



CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

10 **CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,
FORTITUDE VALLEY WITH RESPECT TO**

File No: CO-19-1209

**OPERATION IMPALA
HEARING NO: 19/0006**

20 **DAY 2 - TUESDAY 12 NOVEMBER 2019
(DURATION: 32 MINS)**

**Copies of this transcript must not be made or distributed except in accordance with
any order made by the presiding officer concerning publication of these
proceedings.**

LEGEND

30 **PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – JULIE FOTHERINGHAM
HRO Hearing Room Orderly – KELLY ANDERSON
W Witness – DAVID MILLER
LR Legal Representative – N/A**

HRO All stand.

PO Thank you. Are you ready?

CA Yes. Chair, I call Mr MILLER.

PO Mr MILLER, would you prefer an oath or an affirmation?

10 W The affirmation, please.

HRO Repeat after me, please. I solemnly affirm and declare.

W I solemnly affirm and declare.

HRO That the evidence given by me.

W That the evidence given by me.

20 HRO In these proceedings.

W In these proceedings.

HRO Shall be the truth.

W Shall be the truth.

HRO The whole truth.

30 W The whole truth.

HRO And nothing but the truth.

W And nothing but the truth.

HRO Thank you.

CA Good afternoon, Mr MILLER.

40 W Good afternoon.

CA You were provided with an attendance notice to appear today?

W I was.

CA Yes. Can Mr MILLER be shown the attendance notice? I tender that document.

PO Exhibit 35.

ADMITTED AND MARKED EXHIBIT 35

CA Mr MILLER, your current occupation is as Executive Director of the Integrity and Employee Relations at the Queensland Department of Education?

W That's correct.

10 CA And your areas of expertise are in leading, managing and implementing complex human resources and communication strategies, including policy reforms and cultural change initiatives?

W That sounds like my profile from LinkedIn. So, yes, that sounds about right.

CA And can you outline, just in summary, your previous roles held in Queensland and elsewhere in government, and in Queensland in the Department of Education UI-

20 W In the Department of Education Queensland, I commenced in the Department in late April of 2018, and I commenced in the role of CEA, Executive Director of Business Partnering Safety and Well-Being. I then moved into my current role, Executive Director Integrity and Employee Relations in May of this year.

CA Thank you. I'd just like to ask you a few questions about the proactive auditing of OneSchool. Are you able to speak to that?

30 W Look, I'm not a user of OneSchool and I am not a part of the independent auditing function that the D-G, Tony COOK, spoke of earlier today. But I do have some basic knowledge of some of the auditing that does occur.

CA If you're unable to answer a question, if you could let us know who may be able to answer that question.

W Certainly.

CA So as Mr COOK talked about earlier, the database, OneSchool, is fully auditable?

40 W It is.

CA And how often is access audited?

W I'd love to be able to answer that question but I don't have that knowledge.

CA Do you know who would?

W Yes, certainly. The Assistant Director-General of Information Technology Branch, I believe, would possess that knowledge. If not, then certainly the head

of our Internal Audit Function could assist. I'm happy to facilitate that, if you'd like.

CA Thank you. And with the auditing, is there anything that you know about the system in broad-brush terms that you could-

W Look, in relation to OneSchool?

CA Yes.

10

W In broad-brush terms as you've asked, I'm aware that there are audit logs maintained of every individual who accesses OneSchool; when they access OneSchool; the screens that they view; the searches that they may perform in OneSchool; obviously data that they input; and reports they run. So there are detailed logs that are maintained.

CA Just moving on to disciplinary action.

W Mmm.

20

CA You're able to speak in some detail about-

W -I can indeed, yes.

CA The numbers of disciplinary actions are quite low on the table that you provided in response to our questionnaire.

W Yes.

30

CA If Mr MILLER could be shown tab 5 from the questionnaire? And also, so it is not seen in isolation, if Mr MILLER could be shown the Crime and Corruption Commission data, which was tendered during Mr COOK's evidence.

W Thank you.

CA So for the 2015-2016 financial year, there were – if you go to page 2 of those four pages of data, it talks about the number of complaints-

W Yes.

40

CA -the notifications made to the Commission, which you're aware of and how that process works.

W Yes.

