

**GOVERNMENT RESPONSE TO THE
LEGISLATIVE COUNCIL SELECT COMMITTEE INTO THE POLICE RAID
ON THE SUNDAY TIMES**

AUGUST 2009

Finding 1: The Committee finds that there was no direction given to the Western Australia Police, in relation to its investigation into the alleged leak of confidential Cabinet information to *The Sunday Times*, by any Minister, Parliamentary Secretary or Member of Parliament or their staff.

The finding is noted.

Finding 2: The Committee finds that there was no direction given to any public officer, in relation to the alleged leak of confidential Cabinet information to *The Sunday Times*, by any Minister, Parliamentary Secretary, Member of Parliament, or their staff.

The finding is noted.

Recommendation 1: The Committee recommends that the Attorney General conduct a review of s 81 of *The Criminal Code*.

The State Counsel has been asked to provide advice to the Attorney General on the need for a review of s 81 of The Criminal Code.

Finding 3: The Committee finds that it would have been prudent for the Corruption and Crime Commission of Western Australia to have obtained from the Department of the Premier and Cabinet a copy of the alleged leaked Cabinet document, so that it would have been in a better position to form an opinion as to whether an investigation should be conducted.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

Finding 4: The Committee finds that the Department of the Premier and Cabinet, inadvertently or otherwise, hampered the Western Australia Police investigation by not informing the Western Australia Police of all relevant information concerning the unauthorised disclosure including that there were five separate versions of the document containing information that was disclosed and the distribution of each version.

The Department of the Premier and Cabinet made every attempt to cooperate with the Western Australia Police and to provide information as requested. If there were any shortcomings in the material provided to the Western Australia Police, these were entirely inadvertent.

Finding 5: The Committee finds that the Corruption and Crime Commission of Western Australia did not assess the complaint received from the Department of the Premier and Cabinet with appropriate rigour, and simply passed the responsibility for the investigation on to the Western Australia Police despite the Corruption and Crime Commission's own previously published misgivings about the value of investigations of offences under s 81 of *The Criminal Code*.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

Finding 6: The Committee finds that the role of the Department of Treasury and Finance and its internal processes for managing confidential information has not been adequately addressed. The Committee is of the view that the Corruption and Crime Commission of Western Australia should have also referred the complaint to the Department of Treasury and Finance, as it did to the Department of the Premier and Cabinet, for investigation under s 33 of the *Corruption and Crime Commission Act 2003*.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

It is also noted that the decision not to refer the complaint to the Department of Treasury and Finance was an operational decision of the Corruption and Crime Commission over which the Department of Treasury and Finance had no influence. However, the Government would welcome the opportunity for the Department of Treasury and Finance to conduct an internal investigation into the alleged breach of Cabinet confidentiality, should the Corruption and Crime Commission decide to re-visit its determination.

Finding 7: The Committee finds that the Corruption and Crime Commission of Western Australia expressed to the Western Australia Police a narrow interpretation of Part 4 of the *Corruption and Crime Commission Act 2003* (that is, those sections dealing with organised crime and the conferral of exceptional powers on police officers), and did not take into account the type of joint Corruption and Crime Commission-Western Australia Police investigations using the Corruption and Crime Commission's general powers as envisaged by s 33(1)(b) of that Act.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

Finding 8: The Committee finds that the Corruption and Crime Commission of Western Australia failed to acknowledge that, in most circumstances, a notice to produce documents under the *Corruption and Crime Commission Act 2003* can be as effective as a search warrant due to the available penalties for failure to produce the document.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

Finding 9: Notwithstanding the Committee's concerns with the Corruption and Crime Commission of Western Australia's referral of the matter to the Western Australia Police in this instance, the Committee finds that it was proper for the Western Australia Police to investigate the allegation of a Cabinet leak, given that it was an offence under s 81 of *The Criminal Code*. The Committee believes, however, that alternative methods of investigation should have been employed before resorting to a search warrant, having regard to resource requirements and other Western Australia Police priorities.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

In respect to the second part of the finding, the Western Australia Police argue that due to Mr. Lampathakis' role in the alleged release of unauthorised information, the taking of a search warrant was in accordance with accepted investigative practices for dealing with such matters.

