

Chapter 6 Legal Liaison

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6.1 Introduction

This chapter outlines legal liaison matters under the control and coordination of the Right to Information and Subpoena Unit, Right to Information and Privacy Services and relates to miscellaneous legal process served on the Commissioner.

Staff members of the Subpoena Team of the Right to Information and Subpoena Unit, Right to Information and Privacy Services are the only persons duly nominated to accept legal process given or served upon the Commissioner pursuant to s. 10.9: 'Service and production of documents' of the PSAA.

Definitions

The following definitions apply for the purpose of this chapter:

Action

means a process of bringing legal action.

Claim

means a document initiating a civil claim or relief sought.

Party

means one of the litigants in a legal proceeding; a plaintiff or defendant in a suit.

Plaint

means an accusation or charge.

Pleadings

means a statement of cause of action or defence.

Serve

means to make legal delivery of summons, subpoena, etc.

Statement of claim

means a document attached to a claim detailing the allegations and damages sought.

Subpoena

means a command to attend at a court.

Subpoena to give evidence

means a command to attend at a court to give oral testimony.

Subpoena to produce documents

means a command to attend at a court to produce documents.

Summons

means a court order demanding the presence of a person before a judge or magistrate.

Summons to a witness

means a court order demanding attendance at a court to give oral testimony or to produce documents.

Writ

means a form of written command in the name of the Sovereign, the State, etc., issued to an official or other person and directing that person or official to act or abstain from acting in some way.

6.2 Notice of Non-Party Disclosure

The following describes a process whereby the Service is legally bound to produce for inspection documents relating to incidents involving or coming to the notice of police, to a party, or parties involved in a legal action to which the Service is not a party.

The Notice usually requires inspection of documents from a number of different areas of responsibility within the Service.

The Subpoena Team, Right to Information and Subpoena Unit is responsible for all actions against the Service.

The Subpoena Team does not split, nor devolve to other areas within the Service, the responsibility for finalising these actions in the first instance. The Subpoena Team locates, and collects, all documents mentioned in the Notice, including photographs, before obeying the Notice on behalf of the Commissioner.

The process is an action of the magistrates, district or supreme court of Queensland and stands alone from all other schemes available for the release of information.

Process

A party to a cause, to which the Service is not a party, may serve a 'Notice of Non-Party Disclosure' upon the Commissioner. This is a formal action for the discovery of material in the possession or under the control of the Commissioner. The Service must:

- (i) produce the material for inspection between 7 to 14 days after service of the notice; or
- (ii) make objection to the notice within 7 days of service of the notice.

In order for the material to be produced, relevance to the matter in issue must be established. The required material is the same material that would be produced at a civil trial upon service of another appropriate legal process. To establish the relevance of the required material, the Subpoena Team will at the time of the acknowledgment of the service of the notice, request a copy of the 'pleadings' if they are not supplied.

These types of matters may only be acted upon by the Commissioner and is to be made out to the Commissioner. Apart from the Commissioner, only members attached to the Subpoena Team, are delegated to accept service of these matters. Personal service can be affected at Police Headquarters, 200 Roma Street, Brisbane, between 8.00am and 4.30pm Monday to Friday, public holidays excepted. A notice is to be by personal service only.

Upon service of a notice the Subpoena Team becomes responsible for the matter and requests material to be forwarded to the Right to Information and Subpoena Unit (RTISU), Right to Information and Privacy Services by way of a written request.

Requests for locating and forwarding of documents

The request includes the following details:

- (i) the date that the material is required;
- (ii) lists the parties involved;
- (iii) lists the subject matter of the required material;
- (iv) the identity and station of the investigating officer, if known; and
- (v) the required action to be taken.

