

**(1) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF
THE TRIBUNAL OR OF THE CHAIRPERSON**

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2020] NZHRRT 14

Reference No. HRRT 011/2016

UNDER THE PRIVACY ACT 1993

BETWEEN BRIAN GREGORY MULLANE

PLAINTIFF

AND ATTORNEY-GENERAL

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:

Mr BG Mullane in person

Ms D Harris for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 25 May 2020

**DECISION OF CHAIRPERSON ON REQUEST BY PLAINTIFF FOR DOCUMENTS
ON THE TRIBUNAL FILE¹**

Background

[1] On 25, 26 and 27 September 2017 the Tribunal heard a claim by Mr Mullane against the Attorney-General under the Privacy Act 1993, IPP 8. At the relevant time Mr Mullane was a self-employed taxi driver in Wellington. In the context of a “fit and proper person” inquiry the Police Vetting Service on 20 June 2013 reported to the New Zealand Transport Agency (NZTA) that, based on intelligence held, the Police recommended Mr Mullane not

¹ [This decision is to be cited as *Mullane v Attorney-General (Request for Documents)* [2020] NZHRRT 14.]

have unsupervised access to children, young people, or more vulnerable members of society. In *Mullane v Attorney-General* [2017] NZHRRT 40 (25 October 2017) the Tribunal dismissed Mr Mullane's complaint as no breach of IPP 8 had been established.

[2] As recorded in that decision at [115], Mr Mullane did not seek name suppression for himself. He did, however, seek a suppression order in relation to a third party. That application failed as the name of the third party had been in the public domain for a large number of years.

[3] The Tribunal did, however, accept there could be a case for prohibiting public disclosure of the correspondence passing between Mr Mullane and the third person and others. As it was not possible to make a determination in the abstract the Tribunal directed that there be no search of the Tribunal file without leave of the Tribunal or of the Chairperson. The Tribunal stated:

[117] We do, however, accept that there may be a case for prohibiting public disclosure of the correspondence passing between Mr Mullane and the young man and between Mr Mullane and the young man's then girlfriend. That issue is best dealt with if and when it ever arises. For that reason we make an order preventing search of the Tribunal file without leave of the Tribunal or of the Chairperson. Mr Mullane and the Police are to be notified of any request to search the file and given an opportunity to be heard on that application.

Subsequent correspondence received from Mr Mullane

[4] Two years after delivery of its decision the Tribunal on 23 December 2019 received from Mr Mullane a copy of a 34-page document described as "An open document to the Prime Minister of NZ: the Rt. Hon. Jacinda Ardern – the link between the 2013 Edward Snowden heist of CIA secrets in Hawaii and the NZ Police National Intelligence Agency (NIA) dumping of historic and hearsay information onto the public domain (3 December 2019)".

The application for the return of certain documents

[5] Subsequently, by email dated 14 February 2020 Mr Mullane wrote to the Tribunal "demanding" that certain documents said to be on the Tribunal's file be returned to him. He asserted the documents in question (emails) had been stolen from the third party's computer in November 2001 and used by the Police in their defence of Mr Mullane's claim under the Privacy Act. Mr Mullane sought an order that the (unspecified) emails "be returned and all record of their presence in that case be expunged". He asserted he had proof the Crown Law Office and the office of the Attorney-General were "fully aware of the Snowden Factor of this case long before it was heard in your Court". He went on to state that he believed that I, as Chairperson of the Tribunal, was "also aware of this fact" and asserted:

The intent of those 2 agencies was to stop the Parliament ordered veil of secrecy and media ban being exposed. This ban has been put in place by GCSB to conceal the fact that amongst the CIA files stolen by Snowden was proof of mass surveillance of Kiwis and citizens of other "5 Eyes" partner countries.

[6] Timetable directions were thereupon communicated through the Secretariat. Mr Mullane was required to serve his application on counsel for the Police on or before Friday 28 February 2020. Any notice of opposition, submissions and affidavit evidence by the Police were to be filed and served by Friday 20 March 2020. Mr Mullane had until 4pm on Friday 3 April 2020 to file and serve his submissions in reply.

Further correspondence received from Mr Mullane

[7] By email dated 16 February 2020 addressed to the Crown Law Office but copied to the Tribunal Mr Mullane complained his right to a fair and impartial investigation or hearing had been compromised by the allegedly criminal actions of the Privacy Commissioner, the Chair of the Independent Police Conduct Authority and the Chief Ombudsman:

I have established that the Privacy Commissioner, Mr John Edwards, the Chair of IPCA, Judge Sir David Carruthers and the Chief Ombudsman, Judge Peter Boshier, wilfully and deliberately hindered and/or obstructed my access to fair and impartial investigations of my complaints to their Agencies. I have also established that these three same gentlemen have been promised immunity from prosecution should their actions, bordering on criminal, be exposed at sometime in the future (now) in any subsequent investigation/s.

It is also my contention that then Attorney-General, Mr Chris Finlayson and the current member, Mr David Parker, along with the Office of The Attorney-General, The Solicitor-General (Crown Law), Police Commissioner and Executive, the Chair of the Human Rights Review Tribunal, the Office of the Human Rights Proceedings, were all privy to and fully aware of the aforementioned information and therefore obstructed/hindered my right to a fair and impartial investigation or hearing.

