



Australian Government
**Australian Commission for
Law Enforcement Integrity**

INVESTIGATION REPORT

***An investigation into the conduct of an
Australian Federal Police appointee in relation to
unauthorised disclosure of information
and the giving of testimonials***

A report to the Minister for Home Affairs and Justice,
issued under section 55 of the *Law Enforcement Integrity Commissioner Act 2006*

REPORT 03/2012

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ABOUT ACLEI REPORTS

INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006

The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) established the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

THE ROLE OF THE INTEGRITY COMMISSIONER AND ACLEI

The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corruption in the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police (AFP) and the former National Crime Authority. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

CORRUPT CONDUCT

'Corrupt conduct' is where a staff member of a law enforcement agency:

- abuses his or her office;
- perverts the course of justice; or
- having regard to his or her duties and powers, otherwise engages in corruption.

The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption.

DEALING WITH CORRUPTION ISSUES

A corruption investigation, conducted by ACLEI, can commence in different ways.

- The Minister may refer to the Integrity Commissioner an allegation or information that raises a corruption issue.
- The head of a law enforcement agency within ACLEI's jurisdiction must notify the Integrity Commissioner of any allegation or information that raises a corruption issue which relates to that agency.
- Any person or government agency (eg the Commonwealth Ombudsman) can refer to the Integrity Commissioner an allegation or information that raises a corruption issue. A referral may be anonymous, or on behalf of another person. A person in custody can make a referral by a secure communication channel.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

ABOUT ACLEI REPORTS

The Integrity Commissioner may decide that ACLEI will investigate a corruption issue, allow a law enforcement agency to conduct its own investigation, conduct a joint investigation with a law enforcement agency, or decide that an investigation is not warranted. The Integrity Commissioner can manage or oversee an investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the AFP, the Integrity Commissioner can refer the issue to the AFP for investigation and may manage or oversee that investigation.

An allegation concerning an employee of a State or Territory agency (the home agency), seconded to an Australian Government law enforcement agency, can be referred to the home agency or to the relevant State or Territory police force/service or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

INVESTIGATION POWERS

When conducting an investigation, the Integrity Commissioner can:

- issue a summons or notice, requiring law enforcement personnel and other people to provide information and documents;
- obtain and execute a search warrant; and
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance.

HEARINGS

The Integrity Commissioner may conduct a hearing for the purposes of a corruption investigation. A hearing, or part of a hearing, may be conducted in public or in private.

The word 'hearing' as used in the LEIC Act, has no significance other than to describe a process whereby the Integrity Commissioner may gather information and evidence, and exercise certain coercive powers, for the purposes of an investigation. The purpose of a hearing is not to decide an issue, but to progress an investigation by assisting the Integrity Commissioner to discover facts that may lead to further action being taken.

STANDARD OF PROOF

The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.

Before making a finding, the Integrity Commissioner requires comfortable satisfaction, based on real evidence, that conduct occurred which fell within the meaning of the LEIC Act. This approach applies the reasoning of the High Court of Australia in *Briginshaw v Briginshaw* [1938] HCA 34 (per Dixon and Rich JJ) and *Neat Holdings P/L v Karajan Holdings P/L* [1992] HCA 66.

ABOUT ACLEI REPORTS

GRADES OF CORRUPTION

The relevant provisions of the LEIC Act are based on the Integrity Commissioner's finding on a single question—did a person engage in corrupt conduct? While all corrupt conduct is wrong and should be eliminated, some instances are less grave than others in terms of, for example, motives, pre-meditation and planning, concealment and deceptive conduct, corrupt collaboration, the effects on public confidence in the law enforcement agency, the effect on other agency staff, and the steps required to rectify the problem.

The Integrity Commissioner may reflect on this question of relative gravity in a report.

REPORTING

Investigations conducted by the Integrity Commissioner culminate in a report made under section 54 of the LEIC Act. The Integrity Commissioner's report must be provided to the Minister and to the head of the relevant law enforcement agency.

When an investigation relates to a person seconded from another Government agency, a copy of the report must be provided to the head of the home agency and to a State or Territory integrity agency, as the circumstances warrant. If the corruption issue relates to the provision of police services to the Australian Capital Territory, the *Law Enforcement Integrity Commissioner Regulations 2006* prescribe (regulation 24(2)-(4)) that a copy of the report must also be provided to the ACT Government Minister responsible for police matters.

If a public hearing were held, the LEIC Act requires the Minister to present the Integrity Commissioner's report to both Houses of Parliament within 15 sitting days of receiving it. It follows that a report of a public inquiry requested by the Minister must also be presented to Parliament by the Minister.

Where a report is to be tabled in Parliament, the Integrity Commissioner must exclude information covered by a certificate issued by the Attorney-General under section 149 of the LEIC Act.