Finding 10: The Committee finds that in the execution of the search warrant on the offices of *The Sunday Times*, the Western Australia Police officers at the scene demonstrated professionalism, courtesy and restraint.

The finding is noted.

Finding 11: The Committee finds that there was an inappropriate and disproportionate allocation of resources by the Western Australia Police for a relatively standard search of an office building.

The finding is noted.

Recommendation 2: The Committee recommends that the Department of the Premier and Cabinet and the Department of Treasury and Finance further review their procedures and systems for handling confidential documents, and in particular with respect to informal consultation on drafts of confidential documents.

In broad terms, the handling of confidential documents within the Department of the Premier and Cabinet is guided by the Western Australian Public Sector Code of Ethics that provides, in part, that public sector employees use the resources of the State in a responsible and accountable manner that ensures the efficient, effective and appropriate use of human, natural, financial and physical resources, property and information.

Administrative Instruction 711 also states that an officer shall not, except in the course of the officer's official duty and with the express permission of the chief executive officer,

- (a) give to any person any information relating to the business of the Public Service or other Crown business that has been furnished to the officer or obtained by the officer in the course of his/her official duty as an officer; or
- (b) disclose the contents of any official papers or documents that have been supplied to the officer or seen by the officer in the course of his/her official duty as an officer or otherwise; or
- (c) disclose the contents of any Advertised Vacancy file that has been supplied to the officer or seen by the officer in the course of his/her official duty as an officer or otherwise.

Specifically in relation to Cabinet papers, Section 3 of the Cabinet Handbook provides guidance in relation to confidentiality and security, where it states -

The confidentiality of Cabinet documents, discussions and decisions is a long established principle and has been regarded as essential for the maintenance of Cabinet collective responsibility. However, this principle needs to be tempered by the requirement for prior advice and consultation, and to disseminate Cabinet decisions and background information to ensure effective implementation. To fulfil these aims, the following guidelines have been adopted:

- Access to all Cabinet documents should be guided by the 'need to know' principle. Access should only be granted if it is required for an officer to perform his/her duties.
- Ministers have primary responsibility for maintaining satisfactory security systems for Cabinet documents in their areas of responsibility, including the extent to which others have access to them. Departments and Ministers' offices requiring information in relation to particular Cabinet submissions should obtain approval from the appropriate Minister's office, which may ask the Cabinet Services Branch to supply the information.

- All Cabinet documents are numbered and stamped 'Not to be copied' to reinforce confidentiality. They must not be photocopied or scanned or otherwise digitally copied. There are no exceptions to this.
- While all Cabinet documents are confidential, care should be taken with documents not yet submitted to Cabinet. The distribution of Cabinet submissions for comment should be on the understanding that the documents are not copied and are returned to the source. Additional copies of a submission may be obtained from the Cabinet Services Branch.
- The faxing and emailing of Cabinet documents is discouraged. However, sometimes because of time constraints or distance, there is no alternative. When documents are faxed or emailed, the responsibility for security remains with the Minister's office to ensure that the designated recipient of the document is notified in advance, is aware of the confidentiality and confirms destruction of the fax or email.
- Officers who receive copies of Cabinet documents, including decision sheets, or who are aware of information contained in such documents, must observe the confidentiality of that information. Cabinet documents and the information they contain must not be revealed except for purposes authorised by the relevant Minister and chief executive officer, in accordance with these guidelines.
- Agencies should ensure that any documents considered confidential by the Minister or CEO are not placed on an open file.

The Department of the Premier and Cabinet also has a Recordkeeping Plan that includes policy and procedures for confidential documents. The recordkeeping plan, whilst approved until 2012, is under review due to recent organisational change. This review will include requirements for handling and accessing confidential information.

Supporting this, the security of Cabinet papers within the Department of the Premier and Cabinet has also been strengthened with the administrative functions of the Economic and Expenditure Reform Committee (EERC) and the Legislation Standing Committee of Cabinet (LSCC) being brought under the umbrella of the Cabinet office to better coordinate their procedures and paperwork with the overall Cabinet process. In the longer term, the Department of the Premier and Cabinet is also exploring the implementation of electronic systems within the Cabinet office to improve security of Cabinet papers and reduce paper production costs.

