

LECC

Law Enforcement
Conduct Commission

OPERATION TABOURIE

REPORT TO PARLIAMENT PURSUANT TO SECTION
132 *LAW ENFORCEMENT CONDUCT COMMISSION
ACT 2016*

March 2022

LECC

Law Enforcement Conduct Commission

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



Office of Commissioner

24 March 2022

The Hon Matthew Ryan Mason-Cox MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 132(3) of the *Law Enforcement Conduct Commission Act 2016* ('the Act'), the Commission hereby furnishes to you a Report in relation to its investigation in Operation Tabourie.

Pursuant to section 142(2) of the Act, we recommend that this Report be made public immediately.

Yours sincerely,



The Hon Lea Drake
Commissioner

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1. Introduction

- 1.1 The Commission's investigation in Operation Tabourie arose from information disseminated to the Commission by another law enforcement agency regarding an allegation that an officer of the NSW Police Force ('NSWPF') had provided confidential NSWPF information to an associate.
- 1.2 The information alleged that during a telephone conversation on 19 January 2021, Civilian TAB2 requested Officer TAB1 to obtain information relating to an arrest of the brother of Civilian TAB2's colleague. Officer TAB1 responded that he would look into it but that Civilian TAB2 would have to keep it a secret if the information was provided to him.
- 1.3 At the time of this telephone conversation, Officer TAB1 was in a relationship with Civilian TAB3, the sister of Civilian TAB2. The colleague Civilian TAB2 referred to was Civilian TAB4, whose brother Civilian TAB5 had been recently taken into custody at a police station.
- 1.4 On 2 February 2021, pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* ('the LECC Act'), the Commission decided to commence an investigation to determine whether Officer TAB1 had unlawfully obtained and disclosed confidential police information to Civilian TAB2.

2. The Commission's Statutory Functions

- 2.1 The LECC Act lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.
- 2.2 Section 10 of the LECC Act defines "*serious misconduct*":
 - (1) *For the purposes of this Act, serious misconduct means any one of the following:*
 - (a) *conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,*

- (b) *a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,*
- (c) *corrupt conduct of a police officer, administrative employee or Crime Commission officer.*

(2) *In this section:*

serious disciplinary action against an officer or employee means terminating the employment, demoting or reducing the rank, classification or grade of the office or position held by the officer or employee or reducing the remuneration payable to the officer or employee.

serious offence means a serious indictable offence and includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.

2.3 “Officer maladministration” and “agency maladministration” are both defined in s 11 of the LECC Act. “Officer maladministration” is defined in s 11(2) in these terms:

(2) *Officer maladministration means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct):*

- (a) *is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or*
- (b) *arises, wholly or in part, from improper motives, or*
- (c) *arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or*
- (d) *arises, wholly or in part, from a mistake of law or fact, or*
- (e) *is conduct of a kind for which reasons should have (but have not) been given.*

2.4 The conduct of an officer or agency is defined as “serious maladministration” if the conduct, though not unlawful, is conduct of

a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: LECC Act, s 11(3).

2.5 The Commission may hold an examination for the purpose of an investigation into conduct that it has decided is (or could be) serious misconduct or serious maladministration: s 61 (a).

2.6 Section 29 provides the authority for the Commission to make findings and express opinions:

(1) The Commission may:

(a) make findings, and

(b) form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration:

(i) has or may have occurred, or

(ii) is or may be occurring, or

(iii) is or may be about to occur, or

(iv) is likely to occur, and

(c) form opinions as to:

(i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or

(ii) whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and

(d) make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the Police Act 1990 or under the Crime Commission Act 2012 or other disciplinary action against, particular persons, and

- (e) *make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.*
- (2) *Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.*
- (3) *The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
- (4) *An opinion or finding that a person has engaged, is engaging or is about to engage in:*
 - (a) *officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or*
 - (b) *specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
- (5) *Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.*
- (6) *The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.*
- (7) *The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.*

2.7 This report is made pursuant to Part 11 of the LECC Act. Section 132(1) provides that the Commission may prepare reports “*in relation to any matter that has been or is the subject of investigation under Part 6*”.

2.8 Section 133 (Content of reports to Parliament) provides that:

- (1) *The Commission is authorised to include in a report under section 132:*
 - (a) *statements as to any of the findings, opinions and recommendations of the Commission, and*
 - (b) *statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.*
- (2) *The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:*
 - (a) *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*
 - (b) *the taking of action against the person for a specified disciplinary infringement,*
 - (c) *the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,*
 - (d) *the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer,*
 - (e) *the taking of action against the person as a Crime Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.*

Note. See section 29(4) in relation to the Commission's opinion.

