INTEGRITY COMMISSION TASMANIA

OUR REF: 2022/001919
YOUR REF: RFS-TAS-072

20 June 2022

The Commissioners
Commission of Inquiry into the Tasmanian Government's
Responses to Child Sexual Abuse in Institutional Settings

By email: contact@commissionofinquiry.tas.gov.au

Dear Commissioners,

Response to request for statement – third submission

Please find below our responses to your request for a further statement of 6 June 2022.

Please note that we have redacted names of those who provided material to us on the condition of anonymity. We request that the attachments to this submission (Bundles A, B and C) be redacted from this submission, should it be made public.

I also note that we have identified a notification relating to James Griffin (MM21/0009), that was not identified in our statement of 20 May 2022. The omission of the notification from our earlier statement does not affect our response in that statement.

1 What is your current role and professional background?

I am Chief Executive Officer of the Integrity Commission, appointed in April 2020. I commenced with the Commission in April 2015 as Manager Operations (retitled Director Operations). From October 2015 to June 2017 I was acting CEO, following the retirement of [redacted] was CEO from July 2017 to April 2020, and I reverted to Director Operations during that period.

Prior to the Commission, I was a manager of a statutory authority within the State Service from 1998 to 2013, followed by a brief stint as Research Associate in the Federal Circuit Court (2014–2015).

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Notification

2 Identify all notifications or complaints received by the Integrity Commission during the Relevant Period which concerned:

(a) James Griffin

We have not received a complaint directly concerning James Griffin.

We received a notification from Tasmania Police on 25 January 2021, regarding then Inspector [redacted] (Officer-in-charge, Launceston CIB): **MM21/0009**. The notification and all associated relevant documentation and correspondence is provided in *Bundle B*.

(b) the confidential complaint received on or about 3 November 2019 in relation to James Griffin and the Launceston General Hospital (together the Complaints)

We received a complaint regarding senior nursing managers on 4 November 2019: **MM19/0172**. The complaint and all associated relevant documentation and correspondence is provided in *Bundle A*.

Response and Investigation

3 Explain each step undertaken by the Integrity Commission in responding to the Complaints. In your response, please specifically address:

MM19/0172

(a) how the Complaints were initially assessed

The complaint was received on 4 November 2019 (*Bundle A: Document 1*), and considered at our weekly triage meeting on 5 November 2019 (*Document 2*). Triage is attended by the CEO, a senior investigator and the Operations Officer.

The then CEO [redacted] determined that the complaint would be assessed under section 35(1)(b) of the *Integrity Commission Act 2009* (IC Act) and I (as then Director, Operations) was appointed assessor on 12 November 2019 (*Bundle A: Document 2.1*).

I submitted an assessment report to the CEO on 21 November 2019 (*Bundle A: Document 8*). The CEO determined that the matter be referred to the Secretary of the Department of Health on the same date, under section 38(1)(b) of the *IC Act* (*Bundle A: Document 9*).

(b) whether the Integrity Commission decided that a formal investigation was warranted

The then CEO determined to refer the matter (inclusive of the assessment report) to the Secretary of the Department of Health following assessment.

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We followed up on the referral and received a detailed response from the Secretary on 10 September 2020 (*Bundle A: Document 14*). As per our compliance and monitoring process overseen by the Director, Operations, referred matters are monitored by the Investigator (Compliance), the outcome considered at a compliance triage meeting, and either followed up or closed as agreed by triage. In this matter, it was decided that further follow up was required (*Bundle A: Document 15*). We wrote to the Secretary on 16 September 2020 noting the need for improvement in several areas (*Bundle A: Document 17*) and met with the Secretary on 28 October 2020 (*Bundle A: Document 19*).

Following the meeting with the Secretary, and noting the Premier's announcement of the Commission of Inquiry on 23 November 2020, our compliance review resulted in further monitoring not being required, and the matter was closed on 3 December 2020.

(c) what disposition the Integrity Commission decided was appropriate in the circumstance of the Complaints

The then CEO determined that it was appropriate in the circumstances to refer the matter to the Secretary of the Department of Health following assessment, for action, and that further investigation by the Commission was not required.

