



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

INVESTIGATION REPORT

**Operation Delaney—An investigation into whether an
Australian Border Force officer improperly disclosed
sensitive information**

A report to the Attorney-General, prepared under section 54 of the
Law Enforcement Integrity Commissioner Act 2006

Report 05/2018

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Investigation Reports published by the Integrity Commissioner
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About ACLEI Reports

Investigations and reports by the Integrity Commissioner

The Law Enforcement Integrity Commissioner Act

The *Law Enforcement Integrity Commissioner Act 2006* establishes the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity.

The role of the Integrity Commissioner and ACLEI

The role of the Integrity Commissioner and ACLEI is to detect and prevent corrupt conduct and investigate corruption issues, in designated agencies—presently the:

- Australian Criminal Intelligence Commission (including the Australian Crime Commission and the former CrimTrac Agency)
- Australian Federal Police (including ACT Policing)
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Department of Home Affairs (including the Australian Border Force)
- prescribed aspects of the Department of Agriculture and Water Resources, 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

A staff member of a law enforcement agency 'engages in corrupt conduct' if the staff member:

- 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 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.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

The Integrity Commissioner may decide to: have ACLEI 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 also 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 a State or Territory 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
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance, and
- exercise powers conferred by the *Crimes Act 1914* in relation to controlled operations and integrity testing.

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 is required to be ‘reasonably satisfied’, based on relevant facts, that conduct occurred which fell within the meaning of the LEIC Act. In considering whether or not the Integrity Commissioner is ‘reasonably satisfied’ of relevant facts, he or she applies the reasoning set out by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362; *Rejtek v McElroy* (1965) 112 CLR 517 at 521 and *Re Day* [2017] HCA 2 (27 January 2017) at paragraphs 14 to 18 inclusive.

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

The LEIC Act establishes the means by which the Integrity Commissioner may report to the Minister or to members of the public about issues related to the performance of his or her functions.

For instance, investigations conducted by the Integrity Commissioner may culminate in a report prepared under section 54 of the LEIC Act. The Integrity Commissioner's report must be given to the Minister and to the head of the relevant law enforcement agency.

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.

In addition, if the Integrity Commissioner were satisfied that it is in the public interest to do so, he or she may publish information.

When a report is to be tabled in Parliament, or otherwise published, 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.

Investigation Report

Integrity principle

1. Many government officers, including those employed by the Department of Home Affairs (hereafter referred to as Home Affairs), have work-related access to sensitive information about members of the public. In some cases, this information may relate to a person with whom an officer is indirectly acquainted. In other cases, information may relate to an acquaintance of the officer's family, perhaps a child at a vulnerable or impressionable stage of life.
2. Government officers need to be alert and scrupulous in their dealings with persons who are associated with the subject of information. Furthermore, they need to be alert to the risk of innocent or unintended disclosures by family members, particularly child or adolescent members, and to take care to manage that risk by restricting information and counselling family members about the need for discretion and caution.
3. In this investigation report, the officer is referred to as being employed by the Australian Border Force (ABF), an operational element of Home Affairs.

The Corruption Issue

4. In February 2016, a senior state police officer referred a corruption issue to the office of the Integrity Commissioner. The police officer advised that a state continuing major investigation had uncovered information that suggested that persons of interest to that investigation had been told their names were on what was described as a 'federal watch list' by an unknown federal law enforcement officer. The state investigation related to members of, or associates of, an outlaw motor cycle gang (OMCG).
5. The information had allegedly originated with the mother of a friend of associates of the OMCG member. The mother was said to be an ABF officer employed at an airport.

Jurisdiction

6. Under section 10(2A)(c) of the LEIC Act, an APS officer in the Department of Immigration and Border Protection, or DIBP (including an ABF member) is a ‘staff member’ of DIBP for the purposes of the LEIC Act. The application of the *Acts Interpretation Act 1901* effectively extends that definition to include an APS officer in Home Affairs.
7. The information received raised a possible corruption issue for the purposes of section 6 of the LEIC Act—namely ‘conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency (subsection 6(1)(a)), or ‘conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind’ (subsection 6(1)(c)).

The evidence – what the investigation showed

8. Shortly before the referral to my office:
 - (a) on 16 January 2016, one of the persons of interest to the state police investigation who was a close associate of a member of the OMCG had passed through the airport and ABF conducted a baggage search, and
 - (b) on 9 February 2016, state police had searched the person of interest’s residence, seizing items including the mobile telephone used by his partner. That telephone held a text message dating from before his return to the effect that he and others were on a “federal watch list”. The message attributed the information to the mother of a friend. The mother was said to “work in Customs at the airport”.
9. The state police ascertained that the OMCG member’s partner had received the information from her sister and that she in turn had received the information from a friend, or friend of a friend, whose mother worked at the airport. The state police were not aware of the identity of the friend or her mother.
10. With that information, on 15 June 2016, I decided to investigate the corruption issue alone, under section 26(1)(a) of the LEIC Act. On the same date, I advised the Secretary of Home Affairs of this decision.
11. The investigation considered the history of the state police investigation, including connections with the ABF.