Action necessary

The required action to be taken includes:

- (i) locating the complete file, including all plans, sketches, diagrams, statements, notebooks and/or diaries, photographs (if they have been developed, printed and are with the file), and details of any enforcement or other action relating to the matter whether taken or pending; and
- (ii) forwarding the documents and a 'Location of Documents' declaration in a sealed envelope to:

Subpoena Team
Right to Information and Subpoena Unit
Right to Information and Privacy Services
Level 6, Police Headquarters
GPO Box 1440
BRISBANE QLD 4001; or

- (a) email the documents; or
- (b) place in the Right to information drop folder,
(documents should be posted if only available on CD/DVD ROM)

(iii) if unable to locate the relevant notebook/diary, the officer concerned is to be contacted to ascertain the location of them. When located they are to be forwarded in compliance with the above instructions;

(iv) where documents are not located or have been destroyed, a 'Non-Location of Documents Declaration' is required for ultimate production in court. This declaration is a formal document and requires signature by the OIC (see Appendix 6.1 for a pro-forma);

(v) where photographs have been taken but are no longer with the document, a notation to that effect is to be made on the advice forwarded with the document. The notation is to indicate the original source of the photographs and where the negatives may be held, e.g. Redcliffe Scenes of Crime, Forensic Crash Unit, a police officer, a private photographer, or a newspaper photographer, etc. (arrangements will then be made by the IDSS through the Forensic Imaging Section to locate the negatives and supply the necessary prints where the applicant has agreed to meet the fees associated with printing the photographs);

(vi) checking the material to ensure that it is complete before being forwarded to the Subpoena Team. The forwarding station is to ensure that the material is forwarded to reach the IDSS prior to the return date;

(vii) if no document is located, advice to this effect is to be forwarded to the Subpoena Team with the appropriate advice mentioned above in (iv); and

(viii) if a claim for privilege is to be made for any information contained in the document, a report is required immediately indicating the reasons why such privilege should be claimed. This report should accompany the document.

Fees

There is no prescribed fee for the inspection of this material (see r. 249: 'Costs of production' of the Uniform Civil Procedure Rules). The applicant must pay the Service's reasonable costs and expenses of producing a document.

Photographs are charged for at the rate listed in the Schedule of Fees and Charges available on the Service Intranet and QPS internet website.

Retention of documents

All original documents will be returned to the relevant Service establishment upon satisfaction of the Notice.

6.3 Section 134A Evidence Act (Third Party Discovery Process)

The following describes a process whereby the Service may supply documents relating to incidents involving or coming to the notice of police, to persons involved in legal action.

The application usually involves documents from a number of different areas of responsibility within the Service.

The Subpoena Team, Right to Information and Subpoena Unit (RTISU), is responsible for all actions against the Service. The Subpoena Team does not split, nor devolve to other areas within the Service, the responsibility for finalising these actions in the first instance. The Subpoena Team locates, and collects, all documents mentioned in the notice, including photographs, before obeying the notice on behalf of the Commissioner.

Process

Section 134A: 'Production of documents by agencies in relation to civil proceedings' of the *Evidence Act* provides an administrative mechanism as an alternative to a formal discovery ordered by a court. A person who is a party to a current civil proceeding may apply in writing direct to the Commissioner for inspection of material. This is an informal action for the discovery of material in the possession or under the control of the Commissioner.

There is no prescribed time period for the Service to comply with the action. Administratively the Service endeavours to comply within 21 days.

There is no formal application form for this procedure.

The material to be produced is to be relevant to the matter in issue and is the same material as would be produced to a Court upon the service of another appropriate legal process.

These types of matters can only be acted upon by the Commissioner and must be made out to the Commissioner. Apart from the Commissioner, only members attached to the Subpoena Team, RTISU may action these matters. These matters are to be forwarded to RTISU.

Upon receipt of an application the Subpoena Team requests the material to be forwarded to RTISU by way of a written request.

Requests for locating and forwarding of documents

The request includes the following details:

- (i) the date that the material is required;
- (ii) lists the parties involved;
- (iii) lists the subject matter of the required material;
- (iv) the identity and station of the investigating officer, if known; and
- (v) the required action to be taken.