Having followed up the matter with the Secretary and reviewed their responses, and in the context of the Premier's announcement of the Commission of Inquiry, it was determined to close the matter.

MM21/0009

(a) how the Complaints were initially assessed

We received notice of the matter from Tasmania Police on 25 January 2021 (*Bundle B: Document 1*) and considered at our weekly triage meeting on 2 February 2021 (*Bundle B: Document 2*). Triage was attended by myself, a senior investigator and the Operations Officer. An acknowledgement of receipt was sent to police on the same date (*Bundle B: Document 3*).

(b) whether the Integrity Commission decided that a formal investigation was warranted

We were satisfied that police would deal with the matter and report back to us on their findings. This occurred on 1 July 2021 (*Bundle B: Document 6*) and the matter was triaged again on 7 July 2021 where it was found that the matter had been well handled; a feedback letter was sent to police on the same date noting the organisational learnings identified by police in their review of the matter (*Bundle B: Documents 7–8*). No further investigation was considered necessary.

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(c) what disposition the Integrity Commission decided was appropriate in the circumstance of the Complaints

We determined that police had handled the matter well and had identified organisational learnings and improvements to practices and procedures.

4 Identify the time taken to complete each of the steps referred to in your answer to paragraph 3 above.

MM19/0172

- Receipt of complaint: 4 November 2019
- Determination to assess: 12 November 2019
- Submission of assessment report: 21 November 2019
- Referral to Secretary: 21 November 2019
- Follow up request: 29 July 2020
- Response of Secretary: 16 September 2020
- Closure of matter: 3 December 2020

MM21/0009

- Receipt of initial notification: 25 January 2021
- Receipt of final notification: 1 July 2021
- Response to Tasmania Police: 7 July 2021

5 Who was the decision maker at each of the steps referred to in your answer to paragraph 3 above?

MM19/0172

- Determination to assess: CEO
- Referral to Secretary: CEO
- Nature of follow up: CEO
- Closure of matter: CEO

MM21/0009

- Receipt of initial notification: CEO
- Response to Tasmania Police: CEO

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6 What interviews (if any) were carried out as part of the response to the Complaints?

MM19/0172

No formal interviews were carried out, as our practice is not to conduct coercive interviews during assessments.[1] However conversations were had with the following for the purpose of understanding the matter and responses:

- Complainant (refer *Bundle A: Document 4*)
- Tasmania Police (refer *Bundle A: Document 5*)
- Coroner's Office (refer *Bundle A: Document 6*)
- Secretary, Department of Health (refer *Bundle A: Document 18*)

MM21/0009

No interviews or other conversations carried out.

7 Was any site or system inspection carried out as part of the response to the Complaints?

No.

8 In carrying out an assessment or investigation in relation to the Complaints, please identify whether any investigative steps were considered but not undertaken.

MM19/0172

Assessments under section 35(2) of the *IC Act* are undertaken to help the CEO decide how to deal with a complaint ie whether to dismiss, refer or investigate the matter. While an assessor 'may exercise the powers of an investigator under Part 6 if the assessor considers it appropriate to do so' (section 35(4)), our practice is to not carry out coercive interviews during assessments and to only exercise our coercive power to obtain records if absolutely required (refer question 6, above). Any matter which requires ongoing use of coercive powers is likely to require investigation.

In this matter, paragraphs 8.1–8.13 of the assessment report provide an outline of possible steps that could have been pursued in an investigation (*Bundle A: Document 8*). These included obtaining further records and interviewing THS personnel. As the report notes: there was sufficient direct and anecdotal evidence of historical reports of Mr Griffin's poor conduct, and the Secretary was aware of these; Tasmania Police had concluded its investigation into Mr Griffin given his death; and the staff sensitivities in Ward 4 of the Launceston General Hospital surrounding the matter suggested that the Commission involving itself could be detrimental to those staff.