(3) *An "affected person" is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.*

(4) *Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.*

2.9 In considering any factual conclusions to be reached in a report, the Commission will apply the civil standard of proof, namely whether the relevant factual matters have been proved to the reasonable satisfaction of the Commission.¹ Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

2.10 The Commission has made a determination to protect the identities of all persons involved. Accordingly, all persons and places will be referred to by codenames in this report. There is to be no publication of the name or image of any of the codenamed persons or places in relation to the evidence given in Operation Tabourie or included in this report without further order of the Commission.

3. The Commission's Investigation

3.1 Officer TAB1 joined the NSWPF in 2016 and is based at a police station in western Sydney.

3.2 He is in a relationship with Civilian TAB3.

3.3 Civilian TAB2 worked as a real estate agent with his colleague Civilian TAB4. Civilian TAB4's brother, Civilian TAB5, was arrested by officers of the NSWPF on 19 January 2021 in relation to charges of possessing and supplying prohibited drugs. On the same day at about 1:35 p.m. Officer TAB1 returned a missed call from Civilian TAB2. The following conversation occurred:

Civilian TAB2: *Oh okay. I was gonna see if you've heard something for me.*

¹ *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

Officer TAB1: *Sorry?*

Civilian TAB2: *I was gonna see if you had heard anything for me. My mate's brother, like, well my colleague that I work with -*

Officer TAB1: *Mm.*

Civilian TAB2: *We were driving and he got a phone call saying his brother's been arrested from (ui), ah in [suburb], I was just -*

Officer TAB1: *Fair enough.*

Civilian TAB2: *He doesn't. They don't know what for or anything like that.*

Officer TAB1: *Okay, um.*

Civilian TAB2: *And we're just -*

Officer TAB1: *I'll look into it. I can look into it when I get in.*

Civilian TAB2: *That's alright. There's no rush.*

Officer TAB1: *At [suburb] -*

Civilian TAB2: *I'm sure they'll find out tonight or something, but -*

Officer TAB1: *At [suburb] police station?*

Civilian TAB2: *Yeah, they were just stressing ya know?*

Officer TAB1: *It's like man, it's, it's all good. I'll check it out tonight um. But I, I'm not at [suburb] at the moment I'm, I'm just doing like Covid stuff like with the hotels, 'cause I'm on annual.*

Later on in the conversation, Officer TAB1 said “even if I do tell you, you’ve got to like, still keep it a bit hush, you know?” and “like don’t, don’t tell them that you know what it’s about and stuff, ‘cause it can sort of like, come back to me if they, if they start acting like they know what they’re doing. It’s like oh where did you get your information from

and they'll just go oh fuck".

- 3.4 On 19 February 2021 Civilian TAB2 was arrested with an associate. They were both charged with 18 counts of supplying prohibited drugs.
- 3.5 Officer TAB1 submitted a declarable association form on 22 February 2021 regarding his association with Civilian TAB2. In this form Officer TAB1 stated that he had no knowledge of Civilian TAB2's illegal activities and that he only considered Civilian TAB2 to be an acquaintance.
- 3.6 On 2 November 2021 the Commission decided to conduct an examination of Officer TAB1. Because of the nature of the allegations, and after taking into account the factors set out in s 63 of the LECC Act, the Commission decided that the examination would be held in private.
- 3.7 The scope and purpose of the private examination was:

To investigate whether [Officer TAB1], or any other NSW police officer or other person associated with him, did unlawfully obtain and disclose confidential NSW Police Force information.

- 3.8 The examination was held on 10 November 2021.

THE EVIDENCE

Officer TAB1

- 3.9 Officer TAB1 stated the following during his private examination:
- (a) He joined the NSWPF in 2016 and holds the rank of Constable, and is stationed in western Sydney.²
 - (b) He has been in a relationship with Civilian TAB3 for approximately one year.³
 - (c) Civilian TAB2 is the brother of Civilian TAB3. He believes he met Civilian TAB2 in October 2020.⁴

² Private examination JXU at T6.

³ Private examination JXU at T6.

⁴ Private examination JXU at T7.

- (d) He described his relationship with Civilian TAB2 as “friendly”, and that it was in his “best interest to establish a close relationship with him as he was my girlfriend’s older brother”.⁵
- (e) He thinks he has met Civilian TAB2 between five to 15 times, and they communicated over the phone leading up to Civilian TAB2’s proposal to his girlfriend in December 2020 as he was involved in the preparation for that proposal.⁶
- (f) He has not had any contact with Civilian TAB2 since his incarceration in February 2021.⁷
- (g) He could not recall if he had ever met Civilian TAB2 without Civilian TAB3 being present.⁸
- (h) He knew that Civilian TAB2 was a real estate agent.⁹
- (i) He recalled one occasion when Civilian TAB2 asked him to look up Civilian TAB2’s vehicle registration to see if Civilian TAB2 had any tickets. Although he told Civilian TAB2 he would look up that information he in fact had no intention of following it up.¹⁰
- (j) He was played the telephone call of 19 January 2021 between himself and Civilian TAB2. He stated that he recalled the conversation. As a result of that call he performed a custody inquiry at work to help Civilian TAB2 find out if someone was in police custody or not at a particular police station.¹¹
- (k) He thinks he performed the custody inquiry that same night while he was at the hotel he was working at.¹²
- (l) He told Civilian TAB2 to “keep it a bit hush” during the telephone call because he knew it was something he shouldn’t be doing. He did it because he was trying to maintain the relationship with his girlfriend’s brother.¹³
- (m) Civilian TAB2 messaged him with the name of the person to look up via either SMS or Whatsapp.¹⁴

