



11th August 2015.

Mr Hamish McNeilly
Dunedin Bureau Chief
Fairfax Media
116 Portsmouth Drive
Dunedin 9012

Dear Mr McNeilly,

Information Request – Police Investigation Report – Dunedin City Council Citifleet Inquiry

I acknowledge receipt of your information request dated 22.07.15.

I refer to your request;

- ***“I am requesting under the Official Information Act for the Police Investigation report relating to the Dunedin City Council Citifleet Fraud”.***

I enclose a copy of the Police Investigation Report. I have withheld some information pursuant to Section 9 (2) (a) of the Official Information Act 1982 in order to protect the privacy of natural persons including that of deceased natural persons. In this case personal details and circumstances of persons referred to in the information released have been withheld.

If you are not satisfied with my response to your request you are entitled to complain to the Ombudsman in Wellington.

If you have any queries regarding the information released please contact Detective Inspector Tom Fitzgerald or the writer.

Yours faithfully

Chris Kelley
Official Information Section - Investigative Support Unit
✉ SOUTHERN DISTRICT HEADQUARTERS | Private Bag 1924 | Dunedin 9054
Ext: 33011 | ☎ (03) 471 4811 alexander.kelley@police.govt.nz

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O.I.A. Section
Private Bag 1924
Dunedin 9054

KELLEY, Alexander (Chris)

From: Hamish McNeilly [hamish.mcneilly@fairfaxmedia.co.nz]
Sent: Wednesday, 22 July 2015 14:05
To: KELLEY, Alexander (Chris)
Subject: OIA request

Southern DHQ
OIA/Privacy 22/7/15
Data Received
Initials *McNeilly*

I am requesting under the Official Information Act the police investigation report relating to the Dunedin City Council Citifleet fraud.

Kind regards.

HAMISH McNEILLY

Dunedin Bureau Chief

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Fairfax Media, The Edgar Centre, 116 Portsmouth Dr, Dunedin, 9012, New Zealand



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REPORT FORM

SUBJECT: Citifleet
ADDRESS: Dunedin City Council
TEXT: Fraud Complaint

Report Date: 02/12/2014

[REDACTED]
Dunedin CIB

Introduction

In August 2014 police were contacted by the Dunedin City Council regarding a suspected fraud in the council's Citifleet department. No actual statement of complaint was taken but police were provided with a report from [REDACTED] which set out the areas of potential criminal offending.

[REDACTED] had been engaged by the council to carry out an investigation into Citifleet after discrepancies with the fixed asset register were identified.

Immediately after these discrepancies came to light the manager of Citifleet, [REDACTED] committed suicide. The obvious inference was that [REDACTED] was responsible for the discrepancies.

The Deloitte report set out six potential areas of criminal activity;

- 152 missing vehicles
- credit card spending
- fuel card spending
- the purchase of a motorbike
- the conversion of a council vehicle
- cashing cheques for refilling parking machines

The [REDACTED] report was comprehensive and appeared to be based on solid evidential foundations. The police investigation built on the work done by [REDACTED] but in most cases did not repeat the work that had already been carried out.

In order to understand the background to the six areas of potential criminal activity the reader of this report should also read the [REDACTED] report.

The purpose of the police investigation was as follows:

- to discover whether anyone other than [REDACTED] had been involved in fraudulent activity

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- to determine whether anyone had culpability as a party to [REDACTED] offending or culpability as a receiver
- to carry out some limited work around proceeds of crime but only where it overlapped with the above two points

The police investigation was not an employment investigation, it was not an investigation into the operating practices of the council and it was not an investigation that sought to prove to a prosecution standard that [REDACTED] had committed criminal offences.

Areas of Investigation

1) 152 Missing Vehicles:

It was alleged by council that there were 152 vehicles still showing on their fixed asset register that they were no longer in possession of.

In terms of the offence committed the two options were that the offender had stolen the cars or alternatively had legitimately disposed of the vehicles but stolen the money.