[1] This approach was endorsed by the Independent reviewer in the *Independent Review of the Integrity Commission Act 2009: Report of the Independent Reviewer*, pp 32-33 and Recommendation 8: www.integrityactreview.tas.gov.au/__data/assets/pdf_file/0006/347649/Report_of_the_Independent_Review_of_the_Integrity_Commission_Act_2009_-_May_20162.PDF

The report concludes:

> 9.1. *On the available evidence, it is likely that there has been knowledge and reports of inappropriate and more serious behaviour by Mr Griffin over an extended period of time, and that these may not have been properly dealt with by the THS. It is possible that proper reporting and management responses may have prevented Mr Griffin from offending and subsequently being charged with criminal offences, and thus protected vulnerable children and young people.*
>
> 9.2. *There are issues to be explored and investigated. However it is considered that this is best achieved through the Secretary, as the principal officer for the THS. The issues now relate to whether Mr Griffin's behaviour was reported and how such reports were dealt with, and how to improve such processes into the future.*

Ultimately, the Commission CEO determined that he had sufficient information to determine to refer the matter to the Secretary of the Department of Health, and that the Commission did not need to further investigate the matter.

MM21/0009

No further steps considered. However all notifications inform us of potential misconduct risk areas, which may be revisited at a later stage via own motion investigation, or other research and engagement.

Disposition

9 Identify the final disposition of the Complaints by your office.

MM19/0172

Following referral of the matter and subsequent compliance review, the matter has been closed. We have since delivered further training on managing misconduct to employees of the Department of Health.

MM21/0009

Following compliance review, the matter has been closed.

10 Were there any parts of the Complaints that you consider were not fully analysed or assessed by your office.

MM19/0172

Yes. As outlined in question 8 (above), our assessments focus on preliminary enquiries and information gathering, to enable us to determine whether allegations warrant investigation and if so, whether the Commission or the subject organisation is the best agency to undertake the investigation. This necessarily means that an assessment will not obtain the

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extent of evidence that might be available and consequently has not the potential for deeper analysis.

On this basis, in the current matter our assessment entailed obtaining and reviewing further information from the complainant and Tasmania Police. Various steps were considered but ultimately it was determined that there was sufficient evidence to identify the issues that needed to be addressed, and that the Secretary was in a better position to deal with those issues.

MM21/0009

No – we were satisfied with the response of Tasmania Police, inclusive of their identification of organisational and process improvements.

11 Has the Integrity Commission undertaken any auditing, follow up and/or monitoring in respect of the Complaints after their disposition? Is it the usual practice of the Integrity Commission to undertake such auditing, follow up and/or monitoring in respect of complaints or allegations made to it?

We monitor and follow up all referred matters.[2] This is undertaken by our Investigator (Compliance) in consultation with the Director, Operations, and ultimately the CEO.

The person or entity receiving a referral may be required to provide a report on what action they have or plan to take on the matter, and we have the power to audit how they have dealt with it.[3]

Irrespective of whether we audit a referred matter, the information provided by the referred person or entity forms part of our intelligence on misconduct risks, and may be considered for further research or investigation, in accordance with our misconduct risk identification procedures (refer *Bundle C: Document 2, SOP 9*). This is relevant to both MM19/0172 and MM21/0009.

In relation to MM19/0172, we actively monitored and reviewed the referral; the matter was monitored by the Investigator (Compliance) and the outcome considered at our compliance triage meeting. Following the exchange of correspondence with the Secretary, the matter was considered 'finalised - no longer monitored' from an operational perspective, and closed on 3 December 2020. The matter was then transferred to our Misconduct Prevention team for further engagement on education and training needs.

Since that time, we have continued to engage with the Department on ethical training and education needs, including training on managing misconduct and a session with the Tasmanian Health Service Executive on Integrity in public service.

[2] Complaints may be referred to a relevant person or entity under sections 35(1)(c), 38(1)(b), 58(2)(b) and 78(3) of the *IC Act*.
[3] Sections 35(6), 39(2), 42(2), 43(2) and 58(4) of the *IC Act*.

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The establishment of the Commission of Inquiry, and in particular its reference of Mr Griffin, has ensured a focus on the issues identified in our assessment of MM19/0172.

12 Identify the response (if any) received from the Department of Health to the outcome of a complaint that was communicated to them by the Integrity Commission.

The Secretary's response of 10 September 2020 is provided in (*Bundle A: Document 14*). A brief file note of a subsequent meeting with the Secretary is provided in (*Bundle A: Document 19*).

