

TASER USE — DEPARTMENT OF CORRECTIVE SERVICES GUIDELINES

598. Mr J.M. FRANCIS to the Minister for Corrective Services:

I start by acknowledging on behalf of the member for South Perth the year 11 and 12 political and legal studies students from Penrhos College who are in the public gallery.

I will ask the question that perhaps the member for Mindarie should have asked the Minister for Corrective Services. Can the minister please inform the house of the circumstances surrounding the use of Tasers on Mr Kevin Spratt by officers of the Department of Corrective Services and, specifically, can the minister give some background as to when the incident occurred; whether the incident was compliant with operational guidelines; and what action the minister has taken to ensure that these guidelines are complied with?

Mr C.C. PORTER replied:

I thank the member for his question. It is obviously a very serious matter. I have paid some attention to it over the past week and a half. I might first deal with the Department of Corrective Services' cell extraction of Mr Spratt and give the house something of a chronology. The police footage that we have all seen that has been publicly released was filmed on 31 August 2008. I understand that Mr Spratt was released from the Perth watch-house on 1 September 2008. There was some form of further offending of a physical nature and he was returned to custody on 6 September 2008. At that point the officer in charge of the East Perth lockup contacted what is known as the emergency support group of the Department of Corrective Services and asked for assistance in extracting Mr Spratt from his cell. On that date—that is, 6 September 2008—officers of the ESG arrived at the lockup. They observed Mr Spratt via CCTV because there was no viewing hatch in the cell. Instructions to Mr Spratt to comply with their orders were given. A warning that Tasers would be used was given on several occasions. Restraint processes ensued when instructions were not complied with. The information that I have received—I have viewed the footage, and I will come to that in a moment—is that the Taser was deployed 11 times but it was not effective each time it was deployed, so it was not discharged each time it was deployed. The incident report indicates that at one point one of the barbs managed to become dislodged from Mr Spratt's wrist and lodged in the ankle of an officer through his boot. I do not know how many times it was successfully discharged. That information is not available to me. Mr Spratt was transferred from the East Perth lockup to Casuarina Prison. During that trip he engaged in some behaviour—I will not detail that here for want of prejudicing this matter any further—that may have resulted in the self-infliction of some injury. He was taken to Casuarina from the East Perth lockup on 6 September. He complained of shoulder pain. On 7 September 2008 he was taken from Casuarina to Royal Perth Hospital for X-rays. On 12 September 2008 he was escorted again by ESG from the hospital back to Casuarina Prison. At that point a Taser was drawn on Mr Spratt but not fired because he had threatened the relevant officers with two improvised weapons. There was a follow-up attendance at the hospital on 19 September 2008 and 24 October 2008. Information was also given to me that Mr Spratt attended the infirmary at Casuarina on 16 September 2008 after a recreational injury received whilst recreating on the prison oval. That is the basic chronology.

With respect to whether or not Mr Spratt received any injury, I know the member for Mindarie has said in the media that Mr Spratt woke up in hospital with a punctured lung. I have not been able to determine what injuries, if any, were sustained by Mr Spratt. The reason for that is I have now asked for and received advice from the State Solicitor's Office. The effect of that advice is that as minister I cannot access the relevant medical history without Mr Spratt's consent because he is no longer in custody. I do not know what injuries were sustained. I do not know whether those injuries were sustained by virtue of the Taser incident that we have seen the footage of, because of the physical offending that occurred in between, because of the restraint and cell extraction from the DCS officers or because of the behaviour in the police van.

As to the issue of my knowledge and the government's knowledge about this matter, as I said, the cell extraction occurred on 6 September 2008, which coincidentally was the day of the last state general election. As minister, I did not become aware of the police footage until 29 September 2010 when I was acting as police minister. In the days after that I was briefed on the police footage and in the days after that I became aware of the DCS footage being in existence. I viewed that footage on 5 October 2010.

The rules for deployment of Tasers by Corrective Services officers are very different from those of the police. They do allow compliance in very rare circumstances when a view is taken as a matter of last resort that only the use of a Taser can effectively and safely remove someone from a cell. The instances of Taser use are very rare for Corrective Services. Based on the best information available to me, since the introduction of Tasers for DCS, they have been used on six occasions for cell extraction, all of them during the period of the previous government. There have been no cell extractions from DCS using Tasers during the term of this government. That is not to say that that may not occur in the future. I do not know whether the previous minister received briefings as a matter of course on Taser use by DCS officers during cell extractions. I thought that would occur

because of the very limited nature and rare occasions that Tasers are used. I have never been briefed on Taser use because that has not happened under this government, but I certainly expect to be briefed from this point.

