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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 22 MARCH, 2010

AT 2.00PM

Any person without publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Ms Ronalds.

MS RONALDS: In terms of the documents previously tendered, in terms of Exhibit 3, if I could replace Exhibit 3 with this copy, I'm sorry, Commissioner, which just deletes for publication reasons certain statements made which in my view it's not in the public interest to be published.

10 ASSISTANT COMMISSIONER: All right. Well, Exhibit 3 will now be this version of this email dated 4 October, 2007 with certain names and personal matters blacked out and I formally suppress the publication of any of the information that is blacked out on this email.

EXHIBIT 3 WILL NOW BE THIS VERSION OF THIS EMAIL DATED 4 OCTOBER, 2007 WITH CERTAIN NAMES AND PERSONAL MATTERS BLACKED OUT AND I FORMALLY SUPPRESS THE PUBLICATION OF ANY OF THE INFORMATION THAT IS BLACKED OUT ON THIS EMAIL.

20

#EXHIBIT 3 - EMAIL DATED 4 OCTOBER 2007 FROM BOBBI BIG RE WORK AFFAIRS

MS RONALDS: Mr Romano, prior to the luncheon adjournment I provided you with a copy of the email. Do you still have that to hand?---No, I gave it to my barrister.

30 All right. I'll get you another one. This is Exhibit 3. And do you understand it's the email I took you to before dated 4 October, 2007?---Yes.

I take you to the fifth paragraph, it starts, "Let me say," do you see that paragraph?---Yes.

The contents of that are false. Is that correct?---Yes.

You had not been speaking with Mrs XXXX?---No.

40 And you'd agree that the email was designed to appear as if it was from someone who worked at XXXX?---That's correct.

Now, on the 16th of November, 2007, that was about six weeks after the surveillance of Mr XXXX started, you sent a letter to a senior manager at XXXX and signed it concerned employee?---That's correct.

And if I could just show you that document. For the record if you could just identify that this is the letter that you sent?---(NO AUDIBLE REPLY)

That's a letter that you sent and you endeavoured to, and you endeavoured to represent that that was from a concerned employee?---That's correct.

All right. And you sent another letter dated 16 November to Mr XXXX XXXX?---That's correct, yes.

NON-PUBLICATION ORDER IN RESPECT OF MR XXXX

10

MS RONALDS: And, Commissioner, I just note that Mr XXXX's name is subject of a non-publication order just in case anyone's concerned.

You wrote this letter?---Yes, I did.

And signed yourself a concerned employee?---Yes, I did.

And you set out several matters in relation to Mr XXXX?---Yes.

20

You were making allegations against Mr XXXX. Is that right?---Yes.

And none of those had any connection with Burwood Council, did they?
---I don't believe so.

Well, they were about misuse of CabCharge, missing from the office for extended periods, misuse of the email systems for self-gratification and propositioning of female staff, that's nothing to do with Burwood, is it?
---Nothing at all.

30

No. And misuse of mobile phones for personal issues?---That's correct.

And privileged use of company car park?---Yes.

Now, and attached to that, if I could ask you to look at the third page of the document I've handed to you, are some details. Do you see that?---Yes, I do.

40 And you'd pulled those or taken those details from the surveillance reports that you'd received from IPP?---Yes, I did. Yes, I did.

So that you had used the surveillance reports at least on this instance in relation to Mr XXXX?---Yes, that's correct.

And if I could ask you to turn to page 2 you'll see that you say there at the PS, under concerned employee, the reason I've not identified myself is for fear of being victimised by John XXXX. Now, that wasn't true, was it?

---This is a fictitious letter apart from the claims I was making about his behaviour in the workplace.

But the reason that was, that doesn't explain why it was anonymous, that is, the reason you advanced which was that you had a fear of being victimised by Mr XXXX because you were a concerned employee, that wasn't correct, was it?---No.

10 Because you weren't an employee concerned or otherwise?---No. As I said, counsel, I created this as a fictitious letter.