13 Were there any parts of the response (if any) received from the Department of Health referred to in your answer to paragraph 12 that concerned you?

My main concern with the Secretary's response is relayed in my letter to her of 16 September 2020 (*Bundle A: Document 17*). It relates to the historical failure of the THS or more specifically, managers at the Launceston General Hospital (LGH), to identify a pattern of behaviour in Mr Griffin. The Secretary provided examples of reports extending over 14 years, and explained that the decisions made 'were without the benefit of the information that now exists as a result of the Police investigation and the management actions cannot be judged with that in mind'.

Our response to question 27 in our submission to the Commission of Inquiry of 20 May 2022 relates our view:

> As we note in that assessment and in the later letter to the Secretary on 16 September 2020, there were reports of concerns about Griffin, and these were either acted on in isolation or inadequately dealt with. It is also apparent that some employees did not report their concerns at the time due to distrust of management or a fear of reprisal.
>
> We consider that the reports should have provided a clear warning of the risk that Griffin posed to vulnerable children and young people in his care. Reports of such behaviour should be taken seriously ie it is not a viable excuse to say there was no formal complaint, particularly where the alleged conduct is serious.

It is evident that some of the records are incomplete, and that there existed knowledge about Mr Griffin that wasn't formally reported, due to a lack of confidence in the managers or a fear of retribution.

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Reflection

14 Based on the work carried out by your office, are you able to identify any failures or shortcomings of systems, procedures, processes or Institutional or organisational culture that contributed to Mr Griffin's offending continuing until his arrest in 2019.

We provided the following views in our submission to you on 2 September 2021:

> This matter typifies some of the systemic issues and barriers identified in our main submission.
>
> **Reporting of misconduct**
>
> Staff provided multiple complaints and reports of concerns to the THS about Mr Griffin's behaviour over an extended period. The Secretary has advised that there were at least seven reports made between 2005 and 2019, along with a collection of notes of incidents in 2008–09.
>
> The complainant in this matter suggested that many issues or incidents went unreported given staff did not trust management to take action, or were reluctant to speak out for fear of retribution given Mr Griffin's personality and status within the workplace. In one matter, the Commission was told that a former nurse on the Ward was bullied out of her position following the nurse speaking out on a procedural change; the matter was ongoing through the courts and the complainant believed that this influenced staff willingness to speak out and report matters.
>
> **Response to reports**
>
> The Secretary has advised that 'each matter that the THS was made aware of has been investigated and addressed with Mr Griffin'. The multiple incidents identified in the Nurse Unit Manager's notes from 2008–09 suggest that such matters were not recorded properly and thus unable to be referenced if required. It is unknown if further incidents were not recorded.
>
> The Secretary notes that Mr Griffin's behaviour can be 'broadly characterised as professional boundary issues'. While this may be true for some of the reports, there appears to have been no attempt by THS senior staff to link the reports of behaviour or identify a pattern of behaviour that could be appropriately dealt with, including through the involvement of Tasmania Police. As the assessment report states:
>
> > *It is a valid hypothesis that, had the LGH been made aware of Mr Griffin's conduct and behaviour and had taken appropriate action, then Mr Griffin may have been prevented from offending.*
>
> It also demonstrates the reluctance or inability of public sector organisations to take action in response to what appear to be less serious instances of misconduct, but which can lead to – or be indicators of – more serious misconduct.

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Lack of reporting to Tasmania Police

This matter exemplifies the failure of public organisations to report matters to Police. According to the evidence provided to the Commission, none of the complaints or reports about Mr Griffin's behaviour were reported to Police by the THS. There was a failure to consider whether individual incidents should be reported to Police and a failure to link the incidents and behaviours as a pattern that needed to be reported.

The current mandatory reporting requirements under the *Children, Young Persons and their Families Act 1997* rely on a suspicion of actual sexual abuse rather than the suspicion that a child may be at risk of abuse.

In addition, our response to question 19 in our statement to you of 20 May 2022 references the need for mandatory notification to the Commission of misconduct, and particularly of serious misconduct:

Notifications provide information about:

- the types of misconduct public sector organisations are managing, including the misconduct risk and activity involved
- the processes being used by public authorities in the management of misconduct
- the outcomes of misconduct investigations, including whether matters were substantiated or not and what, if any, sanction was imposed, and
- intelligence that may be useful for current or future matters managed by the Operations Unit.