CA So there were eight. And in that year, there was one demotion of an employee. And then the number has significantly risen, the number of complaints in 2018-2019, there being 37 complaints, and there have not been any terminations

or any demotions or any post-separation declarations. But there has been a sharp increase from your agency of referrals to – and it says there in the column (a) on the disciplinary action page, part 5, to the Queensland Police Service or to the Commission, there being 12 in 2017-2018 financial year, and 10 the following year. Are you able to talk to the increase in the number of referrals from the 2016-2017 year where there's just one, the reason for the increase?

10 W Look, what I can talk to, and I should alert the Commission at the outset that one of the figures in this table provided to you by us is actually incorrect.

CA Which one?

W The figure for the 2018-'19 year in column (a), which currently reads "10", is actually "21".

CA So even higher.

W So it is higher, yes.

20 CA Are you able to break down column (a) into whether there was – which ones were referred to the Queensland Police Service? Have you got those figures?

W Yes, I do.

CA So just police referrals, if you could, for the financial years 2017-2018, and then 2018-2019.

30 W So the data that I have in response to that question is that for the '17-'18 financial year there were three referrals to the Queensland Police Service.

CA Yes.

W In '18-'19 there have been seven.

CA Yes. Are you aware of the outcomes in relation to those matters? If any, or if they're ongoing?

40 W I know that some of those matters will certainly be ongoing, but I don't have disciplinary penalty outcomes in front of me, no.

CA With referrals to the Queensland Police Service, what is the threshold for referring to the Queensland Police Service?

W A matter that may involve a criminal offence is referred centrally to Police Link, the Queensland Police Service. If the Queensland Police Service then decide to investigate, integrity and employee relations will then monitor that matter until further advice is received.

CA So "may involve a criminal offence". So when we're talking about misuse of information on OneSchool database-

W Yes.

CA -what is the Department's definition of what may involve a criminal offence?

10 W That would be a matter that is potentially in breach of section 408 of the Criminal Code, computer misuse. That would be referred directly regardless of the intent.

CA So that would include accessing own records?

W It certainly would, yes.

CA Okay. Just going to your submission, you've read the Department's submission?

20 W The Department's submission, yes. Thank you very much.

CA Page 4, at paragraph 2.

W Yes.

CA Talks about where reasonable evidence is available indicating there's a criminal offence which has occurred under the Criminal Code, then there's referral to the Queensland Police. Who assesses whether there's reasonable evidence?

30 W So there is an area within my portfolio, it is called the Intake and Assessment Team that is headed by a Director. That team is charged with making assessments of that nature, and that is the team that will then complete any referral as necessary.

CA Have you read the Teachers' Union submission?

W I have reviewed, yes, that submission from the Queensland Teachers' Union.

CA We'll just provide you with a copy of it and I'll ask you a couple of questions.

40 W Thank you.

CA Page 4, paragraph 9.

W Sorry, is that the line that starts, "It is also the case"?

CA Yes.

W Yes. All right.

CA It starts, "It is also the case that until relatively recently there has been little interest on the part of the Queensland Police Service in pursuing charges in relation to OneSchool access by teachers."

W Mmm.

10 CA Are you able to provide us any information in relation to the Department's experiences and if there, in your view, is anything to back up that assertion made by the Queensland Teachers' Union?

W Look, I was interested to read that statement among others in this submission. I'm not – I don't possess knowledge about how the Queensland Teachers' Union has come to that judgment, no. And certainly that has not been raised by me with the union. In terms of the experience though of members of my team, I've known of no systemic issues in relation to QPS's response to these matters. There have certainly been some isolated incidents where matters perhaps have not been responded to or where there have been competing priorities. But at a broader level, at a systemic level, no, I don't have any concerns in relation to the
20 Queensland Police Service not taking these matters seriously.

PO Mr MILLER, could I just ask, in a case, for instance, where the matter is referred to the QPS that they decline to take any further action-

W Yes.

PO -does the Department respond by drawing a line under that matter or does the Department then consider taking internal disciplinary action?

30 W Yes, we will consider taking internal disciplinary action if we believe that the Code of Conduct may have been breached. So we will have numerous examples of matters around information management and broader as well where the QPS will decline to take a matter further but we will proceed with internal investigative investigation, yes.

PO Thank you.

CA I'll just show you an email that is part of a case study that I'd like to speak to you about.
40

W Yes.

CA And you have been provided with the details of two case studies. For the identification purpose we won't refer to them by their numbers today.

W Okay.

CA But I have a de-identified redacted copy of that email. So hopefully there's

enough words left on the page. There's quite a few for you to be able to identify it.