If the vehicles (as opposed to the money) had been stolen this raised issues of potential receiving and also the issue of where title for the vehicles lay.

The council were asked to clarify which scenario they were complaining of.

[REDACTED] Chief Financial Officer at the council advised that [REDACTED] was authorised to dispose of vehicles up to the value of \$10,000, therefore vehicles up to this value had not been stolen. Vehicles valued over \$10,000 had been stolen. Establishing the value of the vehicles at the time of sale was not an easy task. [REDACTED] had used a 'Redbook' valuation but from the work police carried out it appeared the redbook values were over inflated. Common business practice would be to use the carrying value when disposing of assets and in theory this is the value that should be used.

In the absence of the carrying values I have relied on the price [REDACTED] obtained for the vehicles. The general consensus from people who bought council vehicles was that the prices paid were perhaps a few hundred dollars cheaper than a true market price. There were very few vehicles (perhaps 5 -10) that were sold for over \$10,000 so in most cases there has been no potential culpability for receiving.

The most relevant offence that can be applied to either the missing money or the missing cars is section 220 of the Crimes Act 1961 - theft by a person in a special relationship.

Investigation

Police endeavoured to answer the following questions:

- Who disposed of the 152 missing vehicles?
- How much was paid for each vehicle?
- Where did the money go?

- Did anyone know or were they reckless as to whether they were buying a stolen vehicle?
- Did anyone act as a party by encouraging [REDACTED] to act unlawfully?
- Was there any suggestion that anyone involved in maintaining the fixed asset register was culpable as a party?

Police spoke to all but three of the people who bought one of the 152 missing vehicles. The three who were not spoken to could not be traced.

Police asked for a narrative on how the transaction occurred, how they knew their particular vehicle was for sale, whether they knew [REDACTED] personally, how the vehicle was paid for and how much they paid.

Having spoken to ninety eight percent of the people who purchased vehicles there is no evidence that anyone other than [REDACTED] has been involved in selling the vehicles. Every transaction originated with [REDACTED]

Of the people spoken to there was no suggestion that anyone knew or was reckless as to whether [REDACTED] was acting unlawfully. Almost without exception the purchasers of the vehicles stated that they believed [REDACTED] was entitled to sell the vehicles and had no reason to believe that he was not forwarding their money onto council.

Of the people who bought one or two vehicles most could recall how much they paid and how they paid. People such as [REDACTED] who bought multiple vehicles, could not recall the price of each one.

As mentioned previously, the vast majority of sales were made with authority so there was no potential for the offence of receiving to have been committed but even if there was potential for the offence, there was no evidence that anyone was a knowing receiver. The normal measures used to prove receiving are such things as a grossly undervalued price, disguising the item, implausible explanations etc. None of these measures featured in the transactions carried out by [REDACTED]

The only possible exception to this was the sale [REDACTED] made of a Mazda 3 to [REDACTED]. This transaction is discussed under the heading 'car dealers'.

Police were aware that [REDACTED] held bank accounts with [REDACTED] and [REDACTED]. There were no transactions that involved money going to any other account.

There was no evidence that anyone other than [REDACTED] profited from the transactions. The council finance department were responsible for maintaining the fixed asset register and while it appears they may have been negligent in the way they went about this, there is no evidence that anyone deliberately turned a blind eye to the errors on the register nor is there any evidence that anyone in the finance department would have had any motivation to become complicit in [REDACTED] offending.

[REDACTED]
[REDACTED] was the largest single purchaser of vehicles, buying or being involved in the purchase of around 25 vehicles.

From a laypersons point of view the fact that [REDACTED] bought a number of vehicles may make his motives seem suspicious but it must be remembered that whether a

person bought one or 25 vehicles the test remains the same - that is; whether they knew or were reckless as to whether [redacted] was acting dishonestly.