This information contributes to our internal processes around the prioritisation of our misconduct prevention and operational activities. This may include opportunities for additional training, resource development and support/advice or own-motion investigations. There are also be opportunities for future trends analysis.

Notifications also contribute to the Commission's intelligence about a public authority's capacity to manage misconduct effectively and this in turn informs our triage decision-making for referrals. There is also the opportunity to assess anecdotally the effectiveness of our Managing and Investigating Misconduct training course.

We provided our views on this issue to the *Independent Review of the Integrity Commission Act*, which remain current.[4]

[4] Independent Review of the Integrity Commission Act 2009: Report of the Independent Reviewer, pp 35-36 and Recommendation 11: www.integrityactreview.tas.gov.au/__data/assets/pdf_file/0006/347649/Report_of_the_Independent_Review_of_the_Integrity_Commission_Act_2009_-_May_20162.PDF

And at question 31:

> The only barrier that directly relates to how we operate is the proposed amendment of the *IC Act* to require agencies to notify us of allegations of serious misconduct. We do not need people making complaints of child sexual abuse to us if they are otherwise – confidently and without fear of reprisal – reporting those allegations either to their own or another relevant agency, or Tasmania Police.

These submissions capture the Commission's views.

15 Reflecting on the conduct of the Integrity Commission in response to the Complaints, please state:

(a) whether you consider the response by the Integrity Commission was appropriate and thorough

I consider the Commission's response was appropriate in the circumstances, and in accordance with the *IC Act*. The matter was dealt with as an assessment under section 35(2) of the Act, involving general information gathering and conversations – this is a necessary step to enable the CEO to determine whether the matter should be investigated by the Commission. The assessment related to the reporting processes within the LGH and the failure of certain nursing managers to adequately deal with these reports, not Mr Griffin's actual conduct.

In this instance, the assessor spoke with the complainant, the Secretary of the Department of Health, Tasmania Police and the Office of the Coroner to determine the status of other investigations and the potential for the issues in the matter to be resolved. This was appropriate, and the Commission continues to encourage such an approach.

(b) whether the disposition of the Complaints were appropriate

The disposition was appropriate, given the issues to be addressed related to reporting processes and management culture within the LGH and the Department of Health, and particularly in light of the establishment of the Commission of Inquiry. Further, referral of complaints and subsequently working with agencies to improve conduct is a key function of the Commission. This has been previously noted by the Office of the Solicitor-General:

> *The Integrity Commission is a body created to 'add to' rather than replace existing accountability mechanisms and to triage complaints by referring them to another agency for investigation and action. The Second Reading Speech for the Act indicates that the view was that Tasmania already had a strong accountability framework. Other than dismissing complaints, the CEO, the Board and the Commission more generally do not prosecute or adjudicate complaints. Section 9 of the Act sets out the principles for the Commission's operation. These principles*

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> *indicate that it is to work with other public bodies and accountability mechanisms and work to improve those mechanisms. I suggest the Integrity Commission's role is not to deal with the conduct raised by that complaint, but is rather to refer complaints and the results of investigations and then to work co-operatively with other public bodies to ensure existing accountability mechanisms are deployed. If it becomes apparent that existing accountability processes need improvement, then recommendations can be given for improvement of the same under Part 4 of the Act.*[5]

(c) whether, if you received the Complaints again today, they would be dealt with in the same way.

In terms of general process, the complaint and notification would each be dealt with in a similar way ie via the triage, complaint assessment and investigation pathway, with potential for monitoring and audits, and own motion investigations.

However, as outlined below, we have enhanced capacity and processes for reviewing responses to referrals of matters and the identification of misconduct risk areas. This would result in us having closer oversight of the outcomes of the referral through our Compliance triage processes.

16 If the response to the Complaints would be different today, please state:

(a) how it would be responded to differently;

We have enhanced and improved our monitoring and risk identification processes and resources, have increased capacity to follow up on individual matters, and to undertake more research into misconduct risks with the potential for more own motion investigations. We have committed greater resources to our compliance functions, with a dedicated Investigator (Compliance) role. We are in the process of establishing a program to more actively engage with public authorities as part of the referral process, and to report on outcomes of referrals and responses to our recommendations.