And why did you do that?---I was upset at what I perceived to be an inappropriate relationship with my wife and this particular person. And there's an element of vengeance I suppose in this letter. And also I'm not, I can't, I don't know what more to say to you. My state of mind at that point in time was not rational.

20 All right. If I could show you an email, this is an email to XXXX XXXX and I'll note again that his name is suppressed, purportedly from an email address of XXXX.XXXX@live.com.au. Now that's an email address you invented?---Yes, that's correct.

And you sent this email to Mr XXXX?---Yes, I did.

And you make certain statements in that about fear of being identified et cetera. They were all false claims weren't they?---Yes, it a fabricated letter.

30 And so that you sent an email to Mr XXXX at his work address from an invented email address in his own name?---That's correct.

And you made it, you invented that email address using live.com.au? Do you see up the top XXXXXXXXX@live.com.au?---I do, sorry, I need to correct myself. I sent him an email from a gmail account, I don't, I don't, I mean, I don't remember using an @live.com account.

Well, that's how it's come to him, so it looks like you've invented an email address - - -?---I'm not sure. I can't be certain.

40 But if that was the sent address you accept responsibility for the content of the email?---It looks like the type of stuff I might've invented during that period. But I can't be certain. I'm not sure.

Just look at it. Do you doubt that you wrote it?---I'm not sure because the email address @live does not, is not familiar to me.

Well, it attaches the email that we looked at a moment ago. Do you see that? That you've agreed you were the author of?---This thing?

Yes. It's in a slightly different format, but it is the letter that I just took you through, misuse of cab charge, et cetera?---I don't recognise those sheets.

Well, just go back to, have you got the earlier document I handed you?---I, I understand, sorry, I'll rephrase that if I may. I understand that the content looks similar but the format doesn't look the same.

No, the format's not the same, but the content is identical?---I'll take your word for it.

10 So if it attached, and (not transcribable) the letter that you'd previously sent and is in fact in quite similar terms, would you accept that you've sent the email starting, Dear XXXX, I write to once again, meaning to you once again and appeal to your sense of justice?---I, I can't be certain. I'm not sure, because I don't recognise the @live.com.au email.

But you, just read the contents?---I understand the contents is, is similar.

They are (not transcribable) - - -?---And it would appear that they are they are same. But I don't recall that email address.

20

All right. But you do recall sending an email to Mr XXXX?---Yes.

And you've agreed the earlier one is yours and I'd suggest to you this one is - - -?---Yes.

- - - expresses the same sort of views?---I first thought that it was from a gmail account that I might've, that I did send XXXX XXXX an email from, but - - -

30 If it turns out that some other connection, but I'd suggest to you it is clearly from you masquerading as a concerned employee. Would you agree?---If it is true that this is the email that I thought I sent then that is correct. But I couldn't be certain.

If I could tender those emails.

ASSISTANT COMMISSIONER: Yes. Those two emails will be Exhibit 4.

40 **#EXHIBIT 4 - EMAIL TO MR XXXX DATED 16 NOVEMBER 2007
RE INAPPROPRIATE USE OF COMPANY RESOURCES AND
LETTER TO MR LOVNEY DATED 16 NOVEMBER 2007**

MS RONALDS: Now in (not transcribable) of November, 2007, sorry, I'll go back a step. In late August, 2007 or early September, 2007, you sent an anonymous letter to Mrs XXXX. Would you agree?---I thought I sent the letter in mid September.

In?---Mid September.

Sorry, there's just a bit of noise behind, you'll have to keep your voice up. In mid September, the first half?---Yes.

All right. So mid September, but you sent, posted a letter to her home?
---Yes.

10 And it was anonymous?---Yes.

And it said essentially that her husband was having an affair?---Yes.

And it didn't say with who?---I can't recall.

Well, she recalled it as just saying your husband's having an affair without saying who. Is that likely to be correct?---I'm not sure. I couldn't be certain.

20 And so you say that you sent that in mid September?---Yes.

And I'm suggesting to you it was a little earlier, but around that time?
---Around that time.

It would've been prior to the surveillance of Mr XXXX commencing on 26 September?---Yes.

