

The Brotherhood

Risks associated with secretive organisations

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to section 103 of the *Whistleblowers Protection Act 2001*, I present to Parliament the report of an investigation into The Brotherhood and the risks associated with secretive organisations.



G E Brouwer
OMBUDSMAN

1 March 2011

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Public Interest Disclosure

1. This report concerns a public interest disclosure received by the Director, Police Integrity in April 2009 about an organisation known as The Brotherhood which was described as a:
 - secretive group that engages in unlawful information trading and whose members request favours from other members who hold positions of trust in our community, including members of Victoria Police.
2. The whistleblower provided a circulation list for The Brotherhood, which identified that the group comprised:
 - serving and former members of Victoria Police, including senior police officers
 - current and former Victorian and Commonwealth public officers from agencies which hold sensitive information about individuals, State Government departments and local councils
 - a Member of Parliament
 - private individuals from insurance companies, financial institutions, construction companies, legal firms, real estate agencies, private security agencies, Racing Victoria and the media
 - private investigators.
3. There were over 150 individuals on this list, all of whom were male and, according to the whistleblower, some of those individuals had been the subject of corruption and criminal investigations.
4. The whistleblower stated that members of the group met for regular lunches at an inner city venue and that the group was 'intended to provide an information exchange (trading) environment and information to assist the facilitation of commercial opportunities'. The whistleblower also said that attendees at The Brotherhood lunches asked Victoria Police officers to 'perform LEAP [Law Enforcement Assistance Program] checks and provide information on the status of various police investigations'. The whistleblower further stated that the group had 'a code of confidentiality'.

ICAC Report on Unauthorised Release of Government Information

5. The potential dangers of groups such as The Brotherhood were highlighted in 1992, when the New South Wales Independent Commission Against Corruption (ICAC) tabled its *Report on unauthorised release of government information*. The report identified a ‘massive illicit trade in government information’ by what became known during the investigation as the ‘Information Exchange Club’ (the club).
6. The club included:
 - New South Wales police, Roads and Traffic Authority officers and other public officers who corruptly sold information
 - insurance companies, banks and other financial institutions, which provided a ‘ready market’ for the information
 - private inquiry and commercial agents, who acted as ‘brokers and retailers, providing the necessary link between anxious buyer and ready seller’.
7. ICAC identified that the club unlawfully traded government information, including driver licence and motor vehicle registration particulars and police records. ICAC noted a disregard for privacy, integrity and propriety among the club and concluded that greed had prevailed over public duty; and laws and regulations designed to protect confidentiality had been ignored.
8. I consider that the ICAC report demonstrates the dangers of public officers being involved in a group such as The Brotherhood. ICAC found that insurance companies, financial institutions, construction companies, legal firms, real estate agencies and private security agencies were a ‘ready market’ for public information.

The Brotherhood

9. My examination of The Brotherhood does not indicate that its activities approached the dimensions of the 'Information Exchange Club'. Nonetheless, I identified potential risks arising from:
- The nature of the organisation, which was established to serve the interests of its founder, a former police member (the founder), who controls the membership of The Brotherhood; and
 - The culture of the organisation which encourages exclusivity and secrecy with the potential for illegal and improper exchanges of information or favours.
10. In response to my concerns, the Chief Commissioner of Police stated:
- I note and share your deep concerns over the activities of The Brotherhood and the direct involvement of both serving and retired members of Victoria Police. Such gatherings, even when totally benign, have the potential to undermine confidence in public institutions – especially policing.

The Brotherhood and its Culture

11. The concept of The Brotherhood began in 2003 when the founder and an Inspector of Police arranged a function for their friends and business acquaintances. Six to eight people, including lawyers, attended the first lunch. Since that time, the group has grown and until recently met at an inner city venue approximately every six weeks. The founder named the group 'The Brotherhood' and, at interview, stated that he has effectively organised the group since around 2004.
12. Since this time, the founder has invited a range of persons to speak at the lunches to entertain and purportedly provide an insight into their respective fields of expertise. Depending on the profile of the guest speaker, attendee numbers range from 30-50 persons.