Action necessary

The required action to be taken includes:

- (i) locating the complete file, including all plans, sketches, diagrams, statements, tapes/videos, notebooks and/or diaries, photographs (if they have been developed, printed and are with the file), and details of any enforcement or other action relating to the matter taken or pending, and;

(ii) forwarding the document in a sealed envelope to:

Subpoena Team
Right to Information and Subpoena Unit
Right to Information and Privacy Services
Level 6, Police Headquarters
GPO Box 1440
BRISBANE QLD 4001; or

(a) email the documents; or

(b) place in the Right to information drop folder,

(documents should be posted if only available on CD/DVD ROM)

(iii) if unable to locate the relevant notebook/diary, the officer concerned is to be contacted to ascertain the location of them. When located they are to be forwarded in compliance with the above instructions;

(iv) where documents are not located or have been destroyed, a 'Non-Location of Documents Declaration' is required for ultimate production in court. This declaration is a formal document and requires signature by the OIC (see Appendix 6.1 for a pro-forma);

(v) where photographs have been taken but are no longer attached to the document, a notation to that effect is to be made on the advice forwarded with the document. The notation is to indicate the original source of the photographs and where the negatives may be held, e.g. Redcliffe Scenes of Crime, Forensic Crash Unit, a police officer, a private photographer, or a newspaper photographer, etc. (arrangements will then be made by the IDSS through the Forensic Imaging Section to locate the negatives and supply the necessary prints where the applicant has agreed to meet the fees associated with printing the photographs);

(vi) checking the material to ensure that it is complete before being forwarded to the Subpoena Team. The forwarding station is to ensure that the material is forwarded to reach the IDSS prior to the return date;

(vii) if no document is located, advice to this effect is to be forwarded to the Subpoena Team with the appropriate advice mentioned above in (iv); and

(viii) if a claim for privilege is to be made for any documents, a report is required immediately indicating the reasons why such privilege should be claimed. This report should accompany the file.

If necessary, the Subpoena Team will arrange for the material to be inspected to establish relevance. Once established, the inspection, if necessary, can take place at Police Headquarters or at a district office.

Fees

The prescribed fee for the inspection of this material will be outlined in correspondence sent from IDSS in accordance with the Evidence Regulation.

The fee for the supply of any photographic prints are listed in the Schedule of Fees and Charges available on the Service Intranet and QPS internet website.

Place of inspection

The inspection may take place at Police Headquarters or at a district office.

If the material is inspected at a district office, the prescribed fee and other costs for supplying the required material are to be receipted upon inspection. Fees received for the inspection are to be credited to account code 4143 and forwarded to the Financial Accountant through the usual channels. Fees received for any photocopying and for the supply of any photographs are to be credited to account code 4144 and forwarded to the Director, Finance Accounting Services through the usual channels.

Retention of documents

Unless otherwise advised the documents may be retained at the district office where the inspection took place.

6.4 Subpoena of members as civilian witnesses

Action required when member is served with a subpoena

When a party requires a member to appear in a court of civil jurisdiction to give evidence relating to matters arising from a matter occurring whilst employed by the Service, that member needs to be served with a Subpoena to Give Evidence.

This type of subpoena commands the presence of the member before a court to give oral testimony only.

These procedures apply equally if a member is served with a summons or subpoena to appear before any tribunal or person in which or before whom evidence may be taken on oath, e.g. The Coroner, Queensland Civil and Administrative Tribunal, or any court in criminal jurisdiction.

These procedures do not apply to matters arising in the normal course of official duty where the member is appearing on behalf of the Crown.

These procedures do not apply to matters investigated by the Crime and Corruption Commission.

In many cases the party who is calling the member to give evidence will require that member to refer to a notebook, report or register referring to the matter in point. Section 10.11: 'Ownership of official property' of the PSAA vests ownership of all things of this nature in the Commissioner. In order for the member to refer to one of these things it is necessary for the interested party to serve a subpoena to produce documents upon the Commissioner.