⁵ Private examination JXU at T8.

⁶ Private examination JXU at T8.

⁷ Private examination JXU at T8.

⁸ Private examination JXU at T9.

⁹ Private examination JXU at T10.

¹⁰ Private examination JXU at T10.

¹¹ Private examination JXU at T11-12.

¹² Private examination JXU at T13.

¹³ Private examination JXU at T13.

¹⁴ Private examination JXU at T13.

- (n) He conceded that it would put him “*in a bad position*” if Civilian TAB2 told people that the information came from him.¹⁵
- (o) He admitted that the information requested was confidential police information but he “*didn’t think it was a major issue*”, and at the time he was not aware that Civilian TAB2 was involved in any drug activity.¹⁶
- (p) He deleted Civilian TAB2’s number from his phone after finding out about Civilian TAB2’s arrest.¹⁷
- (q) He could not recall the result of his custody inquiry but he did get back to Civilian TAB2 with a result via text message.¹⁸
- (r) There was a surprise birthday party organised for him later on and Civilian TAB2 was in attendance. He spoke to Civilian TAB2 on this occasion but could not recall what they talked about.¹⁹
- (s) He learnt of Civilian TAB2’s arrest for drug supply through his girlfriend Civilian TAB3. He confirmed that he would have asked questions about it.²⁰
- (t) Prior to this, he was aware that Civilian TAB2 had previously received a section 10 for possessing a prohibited drug. He also added that Civilian TAB2 had insinuated to him that he was a user of cocaine.²¹
- (u) He had had a bad experience in a previous relationship as a result of his relationship with his ex-girlfriend’s brother. He did not want to jeopardise his relationship with Civilian TAB3 for the same reason.²²
- (v) He was aware of Civilian TAB2’s drug use by December 2020.²³
- (w) He submitted a declarable association form in relation to Civilian TAB2 shortly after Civilian TAB2’s arrest.²⁴

¹⁵ Private examination JXU at T14.

¹⁶ Private examination JXU at T14.

¹⁷ Private examination JXU at T15.

¹⁸ Private examination JXU at T15-16.

¹⁹ Private examination JXU at T16.

²⁰ Private examination JXU at T17-18.

²¹ Private examination JXU at T18.

²² Private examination JXU at T19.

²³ Private examination JXU at T19.

²⁴ Private examination JXU at T20 and Exhibit JXU3C.

- (x) He thinks there were between three to five occasions where he had family dinners at Civilian TAB3's house when Civilian TAB2 was present.²⁵
- (y) He could not recall ever encouraging Civilian TAB2 to use illegal substances. If he did say anything of that nature it was only to build a relationship with Civilian TAB2.²⁶
- (z) He understands the term "*doobie*" means cannabis. It was "*most likely*" that he had used that word in conversation with Civilian TAB2. However, if he ever encouraged Civilian TAB2 to use a "*doobie*" then it would have been a joke.²⁷
- (aa) He has never used a "*doobie*". He told Civilian TAB2 that he had because he did not want Civilian TAB2 to think he was a "*stiff*".²⁸
- (bb) He thinks it was in January 2021 where Civilian TAB2 and Civilian TAB2's fiancée visited his home.²⁹
- (cc) He did not mention on his declarable association form either of the two occasions where Civilian TAB2 asked for his help because he did not "*...want to incriminate myself in any sort of way*".³⁰
- (dd) If he was to complete the declarable association form again today, he would mention the two requests from Civilian TAB2.³¹
- (ee) When asked why he described Civilian TAB2 as an acquaintance in the declarable association form, he stated it was "*...purely to accelerate my relationship with [Civilian TAB3], because the kind of person he was and I knew he was, I knew we'd never be able to have a close enough friendship, so I never personally considered him a close friend of mine or anything more than that*".³²
- (ff) He was played a telephone call of 25 January 2021 during which he and Civilian TAB2 talked about bashing police officers and calling them "*fucking dogs*". His evidence was that the "*...whole conversation was non-serious, it was just, I was just absolutely talking nonsense*" and "*I would never bash a cop*". He further

²⁵ Private examination JXU at T20.