The Founder

13. The founder was a Victoria Police officer from 1988 until 1999, at which time he resigned at the rank of Senior Constable.
14. A review of the founder's Victoria Police record indicates that he came to the attention of the Victoria Police Internal Investigations Department on several occasions for disciplinary matters including an assault on a member of the public, for which he was fined \$200; negligence in the discharge of duty and providing a false and misleading statement to an Inspector during a disciplinary interview, for which he was fined \$150; and engaging in paid secondary employment without approval, for which he was officially admonished.

15. The founder said:

I am proud of the manner in which I served the people of Victoria over 13 years in two emergency services namely the Victoria Police and the Country Fire Authority.

16. He said that the assault on a member of the public was an incident he was 'not proud of' but that it 'may be explained by the [personal] circumstances at the time'. He also stated:

I do not recall all the specific details of the other matter referred to in the Report; however, it is apparent from the record that my conduct was not such as to warrant any disciplinary action nor discharge from the Victoria Police.

17. He resigned from Victoria Police in 1999 and now works as the Managing Director of two proprietary companies.

18. The whistleblower said:

[the founder's] motivation for the formation and maintenance of this group is to, amongst other things, provide an environment to facilitate unlawful information trading including confidential police information and other confidential information from government departments. This is in addition to gaining commercial benefits and inside information regarding contracts for tender.

19. In relation to his motivation for maintaining the group, the founder stated at interview on 1 September 2010 that there was 'nothing at all' in it for him. He stated that he organises the lunches to bring 'business associates and businessmen together to have a common goal in relation to business networking and business insight and business information'. He also said the group had donated to the Victorian Bushfire Appeal and breast cancer research.

20. The founder has also stated that:

- 'The Brotherhood is not a secretive group'.
- 'The Brotherhood does not engage in unlawful information trading.'
- 'The Brotherhood was never set up for any personal benefits or gains for myself or any of my businesses'.
- 'The Brotherhood is a network of people who can reach out to each other for assistance'. In this regard the former police officer gave examples of charities and individuals that The Brotherhood had assisted.
- 'The lunch is a forum for us to talk about current topical issues from sport to politics'.
- 'The Brotherhood was not created for the purpose of providing an environment to facilitate unlawful information trading'.

The ‘Members’

21. The founder compared The Brotherhood to Apex and Rotary. These, however, are international organisations with management committees, histories of charitable work and open membership. A particular distinguishing feature and a matter of some concern for members is that, as the founder advised, only he decides who will be permitted to join the group.
22. The founder described the individuals on The Brotherhood list as ‘men of good ilk’ and said men could join the group if they are a ‘good bloke’. He stated there are 300–350 individuals on the circulation list.
23. The background of the men on the list varies, including many current and former members of the police force, members of the public service, two State Members of Parliament and members of private organisations. Some individuals on The Brotherhood circulation list have been the subject of corruption and criminal investigations, including a former Victoria Police officer with alleged links to an organised crime figure; a former Australian Wheat Board executive allegedly involved in the Iraq kickbacks scandal; and the manager of a licensed table top dancing venue, which is regulated by Victoria Police.
24. Victoria Police officers who attend Brotherhood lunches with persons who have been subject to criminal investigations are required to declare their associations under the *Victoria Police Manual – Procedures and Guidelines*, ‘Declarable Associations’ due to the potential for their relationships with such individuals to conflict with their public duties. An investigation conducted by the Office of Police Integrity identified that such relationships were not declared by police attending The Brotherhood lunches. However, it was acknowledged by the Office of Police Integrity that Victoria Police officers who accepted an invitation to attend a Brotherhood lunch would not know who else was attending until their arrival at the lunch. There was, therefore, no evidence that Victoria Police officers had intentionally associated with individuals captured by the ‘Declarable Associations’ policy.
25. Some of the public officers involved in The Brotherhood work in public sector agencies that maintain databases with sensitive information about individuals. These databases would be a source of valuable information for individuals and companies wishing to serve legal documents, repossess motor vehicles and locate debtors. Such databases, particularly the Victoria Police Law Enforcement Assistance Program (LEAP), have in the past been abused by public officers who have engaged in the unlawful trading of government information.¹

¹ See for example the Office of Police Integrity report, *Investigation into Victoria Police’s Management of the Law Enforcement Assistance Program (LEAP)*, March 2005.