Upon being served with a subpoena or summons requiring a member to give evidence, the member served is to immediately forward a copy of such subpoena or summons to the district officer or commissioned officer in charge together with a report covering the following details:

- (i) brief particulars of the evidence which the member is able to give in relation to the proceeding; and
- (ii) the amount of the expenses, and/or conduct money (if any) tendered in respect of the subpoena or summons.

Where time is not sufficient to enable that report to reach the relevant office through ordinary channels prior to the court date, the member must arrange for the transmission of the required information by the most expedient method.

Action required by district officer or commissioned officer in charge when member served with a subpoena

A district officer, or commissioned officer in charge will on receipt of such a report give consideration to the nature of the evidence involved. If the officer is of the opinion that if the member concerned complies with the subpoena or summons:

- (i) the public interest would be adversely affected;
- (ii) good diplomatic relations could be jeopardised; or
- (iii) for some other reason a special case for privilege should be claimed;

they are to:

- (i) prepare a report detailing:
 - (a) the reasons for such opinion; and
 - (b) whether or not the subpoena or summons requires the production of any official police records; and
- (ii) submit such report with all relevant papers and records of this Service, including the subpoena or summons in question, to the Subpoena Team, Right to Information and Subpoena Unit, Right to Information and Privacy Services.

This action is required in sufficient time to enable the matter to receive all necessary consideration by the Office of the Director, Right to Information and Subpoena Unit before such member is required to give evidence.

Where there is insufficient time for the matter to be considered before the member concerned is required to obey the subpoena or summons, an adjournment is to be sought to enable such action to be taken, and having sought such an adjournment the decision of the court or tribunal, etc., must be abided by and its directions or orders obeyed.

Where a member is served with a subpoena or summons to give evidence, and the member's district officer or other commissioned officer having control over such member is of the opinion that no reason exists for the claiming of Crown privilege in relation to the evidence called for thereunder, the district officer or commissioned officer in charge will authorise that member to obey the subpoena or summons.

Recovery of Service documents at conclusion of proceedings

Where a subpoena to produce documents has been served on the Commissioner for documents to be produced in a matter in which a member is also subpoenaed, that member may produce the documents on behalf of the Commissioner. The member producing the documents is responsible for recovery of the documents from the court and returning to the place they were received.

Conduct money

Members subpoenaed as witnesses in these actions are entitled to payment of conduct money, which should be tendered at the time of service of the subpoena. If conduct money is not paid, the member concerned will attend the court, and upon entering the witness box inform the court that no conduct money has been paid. The member must then, of course, abide by the decision of the court.

Where it is necessary to travel to attend court, the member cannot be forced to attend unless reasonable travelling expenses to and from the member's station or establishment are paid.

Approval to retain conduct money

The district officer or commissioned officer in charge may approve the retention of conduct money.

Member to report at conclusion of matter

Upon the conclusion of a matter, and regardless of whether or not the member attends court, such member will furnish a report including the following information:

- (i) the result of the matter, if known;
- (ii) the amount of conduct money received;
- (iii) date and time of departure from the home station;
- (iv) date and time of arrival at the place where the court was held;
- (v) period engaged at court;
- (vi) date and time of departure from the place where the court was held; and
- (vii) date and time of return to the home station.

Expenses incurred by the Service and relieving arrangements

If any expenses, such as fares or travelling allowance, are incurred by the Service in connection with the attendance of a member at any proceedings in answer to a subpoena, the member concerned will furnish a report containing full details thereof to his/her district officer or commissioned officer in charge for transmission to the relevant assistant commissioner. The report is to include any relieving arrangements undertaken to replace the member during the absence at court.

6.5 Subpoena of documents for production before a court

Action to be taken where documents are required to be produced to court

All Subpoenas to produce documents must be served on the Commissioner at Queensland Police Headquarters. Staff members from the Subpoena Team of the Right to Information and Subpoena Unit (RTISU), Right to Information and Privacy Services are the only persons authorised to accept service on behalf of the Commissioner.