12. Critical to the investigation was the task of identifying the relevant officer from the many ABF officers who had worked at the airport.
13. The investigation identified a particular ABF officer (the officer) as the most likely source of the information, if indeed there was any foundation to the allegation. It was relevant to that identification that the officer's daughter had a social media connection with known associates of the sister of the OMCG member's partner.
14. State police provided further information that tended to support the identification of the officer. The OMCG member's partner's mobile telephone services showed that information had passed between her and her sister about the OMCG member and others being on a watch list. The information was said to have come from the officer's daughter, through a third party who it was subsequently ascertained had social connections with the officer's daughter.
15. The ACLEI investigation closely analysed the telephone records of a number of people, including the officer and her daughter, including conversations on the day the gang member left Australia, but identified nothing to suggest a disclosure of information by the officer.
16. There was nothing in ABF records to suggest that the officer had accessed ABF alert information about any person relevant to the state police investigation.
17. The state police later provided further information but it provided no evidence of corrupt conduct. Rather, it showed that the officer's daughter was not well regarded by the gang member's partner or her associates.
18. While the investigation was on foot, the sister of the OMCG's partner travelled overseas with a friend and returned via the airport on 17 June 2016. A baggage search was conducted by an ABF officer in the ordinary course of his duties. During the search the sister asked about the officer by name and said that her daughter had told a group of friends that they would always be searched because they were identified on an "FBI document that Customs have".
19. The ABF officer who had conducted the baggage search reported the conversation to his chain of command, including the reference by name to the officer concerned.
20. ACLEI investigators interviewed the officer, voluntarily and under criminal caution. The officer was assessed as being credible, frank and forthcoming.

21. In summary, the officer had been aware that her daughter greatly admired the OMCG member's partner and her sister because of their social media presence and the evidence of a lavish lifestyle, including expensive makeup, jewellery and travel. She was aware that her daughter knew the sisters from their school days, when they were senior students. The officer suspected that the sisters' lifestyle may have involved criminal associations and counselled her daughter to cease any online association with the sisters. In doing this, she was conscious both of her daughter's welfare and the possible implications for her own obligations as an ABF officer.
22. The officer later informed ACLEI that she and her daughter had discussed the latter's social contacts and she denied any direct contact with the sisters or any contemporary contact with any of their associates. The daughter denied any recollection or knowledge of any discussion about ABF activity.
23. The investigator spoke with the officer's daughter who:
 - (a) denied seeking information from her mother or conversing with her about ABF work
 - (b) denied that her mother provided her with information, and
 - (c) confirmed being excluded from the online group of people touched on by the investigation.

Conclusion

24. The ACLEI investigation found no evidence that the officer accessed or disclosed sensitive ABF information to any person, including her daughter. Nor did it identify any improper access or disclosure by any other law enforcement official.
25. It is likely, based on the evidence disclosed by the investigation, that a close-knit group comprised of the OMCG member's partner, her sister and some associates, with knowledge of some facts drew inferences in the light of state and federal law enforcement activity both at the airport and at the gang member's home to create a false understanding of a watch list. They made various references in text messages and discussions. That was sufficient to create a valid suspicion of a corruption issue but investigation did not disclose evidence to support that suspicion. The group had moved to distance itself from the daughter.

Findings

26. The LEIC Act requires me to report on findings arising from the investigation.
27. I am satisfied that the officer did not engage in corrupt conduct and I so find.

Part 10 actions

28. Part 10 of the LEIC Act provides for what the Integrity Commissioner must do with evidence and information obtained during an investigation—such as providing evidence to a prosecuting authority or providing information to an agency head for disciplinary or termination action.
29. No action under Part 10 of the LEIC Act was taken in this investigation.

Recommendations

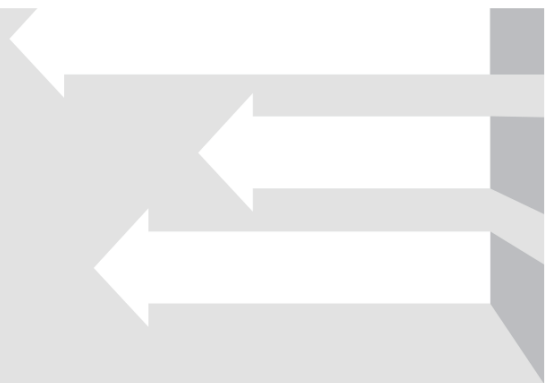
30. The LEIC Act requires me to report any recommendations that I think fit to make together with my reasons.
31. Whilst there was no corrupt conduct found on this occasion, I do consider that the circumstances provide a contemporary example of how unintended or innocent communication by an officer or an officer's child relating to the nature of the officer's employment may create a risk of rumours amongst criminal entities which may be counter-productive to law enforcement activities.
32. Importantly, the lifestyles of gang members and their associates may seem attractive or desirable to young and impressionable members of officers' families. Such family members quite innocently may become the subject of grooming activities by criminal entities to obtain information. In more grave circumstances, family members may place themselves at risk or even place law enforcement officers at risk or compromise law enforcement activities.
33. I consider it timely that I draw these matters to the attention of law enforcement agencies. I will recommend that these risks be emphasised in training and continuing re-enforcement of training of officers and that officers be encouraged to be aware of the temptation and risk to which young and impressionable family members in particular may be subjected. Individual officers should consistently assess and report any risk to themselves or their family members.
34. I have published a case study for the benefit and consumption of agencies and it is included on ACLEI's website at <https://www.aclei.gov.au/Corruption-prevention/case-studies/case-study-4-integrity-risk>.

Concluding remarks

35. I acknowledge the initial referral and subsequent assistance from the state police and the cooperation of Home Affairs during this investigation.
36. I observe that the referral by the state police officer and the reporting of an apparently related matter by the ABF officer who conducted a baggage search on 17 June 2016 provide good examples of personnel who are alert and willing to ensure that corruption issues are brought to attention.

Michael Griffin AM
Integrity Commissioner

3 October 2018





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