W Okay. Thank you.

CA If we may have a short break, Chair?

PO Sure, okay. Just let me know when you're ready.

10 HRO All stand. This hearing is adjourned.

ADJOURNED AT 12.18 PM

RESUMED AT 12.31 PM

HRO All stand. This hearing is resumed.

20 PO Thank you.

CA Thank you. Mr MILLER we were looking at the email-

W Yes.

CA -that I provided you which forms part of the case study that the Commission notified the Department in advance we were going to raise today.

W Yes, that's right.

30 CA And you're familiar with that case study?

W We were only able to actually identify the case yesterday, but I have familiarised myself as much as I can with this matter, yes.

CA First of all, I tender the part 5 of the questionnaire response from the Department regarding disciplinary action and disciplinary action table.

PO Exhibit 36.

40 ADMITTED AND MARKED EXHIBIT 36.

CA And I tender the email dated 4 April 2019, which we're currently looking at.

PO Exhibit 37.

ADMITTED AND MARKED EXHIBIT 37.

CA You'll see in that email, Mr MILLER, that halfway down the page, and I'll just

read it into the record, "The Department has considered referring this matter to the Queensland Police Service. In particular, the Department noted" – and one of the three notes is this – "recent advice from the QPS regarding referrals under 408E in which the QPS have advised that it is not in the public interest to investigate or charge in this instance and further that it is more of an internal matter for the Department to determine."

W Mmm.

10 CA So earlier you said that you weren't aware of any problems for referrals, but here we have an email from the 4th of April this year from your Department to the Commission detailing that there is an issue for referrals that the Queensland Police Service are saying that it is not in the public interest to investigate or charge.

W Mmm.

CA Can you expand on that?

20 W This – I'll give you everything I possibly can on this one, noting that I was not in this role at the time that this was occurring.

CA I'll just summarise it first of all and then you can let me know if you have any more information.

W Yes, sure.

30 CA It was an employee of the Department who accessed details of a complaint made from her ex-partner.

W Yes.

CA In circumstances of an acrimonious separation involving family law proceedings. So potentially a domestic violence situation as well. Potentially.

W Potentially. I don't have any information that it was, but that is possible.

40 CA And it was discovered by way of a reactive audit following a complaint rather than a proactive audit.

W Correct.

CA And the misuse of information had occurred over a period of one year and nine months.

W Yes.

CA So the ex-partner had been at risk during a period of one year and nine months-

W Yes.

CA -of potentially physically and psychological harm from the details being accessed on the system; wouldn't you agree?

W Potentially, yes.

10 CA So in classifying this matter, wouldn't you agree that it would be one of the more serious misuses of information?

W On the information before me, I'm always cautious about generalising about these matters, but certainly given the nature of the matter and that we have clearly two people who I believe were engaged in this clearly acrimonious ending of that engagement, the looking up of the partner's records which included complaints, is a very serious matter indeed, yes.

CA So why in this matter was there no police referral made?

20 W So my understanding of the matter is that it came to the attention of the Department some 20 months after the incident may have – or, sorry, some 20 months after the employee actually resigned from the Department. I understand that the matter was referred as it required to the Crime and Corruption Commission and that there was engagement with the Crime and Corruption Commission. But that ultimately a decision was made at the time that due to the significant lapse of time since the conduct occurred, and clearly there may have been a recent piece of advice from QPS that matters of this nature were not in the public interest to investigate, although as I said before I'm not aware of any systemic problems in that regard, but there may be one-offs here and there, that for some reason it was determined that it should not go to the
30 Queensland Police Service.

But I do note in the letter, and again I'm inferring here from the letter, not having been involved in the matter myself, was that advice was sought from the Crime and Corruption Commission as to whether that was okay, whether that was appropriate. And I'm not sure that – I'm not sure what the response may or may not have been to that.

40 CA But here, as I said before, it says, “Recent advice from the QPS regarding referrals”, referrals, not the singular referral-

W Not singular, yes.

CA -under 408E they've advised that it's not in the public interest to investigate or charge. Wouldn't that infer that there possibly is a systemic issue?

W Look, to my knowledge, as the Executive Director of this area, I'm not aware of any systemic issue. There may have been some instances around the time of

this email in April where there had been some of those – some 408 matters that were referred back from QPS. If that was the case I am very confident that my directors would have engaged with QPS to inquire as to the nature of those referrals back. But, look, as I said I'm not aware of any systemic issue in this regard.