²⁶ Private examination JXU at T20.

²⁷ Private examination JXU at T21.

²⁸ Private examination JXU at T22.

²⁹ Private examination JXU at T23.

³⁰ Private examination JXU at T23-24.

³¹ Private examination JXU at T24.

³² Private examination JXU at T25.

added that he was “...trying to talk myself up to make myself look cool...that I was trying to make him think I wasn’t stiff and that he could talk to me”.³³

- (gg) When he was played a recording of a telephone call of 2 November 2020 between himself and Civilian TAB2 he conceded that they were talking about sleeping pills and police raids.³⁴
- (hh) He agreed that, given the content of the telephone calls that were replayed, it might be thought to be misleading to describe Civilian TAB2 as an acquaintance. However, that was his personal description and he had no intention to mislead.³⁵
- (ii) He stated that “I understand where I have gone wrong. I understand that police information is confidential regardless of who it is disclosed to and it should only be disclosed to as part of your duty...I’m very upset with myself for all this”. Regarding Civilian TAB2 he said that “I knew that he had some sort of affiliation with drugs and he had done them before. I did the wrong thing of not dissociating myself with him then and there on the spot”.³⁶

4. Analysis of Evidence

4.1 The Commission is satisfied that the evidence supports the following findings of fact:

- (a) Officer TAB1 commenced a relationship with Civilian TAB3 in about September 2020.
- (b) Officer TAB1 met Civilian TAB2 through Civilian TAB3 and assisted Civilian TAB2 to organise his engagement in December 2020.
- (c) Between September 2020 and February 2021 Officer TAB1 was in casual contact with Civilian TAB2.
- (d) During a telephone conversation on 19 January 2021, Civilian TAB2 asked Officer TAB1 for information relating to the arrest of his colleague’s brother.

³³ Private examination JXU at T26.

³⁴ Private examination JXU at T27.

³⁵ Private examination JXU at T28-29.

³⁶ Private examination JXU at T32.

- (e) Officer TAB1 complied with this request and provided that information to Civilian TAB2.
 - (f) Officer TAB1 did this to promote his relationship with Civilian TAB3.
 - (g) Officer TAB1 was aware that Civilian TAB2 had some involvement in the use of prohibited drugs prior to February 2021.
 - (h) Officer TAB1 submitted a declarable association form on 22 February 2021 declaring his association with Civilian TAB2 after learning about his arrest.
- 4.2 At the time of the request for information from Civilian TAB2 on 19 January 2021, Officer TAB1 was a relatively junior officer with five years of experience, and had only been in his relationship with Civilian TAB3 for approximately four months. His previous relationship had broken down due to his interaction with his ex-girlfriend's brother. He was therefore keen to maintain the relationship with Civilian TAB3 by being in good stead with Civilian TAB2.
- 4.3 Officer TAB1 provided the requested information to Civilian TAB2 either on the same day or the day after. The information confirmed the arrest of Civilian TAB5 on 19 January 2021. He was the brother of Civilian TAB2's colleague.
- 4.4 The request was made to find out what had happened to a family member of a colleague. The information was not sought for a sinister purpose.
- 4.5 Although Officer TAB1 had some early awareness of Civilian TAB2 using prohibited drugs he did not declare his association with Civilian TAB2 until soon after the arrest on 19 February 2021.
- 4.6 The legal representative for Officer TAB1 was provided with a draft version of this report and invited to make submissions. The legal representative indicated that no submissions would be made.

5. Affected Persons

- 5.1 In Part 2 of this Report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to "*affected persons*".
- 5.2 The Commission is of the opinion that Officer TAB1 is an affected person within the meaning of subsection 133(2) of the LECC Act,

being a person against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.

6. Findings

- 6.1 The Commission is satisfied that Officer TAB1 provided confidential police information to Civilian TAB2 and this was at the lower end of objective seriousness.
- 6.2 The Commission is satisfied that Officer TAB1 ought to have declared his relationship with Civilian TAB2 at an earlier time and more explicitly.
- 6.3 The Commission is satisfied that Officer TAB1 behaved foolishly and made some poor decisions in an effort to fit the social mould of his girlfriend's family.
- 6.4 The Commission is satisfied that Officer TAB1 has corrected his behaviour and has learnt from his mistakes.
- 6.5 The Commission is satisfied that the evidence does not support a finding that Officer TAB1 engaged in serious misconduct.

7. Recommendations

- 7.1 The Commission recommends that the Commissioner of Police should give consideration to the taking of non-reviewable action, namely counselling, for the benefit of Officer TAB1 pursuant to s 173 of the *Police Act 1990*.

Operation Tabourie

Report pursuant to s 132

Law Enforcement Conduct Commission Act 2016

March 2022

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