[redacted] explained that the first car he bought from [redacted] was a car that [redacted] had taken to [redacted] workshop to be warranted prior to sale. While working on the car [redacted] had commented to [redacted] that he would like to buy a car of that type. [redacted] replied that [redacted] could buy that car if he paid the equivalent valuation from [redacted]

In [redacted] mind this made sense and from that point on he believed that he was buying cars that would have otherwise gone to [redacted] [redacted] is an experienced car trader and would have a good idea on the value of cars. He explained to me that the prices he paid were basically the same as what he would have paid at [redacted] minus the buyer's premium. There is no evidence that [redacted] was buying cars at a grossly undervalued price.

[redacted] also pointed out that he referred [redacted] to [redacted] [redacted] mentioned to [redacted] that he was looking for a cheap four wheel drive to tow his boat and [redacted] told him to ask [redacted] if he had anything coming up. [redacted] did not follow up on [redacted] advice but has confirmed that the conversation with [redacted] did take place. It would seem illogical for [redacted] to have passed on [redacted] name to a [redacted] [redacted] if he knew that [redacted] was acting dishonestly.

[redacted] was involved in the purchase of approximately ten vehicles but these all originated with [redacted]. [redacted] and [redacted] are neighbours and lifelong friends.

[redacted] had no involvement with [redacted] and relied on [redacted] for any information about the bona fides of the scheme.

[redacted] He was involved in the purchase of fourteen vehicles.

As with [redacted] there has been a perception that because [redacted] bought multiple vehicles and because he had a familial relationship with [redacted] that he must have done 'something' wrong. This of course is an irrational perception. There is no evidence that [redacted] knew or should have known that [redacted] was acting unlawfully.

[redacted] has stated that he knew [redacted] was the manager of Citifleet and that he believed that [redacted] was entitled to sell vehicles in the manner that he did. Rather than the familial relationship being an aggravating feature it is in fact mitigating. [redacted] placed faith in [redacted] on the basis that they were related.

Car Dealers

[redacted] had various dealings with [redacted] [redacted] and [redacted]. These car yards both supplied vehicles to the council and also purchased vehicles from the council and [redacted]

There are a number of transactions in which [redacted] traded in a council vehicle when purchasing a vehicle for him self. In terms of circumstantial evidence the most significant of these was a Mazda 3 that [redacted] sold to council in June 2008. In October 2008 [redacted] used this Mazda 3 as a trade in on a Mazda CX-7.

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The same salesman that had sold the vehicle to council in June received the vehicle back in October and seemed to have no issue with the fact that the vehicle was being used as a trade in on a vehicle being bought personally by [REDACTED]

[REDACTED] approached [REDACTED] looking for information on the sale and subsequent purchase of the Mazda 3. Through their lawyer, [REDACTED] advised that they were unable to assist with enquiries that related to [REDACTED]. [REDACTED] is no longer an entity as the business was taken over by [REDACTED] in 2009.

I made inquiries directly with [REDACTED] the current manager of [REDACTED]. He had the sale and purchase agreement for the Mazda 3 in a folder on his desk which suggests to me that [REDACTED] were being somewhat obfuscatory when they told [REDACTED] that they could not assist.

The relevant sales person was [REDACTED] [REDACTED] now works for [REDACTED]

I approached [REDACTED] but he declined to speak to me and referred me to his lawyer, [REDACTED]. [REDACTED] advice was that [REDACTED] recalled selling the Mazda 3 to the council but had no recollection of the circumstances in which the Mazda 3 was later traded in by [REDACTED]

In my opinion the actions of [REDACTED] are highly suspicious. [REDACTED] claims that six years after the fact he can still recall selling the Mazda but then says that he cannot recall buying it back four months later. It seems odd that he can recall what would have been a fairly standard transaction but then cannot remember buying the car back only four months later; or that within that four month period the car had changed owners.

There is no evidence that [REDACTED] had explicit knowledge that [REDACTED] was acting dishonestly but it would not be a great leap of faith to suggest that he may have turned a blind eye and preferred not to ask any difficult questions. No doubt [REDACTED] profited each time he conducted a transaction with [REDACTED] and it would have been in his best interests to maintain a relationship with [REDACTED]

While the actions of [REDACTED] are suspicious I do not believe there is sufficient evidence to charge him. If [REDACTED] were charged with receiving the fact that he has declined to make a statement would work in his favour. The obvious defence would be that he did ask [REDACTED] why the car was being traded in and that [REDACTED] assured him that he had legitimately purchased the car from council. With [REDACTED] being unavailable as a witness this defence cannot be negated.