The Integrity Commissioner may exclude other information from a report if the Integrity Commissioner were satisfied that it is desirable to do so. In coming to a decision, the Integrity Commissioner must seek to achieve an appropriate balance between the public interest that would be served by including the information in the report, and the prejudicial consequences that might result from that disclosure.

THE INVESTIGATION



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THE INVESTIGATION

EXECUTIVE SUMMARY

This investigation relates to the conduct of an Australian Federal Police (AFP) appointee, Federal Agent A.

Although since suspended from duty, Federal Agent A was at the relevant time employed in a community liaison role that brought him into contact with a wide range of people. He was asked by some of these people, and other acquaintances, to do favours for them, and the investigation focussed on how he responded to these requests.

The actions considered by this investigation were:

- improper access to and disclosure of information for reasons unrelated to Federal Agent A's duties; and
- the giving of testimonials (official character references) contrary to AFP requirements.

The investigation found that Federal Agent A had taken these actions, without authority and without reasonable excuse. Accordingly, the Integrity Commissioner found that Federal Agent A had engaged in corrupt conduct.

The Integrity Commissioner has recommended that the AFP Commissioner consider terminating Federal Agent A's employment in accordance with the procedures of the AFP.

THE INVESTIGATION

INTRODUCTION

1. A law enforcement officer must take care to separate personal interests and relationships from his or her official role. When he or she does not maintain this separation, there is a real likelihood of compromise and damage to the agency and the community.
2. The present investigation arose from allegations about Federal Agent A that were notified to me by the then Commissioner of the Australian Federal Police (AFP) under section 19 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). Those allegations related to apparent associations between Federal Agent A and people believed to be involved in serious crime.
3. The investigation covered two types of improper conduct allegedly engaged in by Federal Agent A, namely that:
 - (a) without authority, he accessed confidential information from the AFP and other sources (using his privileges as an AFP officer) and may have disclosed that information to friends and associates; and
 - (b) contrary to an AFP National Guideline, he provided testimonials (character references) for use in court proceedings and in relation to regulated employment.

JURISDICTION

4. I decided to investigate Federal Agent A's conduct because, if the allegations were true, they would fall within the definition of 'engages in corrupt conduct' in section 6 of the LEIC Act.
5. Section 26(1)(a) of the LEIC Act provides that the Integrity Commissioner may deal with a corruption issue which relates to a law enforcement agency, including the AFP, by investigating that issue. In deciding to investigate, I considered that the independence and powers of the Australian Commission for Law Enforcement Integrity (ACLEI) should be brought to bear on determining the corruption issues and that it would be beneficial to hold private hearings under the LEIC Act.
6. Section 26(2) of the LEIC Act provides that the Integrity Commissioner may investigate a corruption issue either alone or jointly with another government agency. Since strategies may have been needed for minimising any harm to the operations of the AFP—for instance, should corrupt collusion with an organised crime group have been occurring—I decided to conduct my investigation jointly with AFP Professional Standards (PRS).

THE INVESTIGATION

BACKGROUND

7. Federal Agent A joined the AFP in 2002. At the time of the events under investigation (2008-09), Federal Agent A was an AFP Community Liaison Officer and the Team Leader of the Community Engagement Team in a State office.
8. When he joined the AFP, Federal Agent A acknowledged that he understood the AFP's requirements which restricted access to and use of information technology systems and data holdings. As a member of the AFP, Federal Agent A had access to AFP records that were not available to other people. In addition, by virtue of his particular duties, Federal Agent A had the capacity to access or request information from other public and private sources for official purposes. He could, for example, seek information from other Commonwealth agencies and State police forces/services.
9. As a result of information gathered during this investigation, the AFP suspended Federal Agent A from duty early in 2010.

INVESTIGATION PROCESS

10. During the investigation, ACLEI and the AFP:
 - (a) examined AFP records, including e-mails, documents and information technology audit records;
 - (b) under notices requiring that people give information, obtained information from other Commonwealth and State agencies, financial institutions, a telecommunications provider and an internet service provider;
 - (c) obtained and executed search warrants on Federal Agent A's home and workplace;
 - (d) conducted hearings at which Federal Agent A and several other witnesses gave sworn evidence;
 - (e) obtained a warrant to intercept telephone communications made to and from Federal Agent A; and
 - (f) conducted physical surveillance.