Would you agree?---Yes.

30 Thank you. And then during the course of September and October you sent the same letter to Mrs XXXX on four to six occasions. Would you agree?
---No.

Did you send it to her again?---Not the same letter, no.

Or a similar letter alleging essentially that her husband was having an affair?---I sent two letters.

40 All right?---One in mid September and one later on. I can't recall (not transcribable) at the moment. But if I can refer to my notes, I can tell you a specific time.

Okay. Well, on 4 October, do you recall leaving a message on the home phone of the XXXX?---Yes. I don't know if it was 4 October, but I did, I did leave a message on their phone.

Encouraging Mrs XXXX to check the emails of Mr XXXX?---It could've been something along those lines. I can't recall at the moment.

Well, I'm suggesting to you that was the message?---Okay.

And you delivered it in a muffled way or you somehow muffled your voice so you weren't identifiable. Would you agree?---I didn't think I was muffled, but I delivered the message, yes.

And on 15 November, 2007 you had a letter delivered to Mrs XXXX at her work?---That's correct.

10

Now how did you find out where she worked?---From questions that I'd ask my wife, I learnt that she worked in some sort of facility, a hospital facility in the Concord area. I rang around and I found where she worked and got the details of her workplace.

So you didn't rely on Mr Mailey for that information?---Not that I can recall, no.

You did that yourself?---Yes.

20

And that letter was delivered by someone, was that, did Mr Mailey deliver that letter?---I don't know who delivered it, but I had organised for registered post to be sent to that work address.

Right. Well it'd be unlikely it was Mr Mailey then?---I don't believe it was Mr Mailey, no.

So you didn't ask IPP to deliver it for you?---No.

30 So you had it registered post?---Yes.

And that letter contained copies of two photos in it?---Yes.

And they were essentially print offs I think from a computer?---Yes.

Now are you able to tell the Commissioner how those photos came into existence?---I had a work colleague of mine photoshop them from other photos that I'd taken from the IPP reports, the photos, the two photos that I had.

40

And who was the work colleague?---Sorry, I don't understand your question.

I'm sorry, I thought you said you had a work colleague - - -?---Yes. A chap by the name of Nick Tantaro.

And did you tell him what you were doing and why you wanted these photos?---I, I lied to him. I said to him that I needed a favour. I explained

to him that I was playing a joke on my wife and another friend. And if he could assist me with cropping some photos and putting them together.

Were they photos taken of Mr XXXX during the surveillance?---Yes, I believe they were.

And I think you've indicated from the annual report? Is that what you just said?---No. No, I said I took photos that I was sent from IPP in their reports and those were the photos.

10

Okay. Sorry. And the photo of, sorry, Mr Tantaro works for the Council doesn't he or did?---He's a consultant contractor, yes.

And did you ask him to do this in Council time as part of his Council work?---No. No, it was a favour. I specifically said to him, I'm playing a joke on a friend, would you do this as a favour.

And the photo then, you used the surveillance photos from IPP - - -?---Yes.

20

- - - and photos you've held of your wife?---Yes.

And he, you had to get him to do it, did you, because you didn't have the technical skills?---Yes, I, I emailed him the photos. There were telephone conversations between he and I.

Ah hmm?---I described what I wanted from him. I sent him an email confirming what I wanted from the photos and he then produced them. I think he worked well into the morning hours to help me with that.

30

And there were two photos?---There were two photos, yes.

And can you describe those two photos?---One was a photo of my wife sitting on a bench with Mr XXXX in a park setting and the other was a picture of my wife and Mr XXXX sitting in a, in a car.

And so the IPP photos had, the surveillance photos you'd used essentially, if we go to the park one, was as I understand it at Observatory Hill?---Yes.

40

And Mr XXXX had been there for lunch one day when under surveillance? ---No.

So where did the wall photo come from?---I, I, I took the photo of the Observatory Hill site.

So you took the photo of the Observatory Hill site?---Yes, yes.