Culture

26. The culture of the organisation can be seen from its name, 'The Brotherhood'. While this word has both negative and positive connotations, in the context of police culture it is commonly used to emphasise exclusivity, secrecy and a culture that requires police at all levels to do whatever is required to protect their fellow police.² This culture protects police officers who break the law and strongly discourages others from blowing the whistle on corruption. One witness, a former senior Victoria Police officer described the group's name as 'sinister by connotation'.
27. This cultural prevalence can be seen as being reinforced by the behaviour and shared understanding of expectation expressed at The Brotherhood lunches. Witnesses said that at the beginning of the lunches the founder would state 'we're all members of the "Brotherhood" and we must assist each other'. In addition, the founder acknowledged that he would advise attendees at the lunches that 'Chatham rules' apply – that is, 'what's said in the room stays in the room'.
28. In response to my preliminary concerns the founder said,

The assertion that Chatham House Rule is invoked at the lunches for the purpose of promoting my business aspirations is just wrong.
29. The founder provided numerous references from attendees of The Brotherhood in support of his argument that The Brotherhood is a 'gentlemen's networking lunch forum' where people 'can reach out to each other for assistance'. However, as a result of my investigation, the founder said that he is 'now considering changing the name of the lunch from "The Brotherhood" to M.O.G.I (Men of Good Ilk)'.

Activities of The Brotherhood

30. My examination of The Brotherhood raised a number of issues, as well as concerns regarding its purpose and culture and associated risks to public officers from being a member of The Brotherhood. For instance, a number of issues involving improper behaviour were identified, including:
 - One police member who was on The Brotherhood list, (but who did not attend the Brotherhood meetings) using his position at the Traffic Camera Office to wipe \$2,000 worth of speeding fines that the founder and his companies had incurred. This issue is discussed in more detail at Appendix I to this report.

² Office of Police Integrity, *Past patterns – Future directions: Victoria Police and the problem of corruption and serious misconduct*, February 2007.

- Allegations of the unauthorised disclosure by a senior Victoria Police officer of the identity of a prosecution witness in a high profile murder trial contrary to a Supreme Court suppression order. My investigation concluded that such a release probably occurred at a Brotherhood lunch, but it was not possible to determine who made that disclosure.
- The founder's staff issuing emails to members of The Brotherhood seeking high level contacts within public sector bodies which were to deal with prospective tenders or other business concerning his companies. These emails may simply have been sent for networking purposes as the founder suggested, but alternatively, they may well be attempts to obtain contacts from The Brotherhood members with a view to obtaining an advantage for the founder. While no improper communications or transactions were identified as a result of these emails, they serve as a reminder of the risk to which public officers expose themselves when they are members of such secretive organisations.

31. In addition, I also became aware of an incident where an individual who attended The Brotherhood lunches asked a public officer, who had also attended the lunches, to access confidential government information. I am unable to reveal the details of this due to the need to avoid endangering the person who provided that information to me. I am also unable to provide additional information as this would identify the whistleblower, which I am unable to do due to the provisions of the *Whistleblowers Protection Act 2001*.

Members of Parliament

32. Two members of the Victorian Parliament were featured on versions of The Brotherhood circulation list.
33. Having investigated their involvement, including interviewing them, I am satisfied that they had no involvement with The Brotherhood and were placed on the circulation lists without their agreement.
34. I am also satisfied that they did not attend any Brotherhood lunches nor respond to any requests for assistance. It appears that the founder added them to the list as business contacts. In response to my draft report, the founder stated that he has 'never added a person to the Brotherhood list *without their consent* [his emphasis]'. However I am not satisfied that this is the case.
35. In these circumstances I do not consider that I should name the Members of Parliament.

Risks of The Brotherhood

36. My investigation, like the ICAC report, points to the significant dangers of police officers and public servants being involved, wittingly or unwittingly, in an organisation such as The Brotherhood where there is a culture which allows for inappropriate networking and improper exchanging of favours and information. Membership of such organisations undermines the effectiveness of those officials and the organisations in which they serve and potentially places their reputations at risk.

