters.

MS ELAMROUSY: Yes. No. It's not pressed.

HER HONOUR: And minutes – they wouldn't have held meetings or - - -

MS ELAMROUSY: I would not press item 6.

HER HONOUR: Sorry?

MS ELAMROUSY: I'm not pressing item 6

HER HONOUR: Okay. And we've dealt with item 7. All right. So that's any contemporaneous notes made of this operation by customs officers involved in boarding the two vessels who've not given statements. Okay. Right. That deals with your first point. Are they all the same?

MS ELAMROUSY: Yes.

HER HONOUR: *Okay. So that's it?*

MS ELAMROUSY: *That is all.*

HER HONOUR: *That's all you want.*

MS ELAMROUSY: *Yes.*

HER HONOUR: *Okay. Now, Mr Rice and Mr Foley, I suppose the first question that arises is – well, the first – the two questions that arise first are do they exist and have they been disclosed – if so, have they been disclosed.*

MR RICE: *I can't say that they exist, your Honour. If a statement has not been forthcoming, it, from our perspective, doesn't provide a trigger then to inquire - - -*

HER HONOUR: *Yes.*

MR RICE: *- - - whether - - -*

HER HONOUR: *Okay.*

MR RICE: *- - - there are notes from anyone who - - -*

HER HONOUR: *Sure.*

MR RICE: *- - - hasn't put a statement in.*

HER HONOUR: *Okay.*

MR RICE: *So the subject really hasn't been addressed.*

HER HONOUR: *Okay. Mr Foley.*

MR FOLEY: *I'd need to take instructions on that specifically, your Honour. It's the same issue that faces - - -*

HER HONOUR: *Well - - -*

MR FOLEY: *- - - the Crown - - -*

HER HONOUR: *Now - - -*

MR FOLEY: *- - -that there's a - - -*

HER HONOUR: *Ms Elamrousy has reduced the subpoena to quite a narrow scope now, and that is any contemporaneous notes made by customs officers involved in this operation involved in boarding the two vessels who've not given statements. Now, firstly, we don't know if there are any. And secondly, we don't know if they've been disclosed, although perhaps, from what Mr Rice says, the trigger for disclosing them hasn't occurred. It's very difficult for me to see that they would*

have any forensic purpose, since presumably, if they were useful, then statements would have been obtained. I know I've given Ms Elamrousy a lot of latitude in redoing subpoenas, but perhaps if I could just ask you to inquire as whether or not any such documents exist. And if they do, could they just be provided? It's – hardly seems to me to do any – it can't do any harm. I can't see that it would do any – serve any – much purpose. But at least it would assure Ms Elamrousy and Mr Elfar that they'd seen what they needed to see – what they want to see, even if they don't need to see it. Have you any objection to that course?

MR FOLEY: I don't have anyone here providing instructions, your Honour, because my clients are interstate. But I certainly don't have any difficulty, subject to any submissions that my learned friend - - -

HER HONOUR: Mr Rice.

MR FOLEY: - - - as to making those inquiries.

MR RICE: There'll be only a few people in that category, your Honour.

HER HONOUR: Yes. So it's not going to - - -

MR RICE: Take the boarding of Edelweiss, for example. There were probably eight or 10 - - -

HER HONOUR: Yes.

MR RICE: - - - people involved, and - - -

HER HONOUR: Yes.

MR RICE: - - - probably eight of them – or six or eight have put in statements.

HER HONOUR: Yes. So we're [indistinct] very narrow compass.

MR FOLEY: So, to clarify, it's only in relation to customs officers who were involved in the boarding of the two vessels?

HER HONOUR: Each of – either of the vessels.

MR FOLEY: Yes.

HER HONOUR: Yes.

MR RICE: Well, so far as Mayhem of Eden is concerned, the only customs officers who will have boarded that will be – because it wasn't boarded at sea. It was - - -

HER HONOUR: Yes.

MR RICE: - - - moored at Scarborough - - -

HER HONOUR: Yes.

MR RICE: - - - when police boarded. Police boarded it, not Customs.

HER HONOUR: Yes.

MR RICE: But a handful of customs officers participated in searching of the vessel

- - -

HER HONOUR: Sure.

MR RICE: - - - along with police. They will be the prime category.

HER HONOUR: Yes. That's right. So we've got a relatively manageable number of people - - -

MR RICE: Yes.

