

**Joint NSWPF and LECC Protocol on the provision, disclosure and use  
of documents and information in critical incident monitoring**

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### **Background and Purpose**

1. Both the NSW Police Force (NSWPF) and the Law Enforcement Conduct Commission (the Commission) have an interest in reassuring the public that the Commission is effectively monitoring critical incident investigations. The Commission and the NSWPF are committed to working cooperatively to achieve this aim.
2. Public reassurance can only be achieved if the Commission has access to all relevant documents and information. Public interest immunity does not apply to these requests for information: s 114 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act); *Commissioner of Police v Attorney General for New South Wales* [2024] NSWCA 150.
3. The Commission acknowledges that critical incident investigations often involve sensitive information and documents. All officers of the Commission are under strict statutory obligations to protect the confidentiality of information provided to the Commission.
4. The Commission recognises that the NSWPF has understandable concerns about potential public disclosure of that information and those documents. The Commission is aware of the need to take care before disclosing information and documents obtained through its critical incident monitoring function.
5. This protocol sets out the way in which documents and information will be disclosed to the Commission and how those documents and information will be handled by the Commission. This protocol is complimentary to s 179 of the LECC Act and is not intended to extend the circumstances in which *critical police information*, as defined in s 179, can be disclosed.

### **Standard practice for providing documents to the Commission**

6. Section 114 of the LECC Act sets out the documents which must be provided to the Commission by the nominated NSWPF contact.
7. The NSWPF may provide access by providing:
  - a. access to the relevant case on the eagle.i case management system
  - b. access to documents via DekkoHub
  - c. access to documents copied onto a USB or hard drive
  - d. a document in hardcopy
  - e. access to documents by sharing the documents in a Microsoft Teams meeting.
8. If the Commission has not been provided access to a particular document, the Commission will request access by email. These requisitions will be made by the Critical Incident and Investigations Monitoring (CIIM) investigator to the Professional Standards Command (PSC) Review Officer.

## **Special arrangements for highly sensitive documents and information**

9. The Commission recognises that a critical incident investigation may rely on highly sensitive documents and information that raise high level concerns. Examples include:
  - a. documents that in open courts would be subject to public interest immunity
  - b. policies or procedures dealing with the use of highly specialised capabilities, where the policies or procedures are developed in conjunction with other States or nations
  - c. documents that disclose sensitive police methodology
  - d. documents that are the subject of protective orders, such as non-publication and suppression orders
  - e. documents that identify a civilian police informant, covert police operative or tactical operative.
  
10. In those circumstances, the following special process can be used to allow the Commission access to the document, while maintaining an increased level of security:
  - a. the NSWPF should tell the Commission that there is a particular document, or part of a document, or information in the document that it considers highly sensitive and explain the reasons for their concerns about the disclosure of this information to the Commission
  - b. upon notification the Commission will accept that the document or information in the document is highly sensitive and will deal it with in accordance with this protocol
  - c. the document can be provided to the Commission via DekkoHub as a non-downloadable time-limited read only document
  - d. the Commission's monitoring investigator will access the read only version on DekkoHub and confirm which parts of the document are relevant for the purposes of monitoring the investigation
  - e. the NSWPF may then redact the document and provide only the parts deemed by the Commission to be relevant to the Commission.

If later in the investigation, the Commission needs to have further access to the full document, the steps outlined above can be repeated.
  
11. In addition to the process outlined above, if the critical incident investigation involves documents classified under the Protective Security Policy Framework, the documents will be dealt with in accordance with the Protective Security Policy Framework by the Commission.
  
12. If the names of covert police operatives or assumed identities are deemed to be highly sensitive information by the NSWPF and the NSWPF uses codes and not names in any document, the Commission should be provided with a separate document that provides the names of all covert operatives who are involved in the critical incident, and their code number. This document will have restricted access on the Commission's systems and only staff involved in the monitoring of the critical incident, the Chief Commissioner and the Commissioner will have access.

13. The Commission and the NSWPF will be mindful of any statutory prohibition preventing the disclosure of information, such as, the *Law Enforcement and National Security (Assumed Identities) Act 2010* and *Court Suppression and Non-publication Orders Act 2010*.
14. If the process outlined above is not suitable for a particular document or information, the Commission and the NSWPF will collaborate on finding an alternative path that balances the Commission's right to access materials with the NSWPF's concerns about the sensitivity of the documents or information. That collaboration will begin with discussions between the CIIM Team Leader and the Director, Investigations at PSC. It may then be escalated through the respective agencies.
15. The Commission and the NSWPF agree that these provisions will only be used in circumstances where the content of the documents or information meets the threshold of being highly sensitive.

#### **How the Commission handles Critical Incident and Investigations Monitoring information generally**

16. Information provided to the Commission under the CIIM function is reviewed and managed by the Commission's CIIM Team.
17. The information is stored on the Commission's secure LOIS database.

#### **Disclosure of Critical Incident and Investigations Monitoring information outside the Commission**

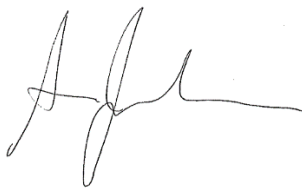
18. The Commission will not disclose a document (or part thereof) or information obtained under s 114 of the LECC Act outside the Commission without first consulting the NSWPF. Possible disclosure includes:
  - a. tabling a report on critical incident monitoring or any other topic
  - b. providing documents or information as compelled in proceedings before a Court or Tribunal
  - c. providing documents or information as compelled in Royal Commissions, Special Commissions of Inquiry or other statutory inquiries
  - d. providing documents or information as compelled by State and Commonwealth Parliaments.
19. If the Commission was considering disclosure of a document (or part thereof) or information obtained under s 114 of the LECC Act, the Commission will give the NSWPF 21 days to raise any concerns they may have about the disclosure of that document (or part thereof) or information, and to set out the reasons for those concerns. In urgent circumstances, a shorter time frame may need to be set.
20. The Commission may be required to produce documents it has obtained under s 114. The requirement may arise in a number of ways, including if compelled by a Court, Parliament or Royal Commission. In that case, the Commission will give the NSWPF notice that it has been required to produce the documents, which will allow the NSWPF to make a public interest immunity claim over those documents, if appropriate.

21. The Commission may need to alert the Coroner to its concerns under s 116 of the LECC Act. This may require the Commission to refer to documents received while monitoring a critical incident investigation. A copy of any letter to the Coroner will be provided to the NSWPF. This letter will advise the Coroner that the relevant document is a highly sensitive police document or contains highly sensitive police information under this protocol.
22. It is not envisaged that the Commission would consider disclosing outside the Commission any highly sensitive documents (or part thereof) or information obtained from the NSWPF. There has been no disclosure by the Commission of such information since the Commission commenced its function of monitoring critical incident investigations since the commencement of the LECC Act. In highly exceptional circumstances where the Commission might be considering disclosure outside of the Commission of highly sensitive documents (or part thereof) or information, the Commission undertakes to find a mutually agreeable way where the Commission can fulfil its duty without disclosure of any highly sensitive documents (or part thereof) or information and the disclosure will not take place until this agreement is reached.

The NSWPF undertakes to make genuine and best efforts to reach an agreement on the mutually agreeable way forward in the spirit of cooperation and acknowledging the Commission's functions under the LECC Act.

#### **Further review**

23. This protocol may be reviewed and updated to address any new challenges identified by the NSWPF or the Commission.



Anina Johnson  
Acting Chief Commissioner  
Law Enforcement Conduct Commission  
Date: 8 August 2024



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Commissioner  
NSW Police Force  
Date: 8 August 2024