And then, this is getting more complicated. So there were three sets of photos to meld together?---There were a number of photos. I can't recall

how many but some I took, some I had in existence of my wife, some I took from the IPP reports.

And the two in the car, that was a particular site, wasn't it?---That was another site that I took a photo of, it was just a park setting.

Was there one that you'd taken a photo of at the Balmain Power Station?---I don't know where the Balmain Power Station is but there's a park adjacent to the Iron Cove Bridge - - -

10

Right?--- - - - and, and that's - - -

(not transcribable)?--- - - - where I took that photo.

So it had the Balmain Power Station in the back?---Possibly, I'm not familiar with that, no.

20 So you took both those photos and you had a, why did you go to those two sites? Well, let's take them one at a time so we're not confusing. Why did you go to Observatory Hill and take - - -?---In my interrogation of my wife during that period, which I'm much ashamed about, I, I learnt that she would have lunches with Mr XXXX occasionally in, in the park at Observatory Park.

And at the Balmain - - -?---And she did mention to me that on occasions they'd park near a, go for a drive and, and talk in the car at a park so I selected that one. It wasn't any rhyme or reason for it.

30 And do you recall when you took those photos?---No, not really.

But if records show that the letter was delivered on 15 November, 2007 would that accord with your recollection?---It sounds about right.

Which was the day before the letter we've looked at to Mr XXXX?---I can't remember the date on Mr XXXX's one but about that, yes.

Well, that was 16 November?---Yes.

40 And by this stage it was clear, wasn't it, what Mr XXXX' role in relation to both your wife and yourself were, that is, it had no connection to Burwood Council?---I don't agree with that. As I said earlier, I was quite stressed, confused and in my mind I, I couldn't determine one way or another what his role was.

You tried on several occasions to call Mr XXXX. Do you recall doing that?---There was a period of time in November where I wanted to speak to him about what I'd done with the letters and emails so there would have been a number of calls or attempted calls.

Well, what I'm suggesting to you is that, I'll just hand you this table. This is a summary table taken from your phone records and it appears that there were two unsuccessful, sorry, three unsuccessful calls on 16 September, 17 September and 28 November and then at 28 November you spoke to him for 57 seconds which is, in phone call land, a reasonable conversation and what I'd suggest to you on 28 November at 18.09, do you see that, the fourth entry there?---Yes.

10 You asked to meet him?---Yes.

And you were concerned, weren't you, because you'd been advised by your wife that XXXX was setting up an investigation into the emails that they'd received?---I don't know that they were setting up an investigation. There, there had been some investigative work that had already had occurred and my wife had been informed by Mr XXXX that the matter was being escalated. My wife came home quite concerned and I, I admitted to her at that point in time that it was me that was sending emails and letters. It was a difficult time. We discussed the situation and we arrived at the conclusion
20 that, that I would contact Mr XXXX and own up and admit that I was the one that was sending these emails and letters.

And did your wife advise you that KPMG had been brought in by XXXX to do an investigation?---Yes, several weeks earlier I had actually attended a meeting at KPMG in relation to this matter as well.

And so you knew that XXXX was spending money on an investigation by a third party?---Yes, I did.

30 And, but you were in possession of information that could have answered that pretty promptly, wasn't it, weren't you?---I was but, as I said earlier, I don't believe that I was in a state of mind that was rational or, or normal.

Well, thank you for that but you were able, were you not, at any stage to tell XXXX, don't waste your money on that, I can tell you it's me?---If I had been in a rational frame of mind, I, I wouldn't have even gotten to that point.

40 Well, you had all the information, would you agree, at all times?---It would appear so.

No doubt is there, Mr Romano?---Well, I mean we've been talking about it most of the day so, yes, there's a lot of information here.

27 November, sorry, you then went and met Mr XXXX. Do you agree?
---Yes, I did.

And you told him that it was you?---Yes.

And you asked him not to go to the police?---No, what I said to him was that I, I would appeal to his good nature that he would not proceed with the investigations.

And your wife also rang Mr XXXX?---The evening before she rang him, yeah, in my presence.