HER HONOUR: - - - who may have taken notes, may not have. They may have been disclosed; they may not have. They may still exist; they may not.

MR FOLEY: Your Honour - - -

HER HONOUR: Obviously, that's a very narrow version of the subpoena. But I think, before I make the final ruling, I'd like to know whether or not these documents exist and how readily available they are. I wouldn't have thought a claim of public interest immunity could apply to them, so it's just that – whether or not they fall within the category of documents that are actually liable to be subpoenaed is another question. But let's find out first if they exist.

MR FOLEY: Yes, your Honour. I don't know – I mean, obviously, I can make those inquiries urgently. And I'll be in my instructors hands, I suppose, in terms of to what extent they're able to access that information to answer the question - - -

HER HONOUR: Sure.

MR FOLEY: - - - quickly.

HER HONOUR: Sure. Yes. They may not have indices of all these sorts of things, and we're going back a fair time, I know. How much time do you need to do that?

MR FOLEY: I'm told, your Honour, that everything is in hard copy, that there aren't electronic copies of those kind of - - -

HER HONOUR: Sure.

MR FOLEY: - - - documents, if they existed. Is your Honour proposing that, if it's going to take more than, say, today, that your Honour would adjourn the subpoena to a further date? Or is your Honour - - -

HER HONOUR: Well, of course I'd like to do it as quickly as humanly possible,

because I imagine we're all tired of dealing with it. And, as I say, I keep giving Ms Elamrousy more latitude, but it really does have to come to a conclusion. But I am essentially in your hands, because I've asked you to do a task, and that will take whatever time it takes. But it can be – if it can be expedited to the greatest extent possible, it would be - - -

MR FOLEY: Sorry. That - - -

HER HONOUR: - - - preferable.

MR FOLEY: Yes, your Honour. I certainly take your Honour's comments on board. And so I suppose the first step is, really, just identifying that those documents of that type do exist. And then, if they do, the second step would be finding - - -

HER HONOUR: Well, let's - - -

MR FOLEY: - - - out when they could be - - -

HER HONOUR: Can we - - -

MR FOLEY: - - - provided.

HER HONOUR: Can you do – the first thing to do is to do a list of the names of any customs officers who have not – who boarded the ships, either of the ships, and did not give – has not given a statement. Who is able to draw up that list?

MR FOLEY: I think we could probably draw that up in consultation with the prosecution - - -

HER HONOUR: Mr Rice

MR FOLEY: - - - your Honour.

HER HONOUR: Yes. You don't know the names?

MS ELAMROUSY: I wouldn't know in the full extent.

HER HONOUR: Okay. So draw up the list, and then you'll have to have the documents – the files searched to see if there are any documents that fall within that category.

MR RICE: From experience, your Honour, it's very likely that, if there are notes, they'll be in a customs officer's notebook - - -

HER HONOUR: So there'll be - - -

MR RICE: - - - now nearly five years' old.

HER HONOUR: I know. I know.

MR RICE: *And he will presumably need to find it - - -*

HER HONOUR: *Yes.*

MR RICE: *- - - and check.*

HER HONOUR: *I know. I'm aware of how tedious this will be. But – and I'm still not absolutely certain how many we're talking about. Are we talking about half a dozen?*

MR RICE: *No. I think, from the boarding of Edelweiss, as I say, there were – can't be exact, but probably no more than 10. And - - -*

HER HONOUR: *Yes.*

MR RICE: *And the majority of those have already given statements.*

HER HONOUR: *Yes. So - - -*

MR RICE: *I can't nominate those who haven't - - -*

HER HONOUR: *No.*

MR RICE: *- - - off the top of my head.*

HER HONOUR: *No. No.*

MR RICE: *But it wouldn't be difficult to work it out.*

HER HONOUR: *All right. Well, I suppose the next question is, are you prepared to make that disclosure without it being subpoenaed? And then I can just deal with the subpoena.*

MR RICE: *Yes. I don't – we don't have a problem with that. But for the sake of advancing the matter, your Honour - - -*

HER HONOUR: *Okay.*

MR RICE: *- - - if for no other reason, we undertake to do that.*

HER HONOUR: *Yes. All right. Well, Ms Elamrousy, they've undertaken to find them and disclose them. So the subpoena is no longer necessary, is it?*

MS ELAMROUSY: *Well, on the basis that my friend's prepared to disclose anything that is found to encompass what has been requested then I wouldn't - - -*

HER HONOUR: *No. No. Within that very narrow - - -*

MS ELAMROUSY: *Yes.*

HER HONOUR: Yes. Compass.