When a subpoena or summons is served upon the Commissioner for production of documents, a memorandum is forwarded from RTISU to the OIC of the station or establishment where the documents are located. Depending on the location of the Court the memorandum may take either of the following forms:

- (i) locate and forward documents to this office; or
- (ii) locate, clear and produce documents to the Court on behalf of the Commissioner.

In instances where a member's disciplinary file is the subject of a summons or subpoena, a member of the Subpoena Team is to notify in writing the OIC of the relevant police prosecutions corps servicing the locale of the court in which the matter is proceeding that a request for disciplinary files of a member has been received.

Locate and forward documents to this office

This memorandum advises that the subpoena requires production of documents in a court in the Brisbane central business district.

The memorandum includes the following details:

- (i) the court and date that the action is to take place;
- (ii) lists the parties involved;
- (iii) lists the subject matter on the required document;
- (iv) the identity and station of the investigating officer; and
- (v) the required action to be taken.

The receipt of the memorandum is to be acknowledged immediately.

The required action to be taken includes:

- (i) locating all of the documents, including plans, sketches, diagrams, statements, notebooks and/or diaries, photographs (if they have been developed, printed and are on the file) and details of any enforcement or other action relating to the matter.

(ii) forwarding the documents in a sealed envelope addressed to:

Subpoena Team
Right to Information and Subpoena Unit
Right to Information and Privacy Services
Level 6, Police Headquarters
Mail cluster 17.1
GPO Box 9879
BRISBANE QLD 4001

(iii) if unable to locate the relevant notebook/diary, the member to whom the notebook/diary was issued is to be contacted to ascertain its location. When located it is to be forwarded in compliance with the above instructions;

(iv) where documents including notebooks are not located or have been destroyed, a 'Non-location of Documents Declaration' is required for production in court (see Appendix 6.1 for a pro forma);

(v) where photographs have been taken but are no longer with the file, they are to be located and forwarded with the file;

(vi) the documents are to be checked to ensure that they are complete before being forwarded to the Subpoena Team;

(vii) should no documents be located, advice to this effect is to be forwarded to the Subpoena Team by return memorandum;

(viii) the forwarding station is to ensure that the documents are forwarded to reach RTISU prior to the court date; and

(ix) if a claim for privilege is to be made for any documents, a report is required immediately indicating the reasons why such privilege should be claimed. This report should accompany the documents.

Find, clear and produce documents to the court on behalf of the Commissioner

This memorandum advises that the subpoena requires production of documents in a court.

The memorandum includes the following details:

- (i) the court and date that the action is to take place;
- (ii) the parties involved;
- (iii) the subject matter on the required document;
- (iv) the identity and station of the investigating officer; and
- (v) the required action to be taken.

The receipt of the memorandum is to be acknowledged immediately.

The required action to be taken includes:

- (i) locate all of the documents, including plans, sketches, diagrams, statements, notebooks/diaries, photographs (if they have been developed, printed and are with the documents) and details of any enforcement or other action relating to the matter;
- (ii) if unable to locate the relevant notebook/diary, the officer concerned is to be contacted to ascertain the location of them. When located they are to be forwarded on to the district requiring them;
- (iii) where documents, including notebooks, are not located or have been destroyed, a Certificate of Non-Location is required for production in court; and
- (iv) where photographs were taken but are no longer attached with the documents or were not developed, the photographic negatives are to be located and a set of photographs developed.

The documents are to be checked for privilege. Should there appear to be any privileged information contained in the documents, RTISU is to be contacted immediately so that the appropriate action can be taken.

Where the investigating officer is subpoenaed in the same matter, that member is to produce all documents on behalf of the Commissioner. If the investigating officer has been transferred, a memorandum is to be forwarded immediately for that member's information and for the information of the relevant district officer or commissioned officer in charge. That officer will direct the member, if the member has been subpoenaed to give evidence in the same matter, to attend at the district office where the Court is located prior to his attendance at court to take possession of the document and produce it on behalf of the Commissioner. Other arrangements may be made to collect the document in cases where the court is not in the same locality as the district office.