The Department of Treasury and Finance's (DTF) information security management practices are guided by the concept of accountability, whereby access to information is given only to authorised officers and, when information is accessed, this can be traced to the individual officer. In this instance, the relative success of these practices was demonstrated by the fact that DTF was able to identify which officer had access to the information in question, and to what extent.

In more general terms, security access to confidential Cabinet documentation is restricted and on a 'need to know' basis only. To officers outside the restricted security setting, DTF's Document Management System (DMS) does not contain confidential Cabinet documentation. Maintaining relevance of its corporate information security policy is an ongoing priority for DTF. As such, DTF is currently reviewing the performance of its DMS, including current and future information security requirements.

In relation to consultation on drafts of secure documents, it is noted that consultation on submissions to Cabinet and its standing committee, currently the Economic and Expenditure Reform Committee (EERC), forms an essential part of the Cabinet process, and is highlighted in the Cabinet and EERC Handbooks as a requirement prior to a submission being listed for consideration. Consultation on draft Cabinet and EERC submissions therefore represents relatively routine procedure for many DTF officers, and awareness of information security policies and procedures amongst staff is high and forms an integral part of day-to-day activities. The Treasurer has been assured that DTF will continue to closely monitor adherence to information security policies and take further action if and when required.

Recommendation 3: The Committee recommends that the Corruption and Crime Commission of Western Australia refer the alleged disclosure of confidential Cabinet information to the Department of Treasury and Finance for investigation pursuant to s 33(1)(c) of the *Corruption and Crime Commission Act 2003*.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

In addition, as noted earlier, should the Corruption and Crime Commission of Western Australia decide to implement the Committee's recommendation, the Department of Treasury and Finance would welcome the opportunity to conduct an internal investigation into the alleged breach of Cabinet confidentiality.

Recommendation 4: The Committee recommends that the Corruption and Crime Commission of Western Australia ensures that a thorough assessment in accordance with the Corruption and Crime Commission's formal case categorisation and assessment procedures is undertaken in relation to every complaint, even where such complaint is the subject of an investigation commenced by another agency.

The Corruption and Crime Commission of Western Australia has provided a separate response to this recommendation in a submission by the Commissioner to the Joint Standing Committee on the Corruption and Crime Commission dated 2 June 2009.

The submission was subsequently presented by the Joint Standing Committee on the Corruption and Crime Commission to the Legislative Assembly on 18 June 2009 and Legislative Council on 23 June 2009.

Recommendation 5: The Committee recommends that the Attorney General continue to pursue the introduction of shield laws for journalists.

The Attorney General is pursuing the introduction of journalist shield laws which were considered at the Standing Committee of Attorneys General meeting held in Canberra on 16-17 April 2009, where Ministers:

- (a) noted the advice of the Evidence Working Group on options for journalist shield laws that could be included in the model Uniform Evidence Bill;
- (b) noted that the Working Group recommended Option 2 for inclusion in the model Uniform Evidence Bill; and
- (c) noted that the Commonwealth undertook to distribute to the Attorneys General a copy of the objects provision of its Bill for their consideration.

Ministers of the States and the ACT:

- (d) agreed that the model Uniform Evidence Bill be amended to adopt Option 2 of the advice.

Option 2 proposes that jurisdictions amend the existing professional confidential relationship privilege in the model Bill, to expand the non-exhaustive list of factors that judges must weigh up when exercising the discretion. It would be amended to expressly require consideration of “the public interest in maintaining the confidentiality of the information” and, particularly relevant in the case of information provided to journalists, “the public interest in maintaining the confidentiality of protected identity information”.

Recommendation 6: The Committee recommends that, in accordance with s 7 of the *Parliamentary Privileges Act 1891*, the Legislative Council excuse the answering of the question asked of Mr Paul Lampathakis by the Committee as set out in paragraph 14.9 of this report.

The Government notes that this recommendation is a matter for the Legislative Council and has been addressed by that House on Wednesday, 13 May 2009 where the following motion was agreed -

“That recommendation 6 of the first report of the Select Committee into the Police Raid on *The Sunday Times* be adopted and agreed to”.