CA When you do have a referral back, what is the reason given by the police for not taking the matter further? Is it sufficiency of evidence, or that it's not in the public interest?

10

W It could be one or both.

CA From your experience – how long are you been in the role.

W Just over six months.

CA In the last six months the matters that you've been involved with, where there have been referrals back – or, have there been any referrals back to start off with?

20

W Certainly. On a range of matters, yes.

CA How many?

W I couldn't give you a figure off the top of my head. But certainly there are a number of matters that my area will refer to the Queensland Police Service that extend well beyond information security. There are other child protection matters, for example, that are referred to the Queensland Police Service.

30 CA If we're talking specifically about the misuse of information referrals.

W Mmm hmm.

CA Have there been any referred back since you have been in your current role, to your knowledge?

W I'm not aware of any. I can double-check this for you, of course. I'm not aware of any relating to information management that have been referred back in my six months in this role.

40

CA Is there a central register of complaints or breaches, sorry, in relation to misuse of information?

W So we have a case management system that we use that logs all complaints and allegations that are received by my area and details all steps of any investigations that may follow and disciplinary outcomes. So, yes.

CA And that's for all the schools?

W The entire Department, yes. And it is fully centralised.

CA And how does the system work with receiving notification from schools?

W Of a complaint-

CA Yes.

10 W -or an allegation? So a complaint or allegation made against an employee can come in a number of forms. We quite frankly are agnostic about how it is delivered to us. We will receive phone calls, we will receive emails, we sometimes receive letters in the mail, and we also have an online referral system that we call I-Refer where anyone can make a complaint and it will be received by my team electronically. Complaints can be made obviously by other employees across the entire Department regardless where they work, they can also be made by parents, they can be made by students, members of the public. It's open to anybody.

20 CA Is your department just reliant upon complaints followed by reactive audits or do you detect any breaches by proactive auditing of OneSchool, breaches of privacy by misuse of information?

W Yes, so I think you asked me a question earlier about auditing and the proactive nature of auditing. And I apologise I don't have intimate knowledge of the auditing function in that way.

30 CA No, not from that end. From your end you talk about receiving complaints. Do you deal with and investigate any breaches that originate from proactive auditing? Or is it just complaints that lead to detection within the Department of Education?

W We're now internal audits, or any audit function actually is conducted if there are findings through that audit that raise any suspicion of any form of employee misconduct. Then, yes, that will be referred to us as a result of that audit and we will take the necessary actions.

40 CA At page 3 of the Department's submission, paragraph 6. You've got the submission in front of you.

W I've got it here.

CA It talks about the management and response to corruption and serious misconduct matters by the Integrity and Employee Relations UI a full and formal investigation in accordance with corruption in focus a guide to dealing with corrupt conduct in the Queensland public sector and it says, "Allegations of serious misconduct or corruption are investigated and founded on the balance of probabilities."

W Yes.

CA Here, with serious misconduct, does that include all misuses of information flowing from unauthorised access to OneSchool or are they graded and only certain types of misuse are investigated in this manner?

10 W No, they're not graded in that way. If there is an unauthorised access of OneSchool, then regardless of the intent of the person, whether they were – there was some discussion yesterday I believe about whether it was simply an exercise in snooping or whether there was something more nefarious, it is still a breach and we will still investigate that.

CA When an employee resigns during the process of the investigation-

W Yes.

CA -is post-separation disciplinary action taken as a matter of course?

20 W Yes, in most cases this is, yes. The only times when we may not is in relation to an administrative investigation that we are conducting is that when the person ceases to be an employee we can no longer compel them to participate in an interview. So evidence gathering can be quite challenging in that circumstance. But aside from that, yes, we do proceed with a number of post-secondary disciplinary, sorry, investigations. Of course they need to be taken within two years of the separation of the employee from the agency and the post-separation disciplinary declaration must be one that would have been either been a termination of the employment or the demotion of the employee.

30 CA You'd see the benefit as a risk strategy for the public sector so that citizens can be comforted that this person isn't going to pop up somewhere else.

W That's exactly right, yes.

CA So that's why post-separation declarations should be sought for instance.

40 W That is one of the key reasons why we do pursue these. Even though they're former employees we have a two-year timeframe after the point that they leave to conduct this process and to make a disciplinary declaration against them for the very reason that we want these outcomes on file, and so that if they attempt to become an employee across the Queensland public sector elsewhere, let alone within the Department of Education, that we will have that on record.