Where the investigating officer is not subpoenaed in the matter, a member of the staff of the district office or, where the court is not in the same locality as the district office, a designated member is to produce all documents to the Court on behalf of the Commissioner.

The member who produces the documents to the court will be responsible for their return and for furnishing a report including the following information:

- (i) the result of the matter, if known;
- (ii) date and time of departure from the home station;
- (iii) date and time of arrival at the place where the court was held;
- (iv) period engaged at court;
- (v) date and time of departure from the place where the court was held; and
- (vi) date and time of return to the home station.

6.6 Legal representation for Service members

Pursuant to s. 10.7 'Provision of legal representation' of the PSAA, a member may be entitled to legal representation in relation to an action, claim, demand, or offence proceeding brought against the member. This does not apply where the Crown brings the action, claim, demand, or offence proceeding.

Where members consider they are entitled to legal representation, they should immediately forward a report requesting legal representation, through their chain of command to the Executive Director, Legal Division for consideration (see Delegation D 15.54).

If legal representation is approved, the appropriate provider will be advised. The appropriate provider may be the Crown Solicitor; Director, QPS Legal Services or a legal provider registered and approved by the Attorney-General for Crown legal matters.

If a member requires legal assistance for a matter that does not require, or meet the criteria for, legal representation under s. 10.7, for example, if a member is a witness in a coronial inquest, a request should be made via email to Strategy & Performance Legal Division.

None of the above prevents members from seeking independent assistance or assistance from their relevant Union.

6.7 Matters of civil litigation

The Office of the Director, QPS Legal Services is responsible for liaison and coordination between the Crown Solicitor and assistant commissioners for claims made against the State of Queensland and others arising from incidents occurring on police property, police housing, during police incidents in general, involving police dogs, police vehicles, police vessels, police aircraft etc.

These matters generally involve personal injury or damage to property and may include matters of wrongful arrest, unlawful detention, malicious prosecution and other incidents whilst on duty.

Personal injury claims are initiated in the form of a Notice of Claim pursuant to the *Personal Injuries Proceedings Act*. A Notice of Claim may be served by mail. Other claims are initiated in the form of a Magistrates, District or Supreme Court claim and Statement of Claim. Such claims are to be served personally.

These matters could also involve matters of public liability.

Generally the State of Queensland is named as defendant. The member can also be named as a defendant.

Immediately an incident occurs which may lead to litigation the matter must be investigated and the completed investigation is to be filed at the Regional Office.

Assistant commissioners are to forward one copy of all relevant documents to the Office of the Director, QPS Legal Services at the conclusion of the investigation.

In cases where a member is served with legal process resulting from their actions as a member of the Service, a full report is to be furnished without delay through the usual channels to the Office of the Director, QPS Legal Services. This report must include the member's comments on each and every allegation detailed in the notice of claim or statement of claim.

Where a member considers that they are entitled to legal representation by the Crown, they must forward a report requesting legal representation pursuant to s.10.7: 'Provision of legal representation' of the *Police Service Administration Act* immediately upon service of the claim, through the usual channels to the Commissioner for decision.

After the decision is made the matter of representation by the Crown Solicitor or Office of the Director, QPS Legal Services is coordinated by the Office of the Director, QPS Legal Services.

Appendix 6.1 Non-location of documents – declaration

Appendix 6.1

Our Ref:

Your Ref:

NON-LOCATION OF DOCUMENTS DECLARATION

I certify that a thorough search for all documents relevant to this request has been conducted. No such documents were located.

No relevant documents were located because:

.....
.....
.....
.....

Comments (Including prosecutions finalised/unfinalised, or if applicable when documents were destroyed etc):

.....
.....
.....
.....
.....

SIGNATURE

PRINT NAME

REG NO. (if applicable)

DATE