MS ELAMROUSY: Then I - - -

HER HONOUR: They've undertaken. They haven't said they will. They've undertaken to the court to do it. So that answers the subpoena. Well, as narrowed. All right.

MS ELAMROUSY: There's nothing I can add.

HER HONOUR: All right. Well, in that case, the subpoena - - -

MR FOLEY: The only other issue – sorry, your Honour. If the subpoena's to be set aside, the only other issue is costs, your Honour, which are pressed.

HER HONOUR: Yes. Ms Elamrousy.

MS ELAMROUSY: Your Honour, in relation to the issue of costs, it's taken a subpoena to have agreement from [indistinct]

HER HONOUR: I don't think it has.

MS ELAMROUSY: I - - -

HER HONOUR: I don't think it has. If you'd asked for precisely what you ask for today, Mr Rice has said they've always been willing to talk to you about disclosure.

* * *

Going to my previous letter to Parliament dated 11 December 2016, copy can be found on twitter: **simonxgolding**. Tracy Holden who is the manager of the Scarborough marina stated that Customs were first to arrive on the 12th October 2010. Holden also stated that Customs were taking statements at the scene. Page 52 of the ACBPS annual report for 2010-11 states that Customs executed a Search Warrant and boarded the Mayhem of Eden with AFP in the late morning, which totally contradicts what AFP state as the execution of the Search Warrant after 7pm. There is more contradictory information in the AFP's very own running log which was also not provided in the Brief of Evidence. It clearly states the search warrant on the yacht was executed at 1.32pm. The 7pm "cover" search warrant is to cover all the corrupt acts that happened earlier in the day.

13:30hrs - Two cars stopped, 3x POIs in custody.

13:32hrs - ORG requested to assist with entry and **execution of the warrants** for the VOI.(vessel of interest)

13:40hrs - Confirmation of two large bags containing narcotics at present believed to be Cocaine

13:42hrs - SYD MIR briefed of arrests.

13:44hrs - Fourth POI has been placed under arrest in the shopping centre car park.

13:45hrs - F/A WATT reported to FCP vehicle registration details of two vehicles stopped and two POIs in custody:

The information contained in this report is not to be disseminated to a third party or to be used in such a way as to prejudice an ongoing investigation by the AFP. Should any information provided in this report fall within the ambit of a freedom of information request, a subpoena, summons to produce or similar process, the AFP should be consulted before releasing information.

Case Note; (150081856) FCP Running Log - 12 OCT 2010

* * *

Tracy Holden also stated that AFP and Customs were removing blocks all day while AFP state nothing was removed until after 7pm. This shows that prosecutor Rice is hiding evidence and has been since 2010. Contrary to what is said, Mr Rice has been anything but willing to talk about or disclosing Customs officers around the yacht Mayhem of Eden which is why he generally only mentions the other yacht (Edelweiss) when mentioning Customs.

Relevance of a Failure of Disclosure on Appeal. I have appeals on the 13 February 2017. The information of Customs officers is still unlawfully hidden. I am content to let courts decide the law but it was hardly a fair trial in 2015 and without the evidence I am entitled to, it will hardly be fair again until it works into the High Court of Australia. This will bring more attention on the corruption in this case. This all equates to an Abuse of Process and Miscarriage of Justice. The fact that all this information has gone unnoticed with agencies unwilling to do anything in regard to the corruption and unlawfulness in this case is simply nothing short of astounding.

“If on appeal it is demonstrated that a failure of disclosure has led to a miscarriage of justice a verdict of guilty is liable to be set aside. The Supreme Court of Victoria stated in Re Ratten [1974] VicRp 26 (at 214): “..Under our law a criminal trial is not, and does not purport to be, an examination and assessment of all the information and evidence that exists, bearing upon the question of guilt or innocence. Even the Crown has some degree of choice as to what witnesses it will call. And the accused is completely free to decide how he will conduct his defence. He has the right to choose what issues he will contest, what facts he will dispute, whether he will give evidence or not, whether he will call witnesses or not, and, if he elects to call witnesses, which ones he will call. All these rights are fundamental to the conception of fair trial under our system of criminal justice. In conformity with this conception of fair trial, if an accused person can show that he has been prevented by surprise, fraud, malpractice or misfortune from presenting at his trial evidence of substantial importance which he desired to present, or which he would have desired to present had he not been prevented by such causes from being aware of its existence or its significance, then ordinarily the fact that he has been tried and convicted without such evidence having been called involves that he has been deprived of his right to a fair trial and that there has, in that respect, been a miscarriage of justice”. In Mallard v The Queen (2005) 224 CLR 125 at 133 “..At this point it is relevant to note that the recent case of Grey v The Queen in this Court stands as authority for the proposition that the prosecution must at common law also disclose all relevant evidence to an accused, and that a failure to do so may, in some circumstances, require the quashing of a verdict of guilty. As will appear, the evidence which was not produced before or at this trial, was certainly no less cogent than the evidence which was not disclosed in Grey”.

