



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: 0HRS 24MINS)**

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LEGEND

30 **PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – JULIE FOTHERINGHAM
HRO Hearing Room Orderly – KELLY ANDERSON
W Witness – EDMUND BURKE
LR Legal Representative – Mr SCHMIDT**

HRO HRO All rise. This hearing has now resumed.

PO Thank you.

CA Good afternoon, Chair. I call Edmund BURKE.

PO Mr BURKE, would you prefer to take an oath or affirmation?

10 W Affirmation.

PO Thank you.

HRO If you could repeat after me. I solemnly affirm and declare.

W I solemnly affirm and declare

HRO That the evidence given by me.

20 W That the evidence given by me.

HRO In these proceedings.

W In these proceedings.

HRO Shall be the truth.

W Shall be the truth.

30 HRO The whole truth.

W The whole truth.

HRO And nothing but the truth.

W And nothing but the truth.

CA Good afternoon, Mr BURKE.

40 W Good afternoon.

CA You are Special Counsel at Holding Redlich-

W Redlich, yeah.

CA -Lawyers. And you are representing the Queensland Teachers' Union?

W Yes.

CA And you've been given authorisation by the union to speak on behalf of them today to matters that are contained within their submissions that they prepared for Operation Impala.

W Yes, although I can't talk about individual matters or cases that I've dealt with obviously for reasons of privilege.

10 CA Yes. If Mr BURKE could be given a copy of Exhibit 33, unless you have the submission before you.

W I do.

CA That's fine. I'll just go through some – did you want to make an opening statement?

W No, I don't think it is necessary. Unless-

20 CA And you've been given an attendance notice to appear today?

W Yes.

CA Can Mr BURKE be shown a copy of the attendance notice?

W Thank you.

CA I tender that document.

30 PO Exhibit 39.

ADMITTED AND MARKED EXHIBIT 39.

CA Did you want to speak to particular parts of the submission, or for me to go through it with you?

W I guess I could summarise the submission in terms of what the QTU hopes the outcome would be, and what their concern is in relation to the matters that Operation Impala is looking at.

40 CA Well, we might do that at the end and I'll just take you through some pertinent parts of the submission, if that's okay with you?

W Yes.

CA So the Queensland Teachers' Union was established in 1889, and has been providing legal advice to the education and training sectors throughout Queensland throughout that period?

W I believe so, yes.

CA And in 2019 there are 45,500 education and training professionals working in state schools, special schools, secondary schools, TAFE colleges, the dual sector and the Central Queensland University and other educational facilities. They are the members?

W Yes, I believe so.

10 CA And the thrust of the submission is that – and please let me know afterwards if you disagree – is that while supporting the privacy of students, their parents, there is also the balancing need for the members of the union, that they are made fully aware of their obligations in relation to misuse of information?

W Yes.

CA And the main – well, the student information management system database is called OneSchool?

20 W The main one, yeah, most schools have an intranet as well.

CA With OneSchool, just to let you know, that is a database which holds the majority of the information of citizens' personal confidential information.

W Yes.

CA And that is the one that we are looking at for the purpose of the hearings.

30 W That's fine, but I would make the point that a lot of the information on the intranet is also the type of information that could lead to criminal charges if it is accessed for reasons that aren't connected to the employment.

CA Did you want to expand on that?

40 W Well, unfortunately there is a bit of a grey area. A lot of the teachers and the union's members don't understand that if the information is held by the school it is the property of the Department, and the access to it isn't something that's sort of closely policed. So it is possible for members to download information, to email information to other people, and it is possible for that to happen without any intention of doing something wrong or illegal. I think in the submission it mentions a mother sending passed exam papers to her daughter. So there are instances like that. The information isn't necessarily held on OneSchool, but it is information that's held by the Department that teachers have access to and are unaware of the possible consequences of using that information in certain ways.

CA In the submission, as you've just gone through, that scenario is mentioned – that case study is mentioned in here, and there is no idea from what the union is told by the members, in particular cases, including this one, that their action does

breach – is an offence under the Criminal Code.

W Yes, one of the main concerns expressed in this submission is there has been no training provided to teachers.

CA For what?

W For the type of access that they are allowed to undertake and what they can and cannot use information for.