10 The 27, I'm sorry?---Yeah, on the evening before she rang him, in my presence, I asked her to.

Yes. And you were there?---Yes.

And that was 27 November at about 8.30pm?---Yes.

And you spoke, she spoke to Mr XXXX?---Yes.

And then you spoke to him briefly?---I can't recall if I did or not.

20 But you arranged to meet in a pub - - -?---Yes.

- - - in a hotel, sorry, in a licensed premise?---Yes.

And you did meet?---Yes.

And do you recall what you said?---I explained to him that I was the person that had sent the emails and letters to his wife. I apologised to his wife. I was deeply - - -

30 She was present as well - - -?---She was present.

- - - so it was Mr and Mrs XXXX?---That's correct.

And is that the first time you'd met Mrs XXXX?---Yes.

Was it the first time you'd met Mr XXXX?---Yes.

40 And at that stage you instructed IPP to cease their, 27 November you instructed IPP to cease the surveillance of Mr XXXX?---No, no, I, I had instructed Mr Mailey several weeks earlier to wind up the operations.

Are you sure about that?---Yes.

You see, the documents suggest that Mr XXXX had been away for two weeks and so there was no surveillance that was (not transcribable) prior to that and by 27 November he'd just returned from holidays and surveillance was commencing again until you instructed that it cease?---No, I don't recall that, no.

Right. But if that's what the IPP documents reflect - - -?---Well, I don't recall that. I was not aware that he was on holidays and I had instructed Mr Mailey well before the 28th. I don't even think the 28th was the day that we met with Mr XXXX. It might have been a week earlier.

No, Mr, well - - -?---It was, I, I recall meeting with Mr XXXX on a Tuesday night and it was the night that I was meant to attend a Council meeting. I have this information in my statement and I couldn't - - -

10

And you met at PJ Gallagher's - - -?---I didn't go to the Council meeting and as you've described in the last few moments, there were phone calls, we met up and had a discussion. The following day, which was a Wednesday, and it's clear in my mind, I met up with Mr, Mr XXXX. I don't believe it was the, I'm not sure that it was the 28th but I can confirm the dates if you'll allow me to look at my statement.

20

And now, I just want to turn to the issue of payment. You asked Mr Mailey to put a false description on the invoices that he submitted on behalf of IPP or he instructed others to prepare on behalf of IPP?---No.

Would you agree?---No.

Well, they did have false descriptions on them, didn't they?---Well, they're unusual descriptions.

I'm sorry?---They were very unusual descriptions. I, I've had a look at recently to refresh my memory and they look quite unusual, yes.

30

And I suggest that that happened at your request?---No, that's not right.

So you say, do you, that that was a matter for IPP?---Yes.

You see, I suggest to you that you asked Mr Mailey to put it, put false descriptors on the invoices so that no one in Council would know what the services being provided were, would you agree?---Well, there were attachments to the invoices that clearly indicated the surveillance days. Why would I do that?

40

Mr Romano, could I just ask you listen to the question and I know that you've got a number of things you want to say and you understand that your counsel will have an opportunity to ask you questions when you can give explanations later. Do you understand that?---Yes.

So if I could ask you just to listen to the question and answer?---Okay.

What I'm suggesting to you is that you gave Mr Mailey a specific instructions to put a false description on the invoice so it could pass through

the Council processing payment areas without any questions being asked, would you agree?---No.

Thank you. Now, you'd agree, wouldn't you, that it's normal practice for there to be a purchase order attached to invoices when they go through the payment process system?---That's correct.

10 And what I suggest to you is none of the invoices relating to what I will call the XXXX surveillance had any purchase order attached, would you agree?--That's correct.

And can you explain why that was?---Our practice at Council isn't consistent. There are many invoices that are processed without purchase orders. This particular exercise I did not produce a purchase order but it's not uncommon for me and others at Council to process invoices without a purchase order.

20 All right. Now, if I can show you, I can show you this document. It's a series of invoices which I'll just take you to. This is the first invoice that relates and just so you understand, the ones that I'm putting to you relate to this surveillance are taken partly from the IPP records where they've been married with the surveillance details that are attached. Do you see that?---Yes.