We have provided relevant standard operating procedures as they existed in 2019 (the time of the complaint relating to James Griffin), and also as they stand now (pending finalisation – refer *Bundle C*). The new draft procedures reflect many of our existing processes, which have evolved since the 2019 versions.

Our response to question 30 in our statement of 20 May 2020 relates improvements to our educative and engagement functions:

> We believe that we have achieved a level of trust with Heads of Agencies, whereby they are not afraid to talk to us, or have their staff talk to us, about misconduct risks, and the way to deal with these risks. We try to work informally,

[5] OSG ref22766-21:EW, 5 August 2021.

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even in our investigative work, in order to achieve the long-term outcomes envisaged by the objectives under the *IC Act*.

Our prevention education and training is well-received, and builds awareness within organisations of misconduct risks, along with tools for identification and management of those risks. Our Managing misconduct in the public sector course has been very successful in terms of numbers of attendees and participant satisfaction. But Commission training cannot stand alone; agencies must build on our training and capacity building by owning responsibility for preventing and reporting misconduct. Further, the complexities and motivations surrounding child sexual abuse requires particular training expertise and content.

We also have experienced staff who can confidentially advise individuals based on their circumstances, potentially one of the only independent services available for public sector employees. Our training on managing and investigating misconduct provides a grounded understanding of the process of an internal investigation which can improve investigative capacity, but a single day of training from base level knowledge will not provide an employee with the experience needed to conduct a sensitive or complex investigation.

We are building our capacity to monitor notifications of misconduct, yet the Independent Reviewer's recommendation that such notifications be mandatory (at least for serious misconduct) are yet to be implemented by the State Government. We note that while this would increase the visibility of such reports, we would always be seeking the involvement of Tasmania Police in the first instance.

As noted earlier, we receive very few complaints relating to child sexual abuse – this would be acceptable if all such matters were being reported either to a relevant agency or Tasmania Police.

(b) whether the Integrity Commission has updated any of its policies and procedures relating to the way in which it responds to matters like the Complaints.

Our Operations Unit has undergone change and growth since 2019. We now have an FTE of 6.1 in that unit (previously about FTE 4.0–5.0), and are soon to increase this to an FTE of 8.0 or so – in the most recent budget, we received a permanent funding increase for the Unit, equivalent to 2 new Band 5 positions. To date, the additional FTE have mainly been put toward our compliance functions, which –as explained above – we are working to enhance and embed.

While we previously had a comprehensive suite of SOPs, over the last year we have been working to expand and update these, and that project is nearly complete. The new SOPs address additional procedures, including our compliance and oversight functions. We now have two separate 'triage' meetings – one for complaints, and one for compliance matters. Among other matters, the Compliance Triage team considers

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the outcomes of final notifications and complaint referrals, and decides whether an audit or other action is warranted.

Also, in 2020, we established an internal working group of senior staff (including the CEO and staff from the Misconduct Prevention Unit) to meet at least twice annually and consider significant misconduct risks. The risks are assessed against criteria, and a decision is made on whether to scope the risk, which helps us to establish if further work should be done, for example, an own-motion investigation, a research project, and/or a prevention measure etc. This has increased the amount of non-complaint based operational work we undertake. We have assessed that the resource required for this work is more than we have been able to allocate previously, and we plan to put some of our new resources to a role with a research focus.

A REQUEST FOR DOCUMENTS

17 Provide copies of any documents referred to in your response.

Refer *Bundles A, B and C*.

18 Provide copies of any policies or procedures of your office relevant to the functions carried out in responding to the Complaints.

Refer *Bundle C*. This bundle contains relevant standard operating procedures as they stood in 2019, and as currently drafted.

I hope that the information we have provided is of assistance. Please feel free to contact me if you require any clarification or further information.

Yours sincerely,

[redacted]

Michael Easton
Chief Executive Officer

Obo Board of the Integrity Commission

Encl:

Bundle A: Documents relating to MM19/0172

Bundle B: Documents relating to MM21/0009

Bundle C: Standard Operating Procedures

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