[8] By email dated 26 February 2020 Mr Mullane made “demand” for a full judicial review of all cases heard by the Chairperson of the Tribunal since 7 June 2013:

Mr Haines, along with The Attorney-General (Hon. David Parker and his predecessor National Party member Hon. Chris Finlayson), The Justice Minister (Hon. Andrew Little), The Solicitor-General and Crown Law, The Police Commissioner, were all fully aware of the ‘Snowden factor’ of this scandal and it was a directive from the GCSB that the action taken by Mr Haines, be the right action, that is so the scandal was kept from the public knowledge and also a total media ban put in place.

I am demanding a full Judicial Review of all cases Mr Haines sat on in the HRRT since 7th June 2013 and that Mr Haines be stood down from all further sittings until that Judicial Review has been concluded.

[9] By email dated 2 March 2020 addressed to Crown Counsel and the Tribunal Mr Mullane claimed he had received new information which indicated a Police witness at the hearing had conducted a personal and private vendetta against Mr Mullane and had deliberately and wilfully disseminated false facts and information about Mr Mullane. In other email correspondence at about this time the Crown Law Office was described as a “deceitful” Crown entity.

Police submissions

[10] By memorandum dated 20 March 2020 counsel for the Police advised the Tribunal that the Attorney-General would abide the decision of the Tribunal on Mr Mullane’s application but offered the following comments by way of assistance:

[10.1] The order made by the Tribunal at [117] of its decision prohibiting search of the Tribunal file and directing that Mr Mullane and the Police be notified of any request to search the file was sufficient to protect the evidence on the Tribunal’s file.

[10.2] In any event the Public Records Act 2005 appeared to prohibit the removal or destruction of a judicial record.

[10.3] It was unclear whether Mr Mullane intended his application to extend to the correspondence held by the Police. If this was the intention, that was a matter for Mr Mullane to address directly with the Police. It was likely, however, that the same restrictions under the Public Records Act would apply to any information held by the Police.

The reply by Mr Mullane

[11] By email dated 20 March 2020 addressed to Crown Counsel but copied to the Tribunal Mr Mullane stated that he did not trust the “HRRT staff placed in charge of these documents”. He also suggested that Ms Harris had something to do with evidence which had suddenly “disappeared” from a “stack of documents which was in the care of HRRT staff”. He also asserted that “corruption, the intrigue, the lies and deceit of senior Government Department Heads” was endless:

The diseased tentacles of this monster stretches into every sector of the public service, IPCA, Privacy Commission, The Ombudsman's Office, The Attorney-General and his Office, The Solicitor-General and her office (Crown Law), The Justice Department (HRRT), The State Services Commissioners Office, and of course, The Police Commissioner and his Executive. All of these people were issued a directive from person/s unknown, (but it is my educated guess that it is GCSB and Prime Ministers Department) to stop the truth of this scandal being revealed to the public, hence a total media ban and why Politicians, from day one, have ignored my pleas for help and also why senior respected officials, such as Edwards, Judge Sir David Carruthers, Judge Peter Boshier and his corrupt side-kick Leo Donnelly, have deliberately misled me, delayed investigations of my complaints to their Agencies (upto 3 and a half years) and then give some lame excuse which led back to it being my fault.

[12] Two days later, on 22 March 2020 Mr Mullane sent an email to the Tribunal alleging that the Chairperson of the Tribunal was corrupt and that Mr Mullane had made a complaint about him to the Minister of Justice and to the Ministry of Justice.

[13] It is not intended to make further reference to the further emails received from Mr Mullane as the allegations made in this correspondence is similar to those made in the correspondence just referred to. It is necessary, however, to note that in an email dated 30 March 2020 Mr Mullane explicitly accused Ms Harris of being “instrumental” in the removal of a two-page document which was part of the evidence before the Tribunal. He also “suggested” that HRRT senior management “take a long hard look” at the case manager responsible for Mr Mullane’s file.

[14] Finally, by email dated 14 May 2020 (apparently intended as his reply submissions) Mr Mullane asserted that a handwritten document two pages in length which he had filed with the Tribunal had later been removed from the file. This had been done by the case manager “at the request of Crown Law defence team”.

Discussion

[15] While the application dated 14 February 2020 “demands” the return of certain emails, the later correspondence dated 20 March 2020 and 30 March 2020 alleges documents had “disappeared” from the evidence filed with the Tribunal. It is not clear whether the “disappeared” documents are the emails or whether there are two separate categories of documents to which the complaints relate.

[16] Either way, the application for the return of documents by Mr Mullane must be declined:

[16.1] The broadly framed accusations of theft and of other forms of unlawful conduct alleged against the Police, Crown Counsel, the Crown Law Office, the Tribunal's case managers, the Chairperson of the Tribunal and many others require that the Tribunal's record be maintained intact.

[16.2] The order made by the Tribunal at [117] of its decision is sufficient to protect third party interests.

[16.3] The Public Records Act 2005, ss 17 and 18 reinforce the Tribunal's duty to maintain its records intact until disposal is authorised under that Act.

Order

[17] The application by Mr Mullane for the return of documents is dismissed.

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Mr RPG Haines ONZM QC
Chairperson