The CDPP has an obligation to the court for disclosure. Accused in Operation Collage/ Bergonia/ Brisbane Supreme case 864/11 constantly demanded evidence of Customs officers being present at Scarborough Marina on the 12th October 2010 along with much other evidence such as the missing CCTV footage that was not lawfully provided. AFP Aaron Burgess stated in an extension of time application to the Office of Australian Information Commissioner (OAIC) that a further 2-4 hours of marina CCTV(the edited out marina footage) was to be provided but would take some time. This held up FOI information for accused when being pushed into the 2nd trial and when the extra 2-4 hours was provided by the AFP, it was simply a duplication of the previous footage provided to make it appear like the missing footage. It was clear lies and games by the AFP. ACBPS/ Border Force and AFP lied about this information which was clearly evident to the CDPP. If anyone else acted fraudulently like this then they would be charged with obstructing justice.

CDPP Prosecutor Glen Rice failed in his obligations to the court in stopping proceedings at my last trial when it became very clear of serious non disclosure and corruption issues in this case. Rice should have stopped court proceedings when it became clear that many Customs officers were undisclosed at the Scarborough Marina on the 12th October 2010, with the obvious corruption cover ups by agencies involved.

Once it became obvious that Customs officers were present at the time of the search of the Mayhem of Eden during the course of the 2nd trial, attempts at adjourning the trial to obtain that material and hold proper inquiry into what occurred at the Mayhem were denied. This was intentionally omitted from any previous evidence by AFP and CDPP before in the previous 5 years despite many, many requests.

It remains the fact to this day not a single statement has been provided of a single Customs officer who was present at the time of the initial search of the yacht Mayhem of Eden and present at the Scarborough Marina on the 12th October 2010. The fact that Customs officers were present had never been mentioned and had never previously been disclosed. In 93 statements provided at Committal that had never mentioned any Customs nor in many pre trial arguments. This is not a case where events at the Scarborough Marina were a side issue.

I ask members to make serious enquiry about Operation Collage/Bergonia. All the court rulings involved in case BS(Brisbane Supreme) 864. Read the Committal transcripts (on twitter drop box) and skip through to read SC George Thomas questioning the AFP involved. You will quickly realise that there are more questions than answers given. The corruption is endless. Please use Parliamentary privilege to look into Operation documents such as the AFP crime scene log of the marina on the 12th October 2010 which was never provided to accused in the brief of evidence (BOE). It should show all the Customs present at the Scarborough Marina on the 12th October 2010. Please do not mistake the crime scene log of the yacht as provided in the BOE.

ACLEI has been given much information of this corruption and refuses to work as it is commissioned to do. There needs to be a new commission that is given powers and actually use them to stop the culture of corruption and is not so reliant on the agency it is investigating.

ACLEI have investigated the corruption in Operation Collage/Bergonia for over 4 years now. Michael Keenan, the Minister for Justice was being provided weekly updates on the progress of the investigation in 2013 and beyond as it was ACLEI's largest investigation ever undertaken. Nothing has eventuated, no one has been charged or even a reprimand of any corrupt AFP or CUSTOMS despite solid evidence of multiple crimes committed that actually carry gaol terms.

Parliamentary enquiry is needed to uncover any ethical standards enquiries and investigations into Operation Collage/ Bergonia and the officers who are raised in previous correspondence who have committed serious crimes and corruption.

There needs to be a transparent enquiry unlike the only two previous enquiries into Australian Federal Police corruption which are still redacted and hidden from the public. The Williams and Harrison report/ enquiry from the late 1980's and the late 1990's. There is clearly a culture and long running reigning regime of corruption within the AFP which spans decades.