10

CA So are you saying that there hasn't been to date any information privacy training which clarifies what is unauthorised access under the Criminal Code?

W Nothing specific. There is broad training in the Code of Conduct and standards of practice, but I mean even a phrase like "Directly connected to your employment" is – it can be very, very broad or very narrow, and teachers are in a position where they – I mean, if you look at OneSchool, for example, it has become the prime source of information in schools. In the past teachers may have kept some of that information in private diaries, you know, their own phones, whatever. But now it all feeds into OneSchool, so information that previously they would have been able to access without any problems, it is now stored on the computer. It is information that there are restrictions on. And our view would be that there hasn't been any training provided to teachers to educate them about the status of that information and what they can do with it.

20

CA With the definition you gave about being directly involved with employment, you'd be acquainted with section 408E, computer hacking and misuse of the Criminal Code.

30

W Yes.

CA And the language there is users are restricted computers so-

W OneSchool would qualify.

CA -one password. Without the consent of the controller. The controller being Department of Education, so it's without the consent.

40

W But every teacher has a password. So you could argue that they already have the consent. But then that broadens out to without the consent in terms of the use of the information once they access it.

CA The "without the consent" is not involved in the work directly – the work that they're doing, it isn't that they can go to work and start looking up whatever they like on the database.

W Well, number one, I wouldn't expect teachers to be reading the Criminal Code, but also without the consent a layperson reading that will look at it and think,

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“Well I have the password, I'm allowed to use this tool.” So they would quite reasonably think they do have consent to access that information.

CA Now you talk about the current controls that the Department of Education in the submission exercises over the data held, and you list the Education General Provisions Act 2006, and you talk about section 426 of the Act.

W Yes.

10 CA -as it relates to confidential information, confidentiality; yes?

W I do refer to that section, yes.

CA And the Code is more stringent than that; that talks about being able to disclose information with the consent of the third party to whom the information relates. That's different from the code. The code is a different standard. So relevant to your appearance here today would be that your members say that they're not given sufficient or if any instruction or guidance in relation to what is unauthorised use and misuse of information under the Criminal Code; is that in
20 summary what you're here today to say?

W Yes, that's the main concern.

CA Okay, thank you. Now the other aspect you talk about is the ethical use of public resources and you talk about for official purposes and conflicts of interests, and can you elaborate on that what you're talking about there?

W Well really, those were the controls that were highlighted in the call for public
30 submissions, and really the reason that they're listed here is to illustrate the inadequacy of them in terms of giving clear guidance to the union's members how they can use information.

CA So, again, a lack of education?

W Yes.

CA What type of education does the Union propose the members should receive?

W Well, for example, teachers and principals receive Code of Conduct training
40 every year. I can't see any reason why part of that couldn't be specifically on the use of OneSchool and departmental data resources.

CA And do you propose that it would be in-person or online?

W Well, I mean, I guess, it's not really a question I can answer, but I guess either would be an improvement on the current situation.

CA And in the submission also at page 4, paragraph 12, which you talked about at

the start what the Union wants to achieve from the Operation Impala, did you want to state that for yourself?

10 W Well, yes, I mean the Department has a large suite of policies and guidelines and procedures in relation to almost every aspect of a teacher's role, but there isn't a specific one on OneSchool. And given how pervasive the use of OneSchool is in all schools in Queensland, we feel that a specific clear policy or guideline that tells members exactly what they can use the system for would be very, very useful, and would avoid a situation – because what we see at the minute is if somebody has used the system incorrectly but, you know, arguably in a much less serious way than say a police officer using somebody's personal information for whatever reason, they are referred through the Department to the police and the police only have some very crude tools to deal with these sort of matters. They have charges that carry custodial sentences. And whilst ultimately the teacher may not be charged they do have to go through that process. We have had situations where police officers have turned up at schools asking for interviews. And, again, I'll bring it back to the fact that in circumstances where the person who may or may not face charges has absolutely no idea that they have done something illegal.

20 So, really, if we could get some clear guidelines so that if somebody is to be accused of something they can't claim that they didn't understand what it was that they have done that was illegal.

CA Mr COOK appeared this morning.

W Mmm hmm.

