

From: Toowoomba North Electorate Office <Toowoomba.North@parliament.qld.gov.au>
Sent: Friday, 19 July 2019 11:09 AM
To: Police
Subject: Meeting request - Assistant Commissioner Ethical Standards Command

Dear Minister,

Mr Watts would appreciate a time to meet with the Assistant Commissioner Ethical Standards Command to discuss a number of cases before the Ethical Standards Command, which have been brought to our attention as they are outstanding or unresolved.

At your earliest convenience, it would be greatly appreciated if you could please provide the details of the appropriate contact person.

We look forward to your earliest possible response.

Kind regards

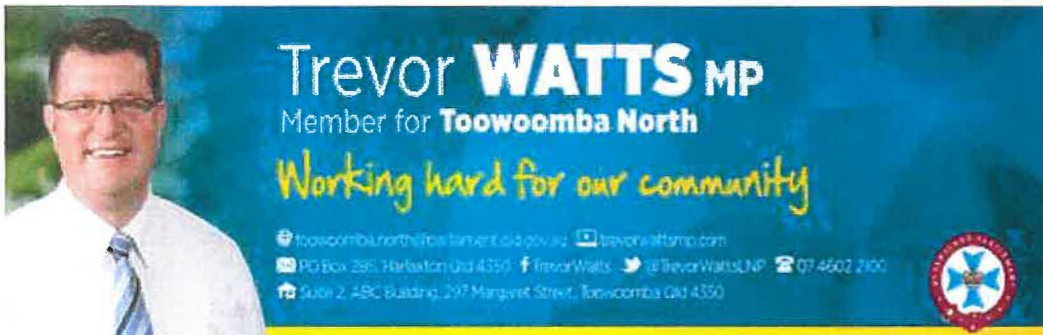
Office of Trevor Watts MP
Shadow Minister for Police and Counter Terrorism,
Shadow Minister for Corrective Services
Member for Toowoomba North

E: Toowoomba.north@parliament.qld.gov.au

PO Box 285 Harlaxton 4350

P: (07) 4602 2100 | F: (07) 4602 2109

Tabled by Hon Mark Ryan MP
At LACSC Estimates Hearing
Date 26 July 2019
Signature [Signature]



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Our ref: TF/19/5126

PRIVATE AND CONFIDENTIAL

25 July 2019

The Honourable Mark Ryan, MP
Minister for Police and
Minister for Corrective Services

By email: police@ministerial.qld.gov.au;
Ellen.McIntyre@ministerial.qld.gov.au

Dear Minister,

I refer to your request for advice dated 24 July 2019 about a request by Trevor Watts MP, Shadow Minister for Police and Counter Terrorism (Shadow Minister), to meet with the Assistant Commissioner, Ethical Standards Command, Queensland Police Service (QPS).

As a member of the Legislative Assembly, you are a designated person under section 12(1)(a) of the *Integrity Act 2009 (Qld)* (the Act), and I am required to provide the advice you seek. In so doing I am not able to provide you with legal advice, however, under section 21(3) of the Act, I must have regard to any relevant codes or standards in providing advice to you.

I draw to your attention your obligation under section 15(3) of the Act to disclose to me all information relevant to an ethics or integrity issue. Any omission, whether intentional or not, can significantly affect and alter my advice to you and take away protections, under section 40 of the Act, against civil and administrative proceedings when following the advice.

For your information, this advice is set out as follows:

1. Facts of situation as provided by you
2. Relevant standards
3. Discussion of issues, and
4. Summary of advice.

Level 13, 53 Albert Street Brisbane
PO Box 15290, City East
Queensland 4002 Australia
Phone +61 (07) 3003 2888
Email integrity.commissioner@integrity.qld.gov.au
Website www.integrity.qld.gov.au

1. Facts of situation as provided by you

You say:

I refer to an email received in my ministerial office on 19 July 2019, a copy of which is attached, from the office of Mr Trevor Watts MP, Member for Toowoomba North and Shadow Minister for Police.

In the email, Mr Watts is requesting to meet with the Assistant Commissioner, Ethical Standards Command, Queensland Police Service 'to discuss a number of cases before the Ethical Standards Command'.

I am most concerned about the nature of this highly unusual request and seek your guidance and advice. I have never received a similar request in relation to the Queensland Police Service or Queensland Corrective Services. I consider this request, which also circumvents the office of the Police Commissioner, highly inappropriate and further, that it could be perceived to be an attempt to interfere in highly confidential and sensitive operational policing matters.

More importantly, the public may perceive a request of this nature to be an inappropriate interference in the independence of an investigative body, thereby undermining the authority of the Ethical Standards Command.

It is my strongly held view that police need to be free to do their job without political interference. This is even more important where that job is the investigation of complaints made against police. Further, a request of this nature could be perceived as an erosion of the separation of powers by constituting political interference in the investigation of internal conduct matters.