[REDACTED] has purchased five vehicles from [REDACTED] that had previously been owned by the council. Through [REDACTED] [REDACTED] have explained that none of their staff have any recollection of these specific transactions and that in general terms it was quite common for vehicles to have the ownership changed just prior to sale. This of course doesn't answer the question of why [REDACTED] staff didn't ask [REDACTED] why he was selling cars that only a week earlier had been registered to his employer.

As with [REDACTED] the difficulty with prosecuting anyone at [REDACTED] is that they could raise the defence that they would have taken steps with [REDACTED] to confirm that he was the legitimate seller. I note that [REDACTED] required [REDACTED] to sign a declaration stating that he was the legitimate seller of the vehicles.

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In summary; there is no evidence that anyone has been complicit in [REDACTED] offending, there is no evidence that that any private purchaser has received stolen property and there is insufficient evidence to prove that any of the used car dealers have received stolen property.

2) Credit Card Spending

As a council department manager [REDACTED] was issued with a Credit Card for work related expenses. [REDACTED] carried out initial analysis of [REDACTED] credit card statements and did not find anything that appeared to be of a personal nature. I was of the opinion that it would have been prudent to conduct our own analysis to confirm this. I have asked [REDACTED] for a copy of [REDACTED] credit card statements but these have not been supplied. I am unable to carry out any work on the credit card spending without the source documents.

Even if I did find evidence of [REDACTED] misusing his credit card it is highly unlikely that I would have found any evidence that would implicate anyone else.

3) Fuel Card Spending

The [REDACTED] report highlights significant misuse of [REDACTED] fuel card. There appears to be around [REDACTED] of personal spending. [REDACTED] did not do any work to determine whether evidence could be found of anyone other than [REDACTED] using the card.

As with the credit card I believed that it would have been prudent to carry out some work to ensure that no one else was profiting from the use of the fuel card.

I requested fuel card receipts from the council but these have not been supplied.

Once again it is highly unlikely that I would have found any evidence that implicated anyone other than [REDACTED]

4) Purchase of a Motorbike

In July 2008 [REDACTED] supplied four motorbikes to the council. Three of these motorbikes were scooters for the parking division and the fourth was a trail bike. Parking Services was one of [REDACTED] departments and he arranged the purchase. The three scooters were delivered to council but the trail bike was not. It appears that [REDACTED] kept the trail bike for his own use. I considered that [REDACTED] may have committed an offence under the Secret Commissions Act or simply been complicit in [REDACTED] defrauding the council.

[REDACTED] was spoken to and he advised that his business was paid in full for the four bikes and that he had no reason to suspect that the purchase of a trail bike was suspicious. He stated that on occasion the council bought different kinds of bikes and he assumed the trail bike was going to be used by the Parks department or some other group that carried out off road work.

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The purchase of the four bikes was authorised by [REDACTED] [REDACTED] has stated that he thought his role was just to sign off any paperwork that [REDACTED] put before him and that he didn't think it was his job to scrutinise payment requests.

In summary there is no evidence that anyone other than [REDACTED] has been involved in the unlawful acquisition of the motor bike.

5) The Conversion of a Council Vehicle

In 2007 and again in 2013 - 2014 [REDACTED] was observed using a council vehicle. It appeared that [REDACTED] was essentially using the vehicle as if it were [REDACTED] own and on the face of it has converted the vehicle as per section 226 of the Crimes Act.

The evidence against [REDACTED] is that council staff observed her driving council vehicles. In order to prove this offence it would be necessary to show that [REDACTED] had used a council vehicle for a significant period of time and that [REDACTED] knew that [REDACTED] did not have authority to allow [REDACTED] to use a council vehicle. The only way to do this would be for [REDACTED] to make an admission and as [REDACTED] has refused to speak to police this is not possible.