I recently made Freedom of Information applications to the Australian Federal Police and will continue to do so despite the continual dodging of releasing this information by the AFP. I ask Parliament to make the same enquiries as these officers are guilty of major corruption and cover

ups.

AFP Freedom of Information Request Ref : CRM 2017/271

1“Any document, note, email regarding professional standards matters, investigation or enquiry into misconduct or any disciplinary action regarding AFP officer Aaron James Burgess pertaining to Operation Collage/ Bergonia or any other name it may be known as.”

2“Any document, note, email regarding professional standards matters, investigation or enquiry into misconduct or any disciplinary action regarding AFP officer Simon Wesley Castles pertaining to Operation Collage/ Bergonia or any other name it may be known as.”

3“Any document, note, email regarding professional standards matters, investigation or enquiry into misconduct or any disciplinary action regarding any AFP officer pertaining to Operation Collage/ Bergonia or any other name it may be known as.”

The reply by Adam Raszewski, acting team leader for Freedom of Information AFP dated 23rd December 2017 **Ref CRM2017/271** stated that the AFP refuse to grant access to the documents sought because *“Initial searches of the AFP's record management system PROMIS have located over 5000 log entries in relation to Operation Collage. As there is no document which lists all AFP members involved in the operation, all log entries would have to be examined in order to identify all possible AFP members involved”* etc.

This is of course complete nonsense and stalling on behalf of the AFP. There are different ways to do things and by going through PROMIS is obviously the long way to give reason for refusal. All relevant AFP and ACBPS officers that were part of the operation are on a marina crime scene log of who was at the marina on the 12th October 2010. AFP internal affairs/ professional standards are well aware of any disciplinary actions taken on officers that were part of the operation.

I urge you to make serious enquiry for lack of any answers to Minister for Immigration and Border Protection and to ACLEI of why this corruption has been hidden and when or if they intend on doing anything about it. Make no mistake that the AFP and Border Force have a timeline of damage control that has been planned and implimented over the last 7 years. I sincerely hope common sense and law prevail as it all equates to Perversion of Justice on a grand scale.

Sincerely



Simon Golding

MEDIA RELEASE January 2017

Are the Australian Federal Police and Border Force part of one of the biggest corruption cover up scandals ever?

The Australian Federal Police and the Australian Customs have been under investigation since 2012, but the recent release of documents has shown that nothing from the investigation has ever been made public. While the corruption has been well hidden since 2010, what comes as a shock is that it has been hidden in plain sight. Finding evidence to support these claims is very easy, all it takes is a mere inquiry.

Photos of 2 Australian Federal Police members from 2010 are one of the most solid proofs of that. In these photographs, they are shown to be leaving from the gate of the yacht Mayhem of Eden with what appears to be a lot of stuff under their shirts in the early afternoon. The exact date and time stamp is present in the corner of these photographs.

Further, while the AFP claims nothing was removed from the yacht until the arrival of the search warrant, photos clearly show members of the AFP walking without any bags, then walking out with filled bags from the yacht and going straight out of the precinct. An overview of many other such incidents with their reports has been sent to the appropriate authorities.

There has been indications of cover-ups in the 2010-11 ACBPS annual report as well. It stated information related to a search warrant, which was in fact a 'cover' warrant for hiding acts of corruption by Border Force and Australian Federal Police. It also supports the lack of presence of any video evidence, showing that the AFP has perjured themselves in this matter.

There have been reports of similar incidents in several newspaper articles, the most prominent being in the March 23rd 2015 edition of the Sydney Morning Herald, titled 'Customs Hid Details of Officer Snorting Cocaine After Drug Bust'. There have been demands to provide information regarding drug busts carried out on the 12th October 2010 and compare the names of officers present to the present day status.

While there have been replies and statements from many officials and ministers, none have been sufficient. In fact the majority of those have been in a defensive tone which further gives strength to the fact that there is a rampant cover up under place. In a recent letter to the Minister for Immigration and Border Protection, evidence of all unlawful acts, cover ups and scams have been sent along with the evidence that is present.

The fact that no action has been taken against the AFP and Border Force is fuelling their further unlawful acts. There is sufficient evidence to expose all cover ups and expose every single officer, official and minister who is involved in these scams. With proofs and evidence of the same so easily available, it is up to the authorities to take these issues up more seriously. But will they do so, or will this series of cover ups continue as time passes, remains to be seen.

photos twitter: simonxgolding