I refer to categories of alleged conduct that might constitute corruption, as defined by the Crime and Corruption Commission in its Corruption allegations data dashboard - Glossary, namely, interfere with or undermine an investigation:

'Interfere with or undermine an investigation, legal process or conduct matter allegations encompasses a wide range of conduct that can involve misusing authority to falsely report an offence, conceal an offence or conduct, as well as corrupt/undermine/alter the course of (a) an investigation into a criminal, civil, regulatory or internal conduct matter, or (b) a prosecution or legal proceedings'.

Whilst that definition isn't exhaustive, it is my view that it could encompass the conduct of the Member for Toowoomba North as described above. I ask that you consider the issues I have raised and provide me with your advice and guidance on what action I should take in relation to the Member for Toowoomba North's request.

You also provided a copy of the email received from the Shadow Minister on 19 July 2019, which I have not reproduced here.

2. Relevant standards

- *Public Sector Ethics Act 1994 (Qld) (PSEA)*
- Code of Conduct for the Queensland Public Service (Code of Conduct)
- Code of Conduct Ministerial Staff Members
- Ministerial Code of Conduct
- *Crime and Corruption Act 2001 (Qld)*
- Integrity Act 2009 (Qld) (the Act)
- *Police Service Administration Act 1990 (Qld)*

3. Discussion of issues

You seek my advice about a request by the Shadow Minister to meet with the Assistant Commissioner, Ethical Standards Command, to discuss a number of cases before the Ethical Standards Command.

You inform that the request is highly unusual. You also have the following concerns with respect to the request:

- It effectively circumvents the office of the QPS Commissioner.
- It may be perceived to be an attempt to interfere in highly confidential and sensitive operational policing matters.
- It may be perceived to undermine the independence and authority of the Ethical Standards Command.
- QPS officers need to be free to do their job without political interference, particularly in relation to the investigation of complaints made against police, and
- Any meeting of this nature might be perceived as an erosion of the separation of powers by constituting political interference in the investigation of internal conduct matters.

Interaction by QPS Officers with Members of Parliament and the Public

I note that the request by the Shadow Minister is particularised to specific operational matters.

As stated, you have identified a number of concerns associated with the request, based on the potential erosion of the separation of powers between the legislative and the executive arms of government.

There are strict obligations and standards that are imposed on public servants, Ministerial staff, and Ministers in regard to proper conduct, access, and interactions between QPS staff and officers, and public officials and public servants. These obligations and standards are imposed to ensure public confidence in the QPS, and so that there can be no justified perception by the public, of any intrusion on the independence and functions of the QPS. Compliance with general obligations and standards are particularly pertinent in regard to QPS operational matters.

For Ministers, the Ministerial Code of Conduct, also provides that you:

'...should also observe the ethics values as set out in the (PSEA) that apply to the Queensland public sector as a whole where they are relevant:

- *Integrity and impartiality*
- *Promoting the public good*
- *Commitment to the system of government*
- *Accountability and transparency.'*

The PSEA declares that *'commitment to the system of government'* is an ethical principle which is, *'fundamental to good public administration'*.¹ More particularly, the PSEA also holds that the public sector has a duty to uphold the system of government:

8 *Commitment to the system of government*

- (1) *In recognition that the public sector has a duty to uphold the system of government and the laws of the State, Commonwealth and local government, public service agencies, public sector entities and public officials—*
 - (a) *accept and value their duty to uphold the system of government and the laws of the State, the Commonwealth and local government; and*
 - (b) *are committed to effecting official public sector priorities, policies and decisions professionally and impartially; and*
 - (c) *accept and value their duty to operate within the framework of Ministerial responsibility to government, the Parliament and the community.*
- (2) *Subsection (1) does not limit the responsibility of a public service agency, public sector entity or public official to act independently of government if the independence of the agency, entity or official is required by legislation or government policy, or is a customary feature of the work of the agency, entity or official.*

Further to this, Public Sector officers (including Ministerial staff) are required to abide by their respective code of conduct, policies, and directives.²

Consistent with the commitment to the system of government, the *Code of Conduct Ministerial Staff Members*, contains a number of standards for interaction with public sector employees³, including reference to the Premier's Communique, *'Interaction between ministerial staff and public servants'*⁴.

The Premier's Communique also relevantly includes the following:

- *Directors-General are responsible for the delivery of their department's services and are ultimately accountable to the Premier, although they report to their responsible Minister on a day-to-day basis.*

¹ PSEA, s.4.

² PSEA, s.18; Code of Conduct p.3.

³ Principle 3 – Interacting with public service employees respectfully, collaboratively and with integrity.