And this one says. "Investigations unauthorised use of premises". Now, there had been a number of investigations, had there not, at Burwood about brothels being an unauthorised use of premises?---There are a number of properties that we used IPP to do some surveillance work, yes.

30 So that that in and of itself was not unusual, was it?---No, I don't understand what you're asking me.

Well, a moment ago you said you'd recently had occasion to look at the invoices and they looked unusual?---They do look unusual, yes.

Well, what do you say looks unusual about this one?---Well, the description doesn't appear to match the, the dates and the work that might've occurred as described in the second page.

40 That's right?---Yeah.

Just look at the invoice itself?---Yes.

If you saw the invoice and you didn't have the attachment, is there anything you say that's unusual about it then?---Well, if I didn't know what the work was I would question it and I would get more information.

But you're the person, one of the two people responsible for signing it?---
Yes.

And you knew what the work was?---Yes.

You knew it was the surveillance that you organised of Mr XXXX?---Yes.

10 So that you at least were in full information, didn't matter what it said on
the invoice, did it?---Well, I don't know that it doesn't matter but the
services were provided.

But your state of knowledge it didn't matter what the description was on the
invoice, did it?---I didn't go to that level of detail, no. I, I, I didn't question
the description on there, no.

You knew that Mr XXXX was under surveillance and when you looked at
the dates you knew that the work was for him?---Yes.

20 Yes. And did you tell Mr Hullick that's what it was for?---I don't know that
I had a discussion with him about this.

Well, Mr Hullick, as I understand it, is the second signature?---It would
appear so, yes.

And the, see where it says, "LH to sign" see that handwriting in the middle
of the stamp there?---Yes.

Is that your handwriting?---No.

30 So that's someone else has decided that Mr Hullick has to sign it?---Usually
when I received an invoice like this with a stamp on it, it would have
notations of that sort on it already so I wouldn't know who put that on there.

So, but you agree that you authorised it?---Yes.

And you didn't ever had a discussion with Mr Hullick telling him that Mr
XXXX was being followed?---No.

40 He was under surveillance and that this was a bill for that?---No, you will
recall that I said that I had talked to my executive about surveillance work
and, and other things that I was doing at the time.

Yes, but Mr Romano - - -?--- - - - specifically to this invoice, no, I never had
any discussions.

I'm asking you a very specific question about this specific invoice, okay?---
Yes.

So it's an invoice dated 2 November, 2007, and it's for a quantum of \$4,136. Did you ever have a discussion with Mr Hullick about this and say this actually arises because Mr John XXXX is under surveillance?---I don't recall having any discussions with him.

In relation to this invoice or any others?---I don't recall having discussions about this invoice or other invoices.

10 Now, if you look at the second page, sorry, just assist me here. When it's processed, does the second page stay with it or do you remove the second page?---No, I don't remove anything. I keep everything intact.

Well, you see that the subject matter remains the same, unauthorised use of premises?---Yes.

And then it sets out some travelling time?---Yes.

Hours of investigation?---Yes.

20 Now, there's nothing on the face of this document, if you didn't know it was really about Mr XXXX, that would tell anyone that it wasn't the sort of activity that it was pretending to be, was it?---I'm sorry, could you ask, ask the question again.

There's nothing unusual about the disbursements listing. If you thought it was for unauthorised use of premises there's nothing they'd left off the page to suggest to you that it wasn't?---Well, it would appear to be surveillance work.

30 Well, one of the ways you determine whether the premises are being used in an unauthorised manner is to place the premises under surveillance, isn't it? ---Yes.

So there's nothing intrinsically odd about that?---No.

So what is it you say that's unusual?---Just the descriptors. It doesn't appear to match accurately what might happen. It, it refers to premises.

40 But, Mr Romano, you bring to it a knowledge that it is in fact a false description of the work, don't you?---No, I don't. I don't print the invoices. I don't tell people what to put on them. The work was done. I made a decision that it was in relation to the surveillance work and I authorised it.