THE INVESTIGATION

WHAT THE INVESTIGATION FOUND

11. The investigation revealed that on several occasions Federal Agent A had been approached informally by a range of acquaintances seeking information for private purposes. These requests included:
 - (a) obtaining information about a motor vehicle incident;
 - (b) locating a relative;
 - (c) locating a former school classmate;
 - (d) progressing immigration matters.
12. On these occasions, Federal Agent A conducted searches of law enforcement databases or obtained law enforcement information through unwitting intermediaries and, without authority, provided the information requested.
13. As well, Federal Agent A was asked by a range of acquaintances to provide, to a court or other authority, testimonials or personal references in relation to:
 - (a) a charge of driving with a suspended licence;
 - (b) a domestic violence matter;
 - (c) a criminal charge of obstructing police; and
 - (d) security licence applications.
14. Federal Agent A provided these testimonials on AFP letterhead, though none of them was sanctioned by the AFP or issued in accordance with its guidelines.
15. In two of these matters (relating to the charge of obstructing police and the charge of driving while a licence was suspended) the testimonials were produced and apparently relied upon in court. In the domestic violence matter, the testimonial was not called upon because the matter was settled out of court (although Federal Agent A could not have known that outcome in advance).
16. Two of the testimonials were embellished in some respects. The testimonial relating to the domestic violence matter overstated the length of time Federal Agent A had known the subject. The testimonial relating to the suspended licence matter referred to, and exaggerated, the assistance the subject had provided to an unrelated AFP investigation.
17. There is no evidence from this investigation that Federal Agent A sought or was provided with any direct financial or other reward for acting as he did. Any advantage gained by Federal Agent A was apparently social, in terms of advancing his reputation within the community in which he lived and worked. The other beneficiaries of Federal A's conduct were those persons who received the information or service that he provided, to which they were not entitled.

THE INVESTIGATION

18. Federal Agent A had a number of undeclared direct and indirect social connections to people involved in serious and organised crime. However, the investigation uncovered no evidence that Federal Agent A's actions, as described in this report, materially or directly assisted any criminal enterprise.
19. I am not aware of any serious or adverse consequences to any third party arising from those actions of Federal Agent A that were investigated. However, such consequences could easily have occurred, since Federal Agent A could not know with certainty the final uses to which the information he supplied would be put, whether by the person requesting it or by someone else.

WHAT "FEDERAL AGENT A" SHOULD HAVE DONE

20. Staff members of agencies with law enforcement functions are at risk of being groomed for corruption by criminal groups.
21. To counter this risk, the AFP has long-established instructions and guidelines to appointees on such matters as access to AFP records and the purposes for which information may lawfully be disclosed. Similarly, a specific guideline proscribes appointees from providing testimonials unless criteria are met and prior approval is obtained. Further guidance has been issued requiring appointees to declare associations and contacts that could compromise a person's integrity.
22. These policies are well-known, and reinforced through regular training. Further, significant infrastructure exists by which AFP appointees can seek assistance to clarify policy or practice.
23. Accordingly, in relation to these matters, Federal Agent A should have adhered to the AFP requirements.

INFORMATION SECURITY

24. Federal Agent A should not have accessed or obtained information for purposes unrelated to his responsibilities. By doing so, Federal Agent A may have contravened section 60A of the *Australian Federal Police Act 1979* (concerning secrecy of prescribed information) and other legislation which protects official information, such as the *Commonwealth Electoral Act 1918*.
25. The correct course would have been for Federal Agent A, when requested to provide information for purposes unrelated to his duties, to refuse the request, alert his supervisors and provide conflict of interest or integrity reports in compliance with AFP requirements.

THE INVESTIGATION

MANAGEMENT OF TESTIMONIALS

26. When a testimonial is issued on AFP letterhead, the reputation of the AFP stands behind that testimonial. In Volume 1 of its 1997 Final Report, the (Wood) *Royal Commission into the New South Wales Police Service* noted (at paragraphs 4.92 to 4.95, 7.11, 7.39, and 7.193 to 7.202) the corruption risks associated with members of a police service providing 'letters of assistance' (also known as 'letters of comfort', 'endorsements', 'references' and 'testimonials').
27. The relevant AFP National Guideline, which was developed in the context of the Wood Royal Commission, reflects the need for great care to be taken before a testimonial is issued. It is not, and should not be, a decision for an individual providing a favour to a friend or acquaintance. The Guideline sets out the factors that a National Manager should consider before approving a testimonial, including the purpose of the testimonial and the relationship between the subject and the AFP appointee.
28. Federal Agent A should have sought approval before providing any testimonial and should have ensured that the content was accurate and expressed in moderate terms, especially when he knew a testimonial was intended for use in judicial proceedings or for regulatory purposes.