37. The Chief Commissioner of Police said:

I note and share your deep concerns over the activities of The Brotherhood and the direct involvement of both serving and retired members of Victoria Police. Such gatherings, even when totally benign, have the potential to undermine confidence in public institutions – especially policing.

Recommendation 1

38. I therefore recommend that public sector agencies advise their officers and employees of the risk of being members of, involved in, or attending meetings or functions of organisations, such as The Brotherhood, which are designed to support the business aspirations of the organiser or controller of the organisation.

Appendix 1 – Seeking Favours from Public Officers

39. My investigators interviewed an individual who was on The Brotherhood list and is an employee of the Victoria Police Traffic Camera Office (the TCO officer). The Traffic Camera Office responds to requests from individuals for reviews of infringement notices.
40. The TCO officer stated that he was on The Brotherhood list; he received The Brotherhood emails, but had not attended a lunch as they were expensive; that he has known the founder since his employment with Victoria Police (1988-99) and socialises with him; and that the founder had employed his son. The TCO officer stated that the founder had contacted him at the Traffic Camera Office three to four years ago in relation to ‘warrants’ issued to the founder and his companies. The TCO officer stated he provided information about the warrants to the founder as he was ‘entitled’ to it.
41. My investigators interviewed the founder under oath on 1 September 2010. The founder stated that he had contacted the TCO officer in the past to ascertain the status of his demerit points. He stated he had not asked the TCO officer to withdraw infringement notices on his behalf and he was unaware that the TCO officer had withdrawn infringements issued to him or his company. The founder also revealed that the TCO officer engaged in paid work with one of the founder’s companies, and that the TCO officer had ‘department approval’ to do this.
42. An analysis of Traffic Camera Office records identified that during 2002-08, the TCO officer withdrew two infringement notices issued to the founder and his family, five infringement notices issued to the founder’s company and two demand notices issued to his company for failing to nominate a driver. The total value of these notices was \$2,131.
43. The TCO officer also processed a nomination for a tenth traffic infringement notice issued to the founder and his company, which nominated a New Zealand resident as the driver of the vehicle.
44. In response to my concerns regarding the infringement notices, at a second interview, the TCO officer said:

In all honesty, yes, probably I should not have done them. But I didn’t break the legislation, I didn’t break policy, I didn’t do anything else.

...

For perception point of view [sic], which I think which is all this is about [sic] ... yeah probably I made a mistake.

45. Victoria Police's current *Penalty Review Guidelines* state:

If a plea or representation is received for any Infringement Notice from a driver or person who is personally known or related to the member of the Penalty Review Section receiving the plea, the plea or representation is to be forwarded to the Manager of Penalty Review, for adjudication ... These guidelines are designed to prohibit members adjudicating on review applications of their personal friends or associates.

46. In a second interview with my investigators, the TCO officer said that while he accepted he was on The Brotherhood email list, this does not mean that he is a member or that he subscribes to the group. He also said that he had not attended a lunch and that he had now blocked the sender from his emails.

47. In response to my preliminary concerns, the founder stated:

[I]t may have been an error of judgement to contact my friend regarding these traffic matters. However the sole purpose for doing so was to ensure that on each occasion they were dealt with properly by a person whose professionalism I respect.

Conclusions

48. This is an example of an individual on The Brotherhood list doing a favour for another individual on the list. Public officers who are involved in The Brotherhood place themselves at risk of being involved in a culture of inappropriate exchanging of favours and information.

49. I consider that it was improper for the TCO officer to withdraw infringement notices issued to a personal friend. He withdrew the infringements to assist the founder. I consider that this issue should be investigated by Victoria Police.

Recommendation 2

50. I recommend that Victoria Police investigate the conduct of the TCO officer in light of my investigation.

Victoria Police response:

51. An investigation into his behaviour has commenced.

Ombudsman's Reports 2004-11

2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection – out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

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March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the *Freedom of Information Act 1982*
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria
June 2004