What do you understand your obligations are as the most senior employee of the Council when you sign a document authorising payment by Council funds?---I understand that I need to ensure that it is a valid and a proper invoice, that I need to ensure that the works have actually been done and the

product has been provided and I ensure that the processes of Council have been followed.

Well, you knew when you signed this it was a false description, would you agree?---Well, no I, I did not. It did not pass my mind at the time that it was a false description.

You knew it related to the XXXX surveillance, didn't you, when you signed it off?---Yes.

10

Yes. And that the XXXX surveillance had nothing to do with unauthorised use of premises, did it?---Well, I presume not.

So you knew when you signed it off that it was not a correct description of the services delivered, would you agree?---it would appear that way but I did not know that, it's not something I would have taken that much attention to. The work was done. I don't go scrutinising descriptions.

20

The work was then given an allocation for what category of where it would fall within the accounts?---yes.

And you see that number 09406 (not transcribable)?---Yes.

You see that? Now, who makes that decision?---I, I'm not sure. I don't, I'm not able to give an answer to that. I don't know./

So were you asked about where was this, these amounts to be put, what they were meant to be put against?---I don't recall being asked, no.

30

And because I'd suggest to you that were put against two other accounts, one about the civic precinct, but wouldn't be your decision, is that what you're saying?---I didn't make that decision, no.

You see, that number, 09406 et cetera, was civic precinct property disposal supply and services, do you see that?---(NO AUDIBLE REPLY)

40

And so that in a sense buries the cost, doesn't it, because obviously the surveillance of Mr XXXX didn't have anything to do with the civic precinct property disposal, did it?---I wouldn't know whether it buries it or not but I, I'm not aware of that number and I did not put that number on there.

And I'll show you the next invoice. This is one dated 12 November, 2007. Do you see that?---Yes.

And this one's for placement of illegal posters, an extra \$9, 779. Do you see that?---Yes. Yep.

And you'll see it's got a number of pages attached to it?---Yes.

And you understand that that is the surveillance of Mr XXXX?---No.

No?---I never had any surveillance on Mr XXXX on 18 September, so, no.

All right?---I don't - - -

10 Looking through the rest - - ?---I don't recall surveillance being done on the 24th, 25th, 26th, 28th. From the 14th onwards, I do recall. But I don't believe the 14th was the first day.

So some of this could be related to, well, did you use IPP to, a special surveillance for the placement of illegal posters?---Yes, we did at some point.

When was that?---Some time around that period, but I couldn't be certain without looking at my files.

20 And what was the problem?---There was companies that were posing illegal posters on power poles.

What sort of illegal posters?---The normal ones that you would see on a power pole advertising concerts, musicians and the like.

30 And why did that need Mr, there was someone from IPP for surveillance? ---The law that relates to the posting of those sorts of posters is quite complex. It's an involved process. The only way that we can, as a Council prosecute or take people, individual people or companies to task is to actually catch them in the act. So I asked IPP to undertake surveillance of the area, of the municipality to catch individuals in the act and then have them questioned as to who employed them, so that we could then take action against the individual and the company.

And Council had it's own surveillance staff?---I'm not sure what (not transcribable)

Had compliance staff?---We have compliance staff, yes.

40 And why were they not able to do that job?---Our rangers and our parking patrol officers are very, very busy. They have been and generally are quite involved in other matters in the municipality. They didn't have the time and I don't believe they would've had the skills to get involved in this sort of activity.

And why was that a particular priority that warranted expenditure of funds on an external consultant?---I've received numerous complaints over the years in relation to illegal (not transcribable) posters on buildings, power poles and the like. Our Council had a specific interest in those sorts of

illegal activities. And the mayor at the time was quite concerned about the appearance and, and those illegal activities. So I took the decision to, not just on one occasion, but on a number of occasions to engage IPP to help us with this particular problem.