With respect to the issue of follow up and the important issue about releasing the footage, as I said, I have no means of confirming whether Mr Spratt did receive a punctured lung, as the member for Mindarie said. I do not know what injury was sustained, if any. I do not know whether that injury was sustained in a variety of different manners.

Mr J.N. Hyde: So there was no logged report?

Mr C.C. PORTER: The logged reports are, in effect, his medical records, which are kept by the commissioner, and he has access to them whilst —

Mr J.N. Hyde: But your officers involved would have filled in their own logged reports, which you have access to.

Mr C.C. PORTER: I have seen those and they do not reveal the nature of the injury. That is based on the medical attention —

Mr J.N. Hyde: So there was an injury.

Mr C.C. PORTER: I am presuming that there was because he was sent to hospital by virtue of the fact that he required an X-ray on his shoulder. That is the information that I have. I have written to the ALS, which is representing Mr Spratt, asking if he will give consent to release that information.

How am I approaching this problem from this point on? I have asked that all of the six Taser usages by DCS be audited and a summary of them be sent to me. I want the guidelines, and have asked for those to be reviewed. I have asked for the professional standards wing of DCS to review this particular cell extraction. I have also asked that the footage be sent to the CCC. I am not yet certain whether it intends to investigate the matter further. I have also provided the footage to the Aboriginal Legal Service for the purposes of it giving advice to its client. If it is the case that, based on that footage, Mr Spratt wishes to take further action, either with police or via the DPP, that is a matter for him, but it is only fair that he have the footage. At this point—I have been in two minds about it—I have determined not to make the footage public. Watching the footage was uncomfortable for me. It is of a qualitatively different type to the police footage. However, it was not entirely obvious to me that the force was excessive or that the guidelines, which are very different from the police guidelines, have been breached —

Mr M. McGowan: You're the judge.

Mr C.C. PORTER: I am not the judge in this matter. Professional standards will take a preliminary view. The CCC has the ability to look at the footage and —

Mr J.N. Hyde: But if you've got evidence of a dislocated shoulder, you've got to act.

Mr C.C. PORTER: I do not know that. It is also the case that the ALS has the footage for the purposes of advising its client. One of the things that stood against releasing the footage publicly is that cell extractions of this type are very rare. They are very dangerous for the officers involved. Publicly releasing the footage when there has been no determination that there was anything unnecessarily outside the guidelines or excessive force used means that every prisoner in the system gets to watch the cell extraction methods on televisions that prisoners have access to, and that to me was a matter that could put at risk public servants' safety. If it is the case that either the CCC, professional standards, the ALS, after advising its client, or the police determine that there is something wrong and measures taken were outside the guidelines, excessive force had been used or there was an improper observance of procedures, my view is that the footage should be released.

I will make these final comments. A lot has been said about this matter. The member for Mindarie spoke about a second Taser assault and the Leader of the Opposition spoke about a second assault. I said that I was surprised that a prosecution was not pursued with respect to the two officers in the first instance, and I think the member for Mindarie agreed with me on that. Notwithstanding that the ALS stated publicly that it looked through the files on 5 October and it could not find Mr Spratt on its books at all, it appears that the ALS did give advice to Mr Spratt through a paralegal. An email was sent to police on 25 February 2009 which said that Mr Spratt had decided to allow the department to take its own action against the officers. There appears to have been a change of mind on Mr Spratt's part, and fair enough, but now it is possible that a prosecution may ensue. In those circumstances, those police officers deserve a fair trial unprejudiced by salacious comment by anyone in this place. I suspect that comments such as this have been made because it is a pre-meditated attack. I know that these disciplinary charges are used as a cover-up. There is another video that the police are hiding that presents the real risk of prejudicing a fair trial for those two officers.

Mr J.R. Quigley: What about the deputy commissioner of police seeking to prejudice proceedings by saying he is satisfied that there's no element of retribution and there's no nexus between what happened on the street and what happened in the lockup? That is a direct comment of the same quality.

Mr C.C. PORTER: I think everyone should stop making salacious media-based comments about this matter based on a complete lack of any evidence, because that prejudices the ability of those police, if a prosecution does ensue, to have a fair trial.

Mr J.R. Quigley: There is no trial. There is no charge.

Mr C.C. PORTER: The things that the member for Mindarie has said are as equally without evidence as anything else that has been said on this matter.

Mr Speaker, at this stage, I have determined not to release the footage. As I have said, it made me uncomfortable to watch.

Mrs M.H. Roberts: You made some pretty strong comments yourself.

Mr C.C. PORTER: There is a reason for that. However, the footage has been openly given out to those I view to be the appropriate individuals to make a judgement as to whether there has been any wrongdoing. If any wrongdoing is suggested to me by either the professional internal review, the Corruption and Crime Commission or the police, and if I am contacted by the Aboriginal Legal Service, I will release the footage.