

Australian Federal Police

INVESTIGATION OF A COMPLAINT AGAINST A SENIOR OFFICER

December 2009

*This is an abridged version of report 17/2009.
The full report has not been made publicly available
due to privacy considerations.*

Report by the Commonwealth and Law Enforcement Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **17|2009**

Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

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BACKGROUND

This investigation was prompted by a review of a complaint against a senior officer in the Australian Federal Police (AFP) in which it was alleged that the officer misused their position in the AFP to send AFP officers to intervene on a relative's behalf in a property dispute in the ACT.

The complaint arose because the relative was involved in a dispute over ownership of a property in Canberra. The relative contacted the AFP to request police attendance while they changed the locks at the property. An AFP officer agreed (on being shown documents which he believed demonstrated a right of possession) to attend the property while the locks were changed, solely for the purpose of preventing a breach of the peace. The officer attended the property with other officers and spoke to representatives of both parties involved in the dispute. Each claimed a right of possession over the property. The officer told each party that ownership was best decided by a court and that the officers were there only to prevent a breach of the peace. The locks were changed without incident and the police departed. The police attendance was in accordance with standard ACT Policing practice and there was no evidence that the senior officer had any role in the police attending the scene.

CONCLUSIONS

This investigation did not find any evidence to support the allegation that a senior officer misused their position in the AFP to send AFP officers to intervene on a relative's behalf in a property dispute in the ACT. The investigation did identify specific deficiencies with the AFP's investigation of the original complaint, more general deficiencies in the policy and procedure for dealing with complaints against AFP senior officers, and a problematic ACT Policing practice of attending when property is removed or locks changed where there is a live dispute about property rights.

While the practice of police attending to prevent a breach of the peace is uncontroversial in circumstances where ownership has been agreed between the parties (or determined in a court), it is problematic if there is, as there was in this case, a live dispute about ownership. The presence of the police in such circumstances creates the impression that the police are acting to enforce the claim and not directed exclusively at preventing a breach of the peace.

Sometime after police attended the property, a complaint was lodged with AFP Professional Standards (PRS). At no time during the AFP's handling of the complaint was the complainant contacted or asked to clarify the details of the complaint. The first communication that the complainant received from PRS was an outcome letter stating that the two complaints had been 'not established'. The complainant told Ombudsman investigators that they had only made one complaint and that PRS had misunderstood the complaint. This misunderstanding could have been averted if PRS had a policy (at the time) of contacting complainants to confirm the details of their complaints.

While there is some confusion about how this complaint was processed, in general it is AFP policy to refer complaints against senior officers to the Commissioner (or his Chief of Staff) who will then allocate an officer of equivalent or higher rank to investigate the complaint. This is an informal arrangement and there is limited

Commonwealth Ombudsman—Australian Federal Police: Investigation of a complaint against a senior officer

consensus about how the system works in practice. For example, one senior officer thought that this practice would not preclude the investigator being junior in rank to the officer that they were investigating while another thought that it would.

My investigation found that a misunderstanding of this kind resulted in no investigator being assigned to the case and no investigation taking place. The then Manager Professional Standards (MPRS) referred the matter to a senior officer outside PRS in the belief that they had been assigned to investigate the complaint. However, this officer believed that PRS had already investigated the complaint and that their own role was to inform the subject officer (as their supervisor) that PRS had found the complaint to be 'not established'. We found that the lack of formal guidelines and procedures was a principal cause of this misunderstanding. The absence of such guidelines caused key people to be unsure of the role expected of and assigned to them.

The quality assurance in this case was not adequate. Although a formal QA was undertaken, this was a simple administrative rather than qualitative assessment. The final adjudication by the then MPRS should have, but did not, disclose that no investigation had taken place. The Manager's adjudication endorsed an outcome that had no basis, given that there was no investigation and the Manager then issued outcome letters to the complainant and the senior officer and closed the case.

As part of my investigation we reviewed the complaint history of the senior officer and all other complaints against senior officers received by the AFP since the introduction of the new AFP complaint-handling system in December 2006. Three other such complaints had been investigated. It was apparent that not all allegations against senior officers had been appropriately recorded, although there was no evidence that the allegations were not, in the end, properly dealt with. In terms of the latter cases, there was a more thorough investigation than in the case dealt with in this report.

Finally, given the very low number of complaints against senior AFP officers it is not possible, from a review of other available cases, to say whether this case is typical of the way in which complaints against senior AFP officers are managed or if it is an anomaly. However, this investigation highlights the vulnerabilities of informal systems and I have recommended that the AFP develop formal guidelines for managing and investigating complaints against its senior officers.

RECOMMENDATIONS

Arising out of this investigation I make the following recommendations:

- ACT Policing guidelines for stand-by situations to prevent a breach of the peace should be reviewed to provide police with more guidance on how to manage situations in which there is a live civil dispute.
- The AFP should ensure that, as far as possible, all complainants are contacted personally after a complaint is received to ensure that the complaint has been correctly understood and to allow the complainant an opportunity to clarify any aspects of the complaint that may be unclear.
- All allegations of misconduct against an AFP employee be entered into the CRAMS system.

Commonwealth Ombudsman—Australian Federal Police: Investigation of a complaint against a senior officer

- The AFP should review its QA process (including the final adjudication) for complaints to ensure that those undertaking the QA are qualified to do so and that the process is robust and effective.
- The AFP should ensure that, as far as possible, when officers outside PRS conduct an investigation, they have access to the CRAMS system for the duration of the investigation.
- The AFP should develop appropriate guidelines for the management and investigation of complaints against senior officers.

AFP RESPONSE

The AFP Commissioner, in response to the draft report, advised me that:

- he had referred the draft report to the current Manager, AFP Professional Standards (MPRS) to ensure that the recommendations contained in it would be appropriately considered and actioned
- the current AFP review of its Integrity Governance Framework was nearing finalisation and that recommendation six (the development of appropriate guidelines for the management and investigation of complaints against senior officers) was already being incorporated into the amended *AFP National Guideline on Complaint Management*
- he had instructed the current MPRS to refer recommendation one, which relates to ACT Policing Guidelines for standby situations, to the Chief Police Officer, ACT Policing for his consideration and appropriate attention.