

GPO 1601.
BRISBANE
QUEENSLAND 4001
DX 40121 Brisbane Uptown

FACSIMILE: (07) 229 0993

TELEPHONE: 22 74173
WHEN TELEPHONING OR
CALLING PLEASE ASK FOR

Re: Mr. Thomas
BJT:LJP



FCI 9H 222 +12

Crown Solicitor,
State Law Building,
50 Ann Street,
Brisbane, Queensland. 4000.

23 January 1990

Acting Director-General,
Department of Family Services,
and Aboriginal and Islander
Affairs,
FACSIMILE NO.: (07) 221 8510

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QCPCI

Date: 3.12.2012

Exhibit number: 129

Dear Ms. Matchett,

I refer to previous correspondence concerning the appointment of former Stipendiary Magistrate Mr. N. Heiner to investigate matters at the John Oxley Youth Centre.

I wish to advise that I am of the opinion that Mr. Heiner was lawfully appointed pursuant to Section 12 of the Public Service Management and Employment Act 1988 which gives authority to the chief executive to do such Acts and things as he thinks necessary or expedient for the proper discharge of his responsibilities.

I do not believe that there is any other basis within that Act, the Children's Services Act or the Family and Youth Services Act 1987 which would justify the appointment of Mr. Heiner as detailed in the letter of 13 November 1989 from the former Director-General to Mr. Heiner.

The next question is whether the inquiry commenced by Mr. Heiner can or should continue. I believe there is no legal impediment to the continuation of the inquiry. There are however a number of other considerations which arise and which may well cause you to conclude that no useful purpose would be served by the continuation of the inquiry and the preparation of a report by Mr. Heiner.

It would seem that the conditions under which the inquiry has been conducted are such that through no fault of Mr. Heiner's any report is unlikely to satisfy any of the parties affected by the inquiry and in fact it seems that the whole matter has gone astray from its inception.

In such circumstances, I believe the better course would be to advise Mr. Heiner that although he was lawfully appointed to carry out the inquiry there is no good purpose to be served in the current situation by asking him to continue

File 9-229-1

further with the inquiry and report and therefore his services are no longer needed. Naturally Mr. Heiner is concerned about any risk of legal action which may be instituted against him for his part in the inquiry and it would appear appropriate for cabinet to be approached for an indication that should any proceedings be commenced against Mr. Heiner because of his involvement in this inquiry, the government will stand behind him in relation to his legal costs and also in the unlikely event of any order for damages against him. In short, that he will be indemnified from all costs associated with carrying out the task which he was given.

I understand that Mr. Heiner did not purport to exercise any powers under the Public Service Management Act or any other legislation to compel attendance upon him or require answers to questions he asked of those attending. Mr. Heiner's informants had no statutory immunity from suit or action for defamation in carrying out these duties although they would appear to have qualified privilege. Therefore, it seems that some of the material which has come into his hands may well be regarded as defamatory. This material is now in your hands and if you decide to discontinue the inquiry I would recommend that as it relates to an inquiry which has no further purpose, the material be destroyed to remove any doubt in the minds of persons concerned that it remains accessible or could possibly affect any future deliberations concerning the management of the John Oxley Youth Centre or the treatment of any staff at that centre.

I do not see any difficulty in destruction of the material supplied to Mr. Heiner, naturally any material removed from official files should be returned to those files but the tape recordings of interviews had with people or any notes or drafts made by Mr. Heiner should I suggest be destroyed.

This advice is predicated on the fact that no legal action has been commenced which requires the production of those files and that you decide to discontinue Mr. Heiner's inquiry. I note that in a letter of 17 January 1990 Messrs. Rose, Berry and Jensen, solicitors for Mr. Coyne and Mrs. Dutney request that they be allowed to have copies of all allegations and evidence taken to date. However, such request is related to the continuation of the inquiry which is now to be halted, therefore, it is my recommendation that the solicitors for Mr. Coyne and Mrs. Dutney be advised that the inquiry has been terminated, no report has been prepared, and that all documentation related to the material collected by Mr. Heiner has been destroyed. I have enclosed a draft letter to this effect.

It is my understanding that you still wish to investigate the issue of management at the John Oxley Youth Centre and to that effect to have some form of inquiry address that particular issue.

It would perhaps be best to wait until you have a particular individual in mind to conduct the inquiry and then my office

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can give you specific advice on the appropriate method of appointment and terms of reference for the person conducting the investigation. This will obviously be related to whether or not the person comes from within the public service or outside of it.

I have also enclosed a draft letter to Mr. Heiner which you may find of assistance.

Enclosed also is a copy of the cabinet Policy Statement concerning indemnities for claims against officers. This may be of some assistance in Mr. Heiner's situation.

Yours faithfully,

(K. M. O'Shea)
Crown Solicitor.

AK7

Enc.

101/4 22-3
Dear Mr. Heiner

22 January 1990

Mr. N. Heiner,
10 Langura Crescent,
FERNY HILLS. Q. 4055

Vol 1



Dear Mr. Heiner,

I refer to previous correspondence concerning the inquiry conducted by yourself into the John Oxley Youth Centre and various discussions had between us in the recent past.

I have received advice from the Crown Solicitor and he confirms that your appointment to carry out the inquiry undertaken by you was in accordance with the Public Service Management and Employment Act 1988 and the powers reposed in the chief executive by Section 12 of that Act.

I appreciate that you have been engaged in a most difficult task which has consumed a significant amount of your time, however, in light of recent events I have made the decision to request of you that you not continue the inquiry any further and therefore relieve you of any necessity of supplying a report in accordance with your original terms of reference.

I wish to advise that the material collected by you in the form of interviews with various members of the staff will be destroyed and will remain confidential until such time of destruction. Further, I have approached the Honourable the Minister and she has agreed to seek the approval of cabinet to the decision of indemnifying you from any costs or damages arising out of your actions on behalf of my department concerning this inquiry.

I thank you for your assistance in conducting this inquiry.

Yours faithfully,

Mrs. R. Matchet

For file 200-4-9
with attachment

DRAFT

23 January 1990

Messrs. Rose, Berry
& Jensen,
Solicitors,
P.O. Box 89,
IPSWICH. Q. 4305

Dear Sir,

I refer to your correspondence concerning the inquiry by Mr. N. Heiner at the John Oxley Youth Centre. I wish to advise that the inquiry by Mr. Heiner has been terminated.

Further, all material collected by Mr. Heiner excepting material that was already in existence on departmental files has been destroyed in an effort to avoid biasing any future inquiry which may be conducted into the centre.

Therefore, as there is no inquiry on foot it is not my proposal to revive any part of the inquiry to permit the matters raised in your letter of 17 January to be explored as I believe that would serve no useful purpose.

Yours faithfully,

Mrs. R. Matchet
Acting Director-General

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82 57
0411 1001

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- State Law Building,
50 Ann Street,
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23 January 1990

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Yours faithfully,

K M O'Shea
(K. M. O'Shea)
Crown Solicitor.

Enc.

F01 q222-2011-7

DRAFT *initial sent*

23 January 1990

Messrs. Rose, Berry
& Jensen,
Solicitors,
P.O. Box 89,
IPSWICH. Q. 4305

Vol 5



Dear Sir,

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Mrs. R. Matchet
Acting Director-General

135

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23 January 1990

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Solicitors,
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Vol 2



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22 January 1990

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Yours faithfully,

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