In summary the lack of evidence will preclude a prosecution.

6) Cashing Cheques for Refilling Parking Machines

During their investigation [REDACTED] were alerted to the fact that [REDACTED] had been cashing cheques for the purpose of restocking parking machines. On at least one occasion it appears that [REDACTED] may have stolen some of the cash.

Council were aware of the risk around the cash handling for parking machines and in 2012 the accounting firm [REDACTED] were brought in to carry out an internal risk audit.

The [REDACTED] report outlined a number of risks and made recommendations. Shortly after [REDACTED] carried out the audit the council replaced the parking machines with an automated type that did not require the physical loading of cash. This essentially negated the risk.

Staff from the parking division and finance department have stated that [REDACTED] was the only person who cashed cheques for the parking machines. There is no evidence that anyone other than [REDACTED] was involved in the cash handling process.

In summary there is no evidence that anyone other than [REDACTED] has stolen cash.

Solicitor General's guidelines for Prosecution

In applying the Solicitor General's guidelines the first step is to determine whether there is sufficient evidence that would be likely to result in a successful prosecution. The second test is to determine whether it is in the public interest to prosecute.

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As mentioned in the introduction the police investigation has not been focused on the culpability of [REDACTED] but rather anyone who may have helped [REDACTED] or benefited from [REDACTED]

In short there is some evidence that points to [REDACTED] having culpability for receiving and [REDACTED] having culpability for conversion but neither case is even remotely close to meeting the evidential sufficiency test. There are insurmountable defences that could be raised in both cases.

In my opinion there should not be prosecutions brought against any person.

Proceeds of Crime Work

In preparation for a potential interview with [REDACTED] I carried out sample analysis of the financial records of [REDACTED]

[REDACTED] conducted most of their banking with [REDACTED] but also held credit card accounts with [REDACTED]. [REDACTED] held accounts at [REDACTED] and it was this account that transacted the fraudulent funds.

I could find no evidence that anyone other than [REDACTED] was using the [REDACTED] account. There was only ever one card in existence for the account. There was some speculation by [REDACTED] that transactions occurred in two locations on the same day e.g. [REDACTED] and [REDACTED] and that this meant two people were using the account but it appears that [REDACTED] have confused the transaction date with the processing date. The bank statements have a processing date and from looking at this it does appear that the card is used in two locations on the same day but the transaction dates nullify this.

There were transactions on the statement that one might have expected a [REDACTED] to have completed e.g. a [REDACTED] and [REDACTED]. I made inquiries into this type of transaction and they were either confirmed as being conducted by [REDACTED] or were unable to be attributed to anyone in particular.

I carried out a sample analysis of two months income and expenditure. This was for the end of 2012. Excluding introduced capital total spending exceeded total income by [REDACTED]. This did not take into account the fact that over the two month period [REDACTED] contributed around [REDACTED] to the family expenses from his [REDACTED] account.

Of note was that over the two month period [REDACTED] legitimately spent an average of [REDACTED] a week on groceries. This was topped up by an average of [REDACTED] a week from [REDACTED] account. This spending would indicate that [REDACTED] directly benefited from [REDACTED] frauds and that the [REDACTED] may well be tainted.

It will be for the council's lawyer to determine what action should be taken regarding tainted assets.

Conclusion

The police investigation set out to answer the questions of whether anyone other than [REDACTED] had been involved in fraudulent activity, either as a principle, party or secondary offender.

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As discussed, there is limited evidence that points to [REDACTED] being a receiver and [REDACTED] having [REDACTED] but both fall short of the standard of evidence required to prosecute.

Other than these two people there is no one else with potential culpability.

It may be that the council still wishes for me to carry out an analysis of the credit card spending. I leave it to you to determine whether you see any merit in once again asking for the source documentation.

There are no other outstanding inquiries.

For your information.

M J PREECE
Detective MPH363
Dunedin CIB