30 CA And he has taken onboard some of the matters that we raised earlier and he said that changes will take place, he'll be looking into that in relation to adding specific education and policy, including the log on warning sign around section 408E of the Criminal Code so that the staff are aware that that is one of the possible repercussions from them misusing the confidential information held on OneSchool.

W We would like to see it be more than a button that they press when they go into the system because as we all know-

40 CA -Sorry, maybe I wasn't clear. I said that he said that he would make changes to education; i.e. training, policy and procedure.

W Okay.

CA And the warning log on. Anything else?

W That would be a good outcome. I mean I guess the final point on that, and I don't know if it is within the remit of this inquiry, but I think it would be useful if there were more specific criminal charges connected to these type of offences.

I think police have no option at the moment to-

CA We're having the police appear as a witness later on. They're better able to address that; would you agree?

W Absolutely, but I would say some charges that weren't quite as serious would be useful in relation to the matters as they relate to the types of offences that teachers may or may not find themselves facing questioning on, something that was more relevant to the types of uses of information that they engage in.

10

CA I have nothing further.

PO Thank you. Mr BURKE, just one thing. You mentioned that one concern you have is the sensitive confidential information is stored on the intranet. What if any access controls are there in respect of the intranet?

W Well, I know that an individual employee will need a password to access it. But beyond that I'm not sure that there are any controls.

20 PO Is there a warning screen that comes up on that – on the intranet to warn about the need to protect confidential information?

W Look, I can only anecdotally say in terms of clients that I have dealt with, they haven't been aware that they were accessing information that they shouldn't have been.

PO Okay. Do you have any questions, Mr SCHMIDT?

30 LR I do, Chair. If I could seek leave to ask this witness questions in relation to the interplay of 426 of the Education Act and 408E and also about the existence whether he knows of any policy which relates to the operation of 426.

PO Okay, I'll grant you leave.

LR Thank you. Mr BURKE, I actually appear for the police union.

W Yes.

40 LR I just want to ask you some questions in respect of that. Are you familiar with section 426 of the General Provisions Act?

W Yes.

LR Okay. So you accept that under 426 there are a number of exemptions where teaching staff and other people associated with schools can release information and one of those exemptions specifically is with the consent of the person that it refers to or if that person was a child with the consent of the parent or the guardian or caregiver.

W Yes.

LR Okay. Are you aware if there's any education policy which surrounds that? For example, has the Director-General given a general consent to teaching staff to release information in circumstances where a child might be transferring schools?

10 W I'm not aware of that. But I assume that something like that would take place, but I'm not aware of any specifics.

LR And specifically where the General Provisions Act 426 allows for a release of consent of the person whose data it is-

W -Yes.

LR -are you aware if there's policy on that?

20 W Only in broad terms it's mentioned in other policies.

LR Right.

W But there isn't a specific policy on the operation of 426.

LR Would it be fair to say that the policy of 426 speaks for itself?

W Well, yeah, I guess so. Yes.

30 LR And am I correct in understanding your evidence that that creates some difficulty with the operation of the code offence, 408E in that if there's no policy surrounding the consent of the Director-General of education who presumably owns the information, then it is irrelevant if, for example, a student's parent consents to the release?

W That's correct, yeah.

LR So a person could actually be caught under the Criminal Code provisions but be complying with 426.

40 W Yes. Although the reality is it's very unlikely that police would be involved unless the Department referred the matter to them.

LR Certainly. Certainly. But I'm still talking about the criminality. Do you see an issue there for your membership?

W Look, in practical terms not really because, as I say, the only way that police will be engaged normally will be if the Department refers the matter to them as a result of a disciplinary action. But certainly it is something that would be

useful to clean up.

LR Yes. So in a nutshell your evidence is that there should be clear policy made available to your members-

W -Yes.

LR -coupled with education and so forth or add to that policy-

10 W -Yes.

LR And clearly that should apply to both provisions?

W Yes, absolutely.

LR Thank you, Chair.

PO Thank you. Do you have anything arising, Ms FOTHERINGHAM?

20 CA No, thank you.

PO Thank you. You're excused, Mr BURKE. Thanks for coming.

W Thank you.

END OF SESSION