CA I've got one more case study to go through with you.

W Certainly.

CA That was the other one that we raised with the Department.

- W Mmm-hmm.
- CA And I'll hand to you the document that again has been redacted. The Intake and Assessment Corrupt Conduct Assessment.
- W Thank you.
- CA You're familiar with that one?
- 10 W I am. Excuse me, I am familiar with this matter, yes.
- CA So here we have access by a senior officer, so an officer in a supervisory mentoring role. Without giving the exact details of who we're talking about.
- W The individual was not senior, no.
- CA Did the individual have a supervisory role?
- 20 W No, the individual was the assistant to a very senior person. But the individual themselves was not what I would consider to be senior.
- CA The access was into the – a complaint are details about that person.
- W Yes.
- CA And the access occurred both prior to detection, obviously, and the detection was as a result of an audit?
- 30 W That's correct.
- CA Was as a result of an audit, a proactive audit detected this?
- W It was in this particular instance, yes.
- CA And then after the proactive audit there was again further access?
- W There was.
- 40 CA During the investigation when that person knew that they were under investigation?
- W Correct.
- CA So you'd agree that that's one of the more serious cases?
- W It was a very serious case.

CA Particularly in relation to accessing complaint files for the complainants and witnesses involved in that process if the details aren't known, accessing of the details can then become known and possible harm can occur?

W Indeed. Possibly. Possibly that may occur.

CA Was that person's access to OneSchool – was it OneSchool? I'm not sure.

W No, this one wasn't OneSchool.

CA It was Resolve?

W No, no, no. This one was one of our core databases called HPE records manager, otherwise known as TRIM in our vernacular. It is a document management system.

CA Was the access shut down in any manner, any control put over the access as a result of this, particularly in areas where that employee didn't need to go for that employee's role?

W The short answer is yes. Yes, access controls were immediately implemented over this.

CA Was that after – obviously after the second misuse?

W Yes. After, yes.

CA And learnings from this, this is a recent matter from – it was referred to the Queensland Police Service-

W Yes.

CA -in May, was it?

W It was referred – sorry, it was referred to the Crime and Corruption Commission in May. It was referred to the Queensland Police Service in July.

CA July. So the access was controls were put on after the second access. Learnings from this, moving forward; are the controls going to be put on as soon as there's a breach detection in future for similar matters?

W The unique aspect of this particular case-

CA Well, we won't talk about unique if that's okay.

W I'm not identifying.

CA Because this is a de-identified case matter so we might just move on talking

about unique aspects of it.

10 W I certainly don't want to identify the individual or anything that could lead to that at all. But I think the relevant issue, if I can assist the Commission, is that this individual had a higher level of access than the majority of other staff within the organisation due to the nature of the role that the person was performing. So, going to learnings, certainly it became quite stark to us that the need to put on very, very secure access controls around any such documents, particularly for the small group of people who hold this particular level of access in that particular system is critical, right upfront.

CA And what disciplinary action has occurred with this individual to date?

20 W So this is a bit of a tricky one, and I – this matter proceeded to a disciplinary show-cause process. The subject officer was given a letter seeking – as part of the first step of the show-cause process – that she would be liable to a disciplinary – likely to be liable for a disciplinary outcome. The matter was then subject to a claim filed in the Queensland Industrial Relations Commission. So that disciplinary process was put on hold as a result of that, that general protections claim. The subject officer subsequently resigned from the Department. And the matter was subject to a deed of settlement that included a confidentiality arrangement.

CA In relation to the Queensland Police Service referral, are you aware of any progress made since July?

30 W That's a good question. The latest advice as of yesterday is that I understand that the Department is yet to hear back from the Queensland Police Service in relation to this matter.

CA Since July?

W Correct.

CA I have no further questions, thank you.

PO I don't think we've tendered this second assessment. I will make that-

40 CA -Yes, I tender that document.

PO Oh, did you. Okay. So it is 38, is it?

ADMITTED AND MARKED EXHIBIT 38.

CA If Mr MILLER could be excused. Thank you very much.

W Thank you.

PO Yes, thank you, Mr MILLER. You can go. Thanks for coming.

PO We adjourn for lunch?

CA Yes, thank you.

PO Resume at 2. Okay. Thank you. You can go, Mr MILLER. Thank you very much.

10 HRO This hearing is adjourned.

END OF SESSION