FINDINGS

29. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
30. I find that Federal Agent A accessed confidential records without authority and, without reasonable excuse, he disclosed official information improperly.
31. In relation to his unauthorised access and subsequent disclosure of official information to personal associates, I note that:
 - (a) Federal Agent A's privileged access to sensitive information arose as a consequence of his duties;
 - (b) the level of deceit involved in obtaining the information (including misleading colleagues from the AFP and partner agencies as to the true reasons for his requests); and
 - (c) e-mail evidence demonstrates Federal Agent A understood that the type of conduct he engaged in was improper.
32. As to providing testimonials on AFP letterhead for private purposes, I consider that Federal Agent A's actions were, at the least, irresponsible and reckless, and may amount to colluding to affect the outcome of regulatory matters or to pervert the course of justice.

THE INVESTIGATION

33. Taken together, Federal Agent A's conduct demonstrated a consistent willingness to disregard his official duty and misuse the discretionary power entrusted to him in favour of advancing his personal standing.
34. It is incomprehensible that an AFP appointee of any length of service would not know of the sensitivity of handling law enforcement information. If Federal Agent A had any doubt about his obligations, he needed only to have asked a supervisor, consulted the relevant AFP Guidelines or contacted AFP Professional Standards or the AFP Confidant Network.
35. Given the importance of information security to effective law enforcement, I consider that Federal Agent A's conduct amounts to an abuse of his office as an appointee of the AFP, albeit at the low end of the type of conduct contemplated by section 6(1)(a) of the LEIC Act. Accordingly, I find that Federal Agent A engaged in corrupt conduct.
36. Before I reached my conclusion, I provided Federal Agent A with an opportunity to be heard, as required by section 51(4) of the LEIC Act, and I have taken into account written comments provided by his legal adviser. Without conceding any wrongdoing, Federal Agent A contends that his actions arose from ignorance of relevant policy, shortcomings in his training and supervision, unrealistic and incompatible expectations regarding his duties and ethnic background, his understanding that his role was to assist people who requested assistance, and misjudgements arising from Post-Traumatic Stress Disorder (for which Federal Agent A seeks to hold the AFP liable).
37. I consider that Federal Agent A has no reasonable basis to conclude that he should have been, or was, exempt from the policies and practices of the AFP, or that he could disregard them or interpret them unilaterally. The potential damage—to law enforcement cooperation, to inter-agency information sharing arrangements, and to the administration of justice—caused by significant individual failures of this type, warrants a proportionate sanction.

PART 10 ACTIONS

38. Part 10 of the LEIC Act provides for what the Integrity Commissioner may do with evidence and information obtained during an investigation. Section 146 requires the Integrity Commissioner to bring to an agency head's notice evidence of a breach of duty or misconduct by a staff member. This requirement arises when the Integrity Commissioner is satisfied that the evidence may justify terminating the staff member's employment or initiating disciplinary proceedings against the staff member and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so.

THE INVESTIGATION

39. During the investigation, I notified the AFP Commissioner of the evidence obtained in relation to Federal Agent A's access to and disclosure of information for purposes unconnected with his duties, and his unauthorised provision of testimonials. As a result, Federal Agent A was suspended from duty, pending an assessment of his suitability for continued employment.
40. In addition, in accordance with section 142 of the LEIC Act, I have provided to the Commonwealth Director of Public Prosecutions evidence, obtained during my investigation, of possible offences against the criminal law.

RECOMMENDATION

41. As a consequence of my finding that Federal Agent A engaged in corrupt conduct, I recommend that the AFP Commissioner consider terminating Federal Agent A's employment for reasons of loss of confidence, in accordance with the procedures of the AFP.

OTHER ACTIONS

42. Under section 208 of the LEIC Act, in appropriate circumstances the Integrity Commissioner may disclose to various heads of agencies relevant information relating to investigations. During the course of this investigation I have disseminated information to the AFP Commissioner about:
 - (a) a contact after his suspension between Federal Agent A and another Federal Agent that the other Federal Agent should have reported under AFP 'reportable disclosures' guidelines; and
 - (b) a possible deficiency in a communication system, leaving it vulnerable to corruption risk.
43. I have also disseminated information to a law enforcement agency about the conduct of one of its officers who came to my attention during the course of this investigation.
44. In the context of corruption risk, ACLEI and the AFP will work together to explore the implications of this investigation for the community liaison officer program (and similar risk areas).

THE INVESTIGATION

CLOSING REMARKS

45. Any investigation by ACLEI sometimes requires decisions to be made that take into consideration the risk of operational harm to a law enforcement agency that may result if a potentially corrupt employee were left in place during an investigation. As noted above, once sufficient evidence was gathered, I decided to disseminate information to the AFP Commissioner under section 146 of the LEIC Act to allow him to consider whether to suspend Federal Agent A from duty while the investigation was completed.
46. A consequence of my decision is that further opportunities for covertly gathering information were extinguished. I took the view that the disruption of potentially corrupt activity would be more important in the circumstances than collecting evidence for a prosecution.



Philip Moss
Integrity Commissioner

17 October 2012

THE INVESTIGATION

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