Thank you. Just bear with me. Excuse me for a moment. I was just having a document (not transcribable) problem, Mr Romano. So we might have to return to the other invoices at a later date. In relation to the date that the witness mean to say was discontinued, if I could just show you, show you
10 this document. This is a document from Miss Malouf dated 28 November, 2007. Do you see that? At 12.27, sent to you. And that's called the XXXX, XXXX Investigations. Right. And you'll see attached to it is day 25, Tuesday, 27 November, 2007. It sets out what happened and then at, see the very last entry just above David, 10.30am the surveillance was discontinued as instructed. Does that assist you now to recall the dates which you instructed, which I'm suggesting to you was 27 November, 2007 (not transcribable)?---Sorry, if I may rephrase that. There was some work that Mr Mailey continued to do well after I had instructed him to stop.
20 There was one day which was, it must've been the 27th, I thought it was a Monday, where he conducted surveillance. It was a week away or apart from the last piece of surveillance that I thought had been undertaken. And in fact even in the last week of the surveillance I was quite annoyed with him that he continued to do work in that week. When I challenged him about it he said to me that, well he had people in the field and he just wanted to complete the work because he didn't want to fail in any task that his clients had given him and he felt obliged to try and find some evidence that I was looking for. And it was a week and one day, which was well apart from the, where I thought the work had finished that he undertook further works without, without my knowledge and without m consent.
30 quite annoyed about about.

Now one of your instructions in relation to the pursuit of the surveillance of Mr XXXX was to see if he was or to photograph or record him being with any woman or any women?---Yeah.

That was a specific instruction that you gave wasn't it?---No.

Now in December, sorry, Commissioner, if I could tender that bundle of
40 invoices.

ASSISTANT COMMISSIONER: Yes. Those IPP invoices will be Exhibit 5.

#EXHIBIT 5 - TWO IPP CONSULTING PTY LTD INVOICES TO MR ROMANO – ONE DATED 2 NOVEMBER 2007 AND 12 NOVEMBER 2007

MS RONALDS: Telephone records for Mr Romano of the four phone calls to (not transcribable)

ASSISTANT COMMISSIONER: Yes. Those telephone call records will be Exhibit 6.

10 **#EXHIBIT 6 - TELEPHONE RECORDS FOR TELEPHONE CONTACT FROM ROMANO MOBILE SERVICE TO XXXX SERVICES**

MS RONALDS: And then the last email to which I just referred, 28 November, 2007.

ASSISTANT COMMISSIONER: That email will be Exhibit 7.

20 **#EXHIBIT 7 - EMAIL DATED FROM YASMIN MALOUF DATED 28 NOVEMBER 2007 RE XXXX INVESTIGATIONS WITH ATTACHMENT**

MS RONALDS: Now on or about 17 December, 2009 you've had a conversation with Mr David Baird. Now, if I could just stop there and Mr David Baird is a lawyer?---(NO AUDIBLE REPLY)

30 You have to answer Mr Romano, it doesn't pick up on the - - -?---Sorry?

The transcript doesn't pick up your head nodding. It's necessary to actually answer?---Yes. Sorry, what was your question?

Mr Baird is a lawyer?---Yes, that's correct.

And he was a partner at a law firm called Maddocks?---That's correct.

40 And he's now moved to another law firm?---That's correct.

And when he was at Maddocks, you had, you provided substantial instructions to Mr Baird in relation to Council matters?---Yes.

And you saw quite a lot of him?---Yes.

How did you meet Mr Baird?---Through his law business.

So when you went to Burwood Council had you known him prior to that, that is prior to September, 2002?---No. No.

And prior to you arriving at the Council were Maddocks on, providing legal services to Burwood Council?---I can't recall for certain, but I believe so.

Was there a panel of lawyers?---Yes. Yes.

10 And when did that come into existence?---I believe the panel that was in place when I started had been established well before my arrival.

Right. And during the course of your time from 2005 let's say onwards, there was a panel in existence?---Yes.

20 And how did the panel work? Was it a panel by rotation? Some people have panels and they have six people and then each matter goes one, two, three, four and then back to one?---No, we weren't that scientific about it. Staff would choose who they preferred to deal with from that panel. I developed a good working relationship with Mr Baird and