⁴ <http://statements.qld.gov.au/Content/MediaAttachments/2010/pdf/Communique%C3%A9.pdf>

- *All interactions between Ministers, Ministerial staff and public servants are subject to a comprehensive framework of laws, policies and codes of conduct that establish legal obligations and expected standards of behaviour.*
- *Directions given by Ministerial staff to the public service on behalf of a Minister should be provided directly to Directors-General in accordance with the public service management and accountability framework set out in the Public Service Act 2008.*

Operational Matters

As noted, compliance with such obligations and standards is particularly pertinent with regards to QPS operational matters, and the nature of the Shadow Minister's request is specific to this type of matter.

With respect to Members of the Legislative Assembly, including shadow ministers, to my knowledge there are no provisions that provide for an exception to the general standards that apply to proper conduct, access, and interactions, with QPS officers regarding specific operational matters than would ordinarily apply to others such as public servants, Ministerial staff, and other Ministers.

Therefore, I am of the view that the nature and specificity of the request is unusual and at odds with the established standards that apply. I also have additional concerns about confidentiality as detailed below.

Confidential Information

I understand that matters dealt with by the Ethical Standards Command are conducted under continued monitoring of the Crime and Corruption Commission and are subject to the *Crime and Corruption Act 2001 (Qld) (CCA)*.

In the circumstances, the following secrecy provisions under the CCA may apply:

213 Secrecy

- (1) *This section applies to a person who is or was —*
 - (a) *a relevant official; or*
 - (b) *a member of the reference committee; or*
 - (c) *a person to whom information is given either by the commission or by a person mentioned in paragraph (a) or (b) on the understanding, express or implied, that the information is confidential.*
- (2) *A person must not make a record of, or wilfully disclose, information that has come to the person's knowledge because the person is or was a person to whom this section applies.*

Maximum penalty—85 penalty units or 1 year's imprisonment.

In any event, it would also seem that provisions under the *Police Service Administration Act 1990 (Qld)* relating to the improper disclosure of information would be relevant:

10.1 *Improper disclosure of information*

- (1) *Any officer or staff member or person who has been an officer or a staff member who, except for the purposes of the police service, discloses information that —*
- (a) *has come to the knowledge of, or has been confirmed by, the officer or staff member or person through exercise, performance or use of any power, authority, duty or access had by the officer or staff member or person because of employment in the service; or*
 - (b) *has come to the knowledge of the officer or staff member or person because of employment in the service;*
commits an offence against this Act, unless —
 - (c) *the disclosure is authorised or permitted under this or another Act; or*
 - (d) *the information is about a person offered an opportunity to attend a drug diversion assessment program under the Police Powers and Responsibilities Act 2000, section 379 and the disclosure is made to the chief executive of the department within which the Health Act 1937 is administered; or*
 - (e) *the disclosure is made under due process of law; or*
 - (f) *the information is not of a confidential or privileged nature; or*
 - (g) *the information would normally be made available to any member of the public on request.*
- Maximum penalty — 100 penalty units.*
- (2) *In prosecution proceedings for an offence defined in subsection (1), it is irrelevant that information of the nature of that disclosed had also come to the defendant's knowledge otherwise than in a manner prescribed by subsection (1).*

Whether the request should be approved

I concur with the concerns you have raised about agreeing to the Shadow Minister's request for a meeting between the Shadow Minister and the Assistant Commissioner on the subject of current investigations.

I also agree that it is open to you to decline the request, consistent with your obligations as Minister to act in the public interest. I base my views in this regard on the following:

- Such a meeting would be incompatible with the comprehensive framework of laws and related codes of conduct separating the legislative and executive arms of government.
- It would tend to circumvent the QPS Commissioner's oversight role and responsibilities in communication between the executive and legislature.
- There would be a high risk of a breach of the serious confidentiality obligations in any substantive discussion of the investigations, particularly given the Shadow Minister has no executive role or function with respect to them.
- As you note, the proposed meeting with the Assistant Commissioner on these issues is highly unusual, and seemingly unnecessarily gives rise to potential concerns, including undue influence.

- While the ethics principles include *accountability and transparency*, the investigations are already subject to direct or potential oversight, including by the CCC and the Parliamentary Crime and Corruption Committee.

4. Summary

Thank you for your request for advice. I commend you for recognising the importance of upholding the system of government and the comprehensive framework of laws and codes of conduct that support it.

Based on the information you have provided, and for the reasons detailed, I agree that it would be reasonably open to you and consistent with your obligations as Minister to decline the Shadow Minister's request for the meeting and to perhaps suggest alternative options.

Under section 27 of the Act, it is at your discretion as to whether you disclose this letter. However, in the interests of transparency, should you choose to disclose this letter I would strongly urge you to disclose it in full.

Please do not hesitate to contact me should you require any further assistance.

Yours sincerely,



Dr Nikola Stepanov PhD (Melb.)

QUEENSLAND INTEGRITY COMMISSIONER

W. <https://www.integrity.qld.gov.au>

E. [REDACTED]

M. [REDACTED]

Note: The *Right to Information Act 2009 (Qld)* does not apply to this document and the enquiry to which it responds – *Right to Information Act 2009 (Qld)*, schedule 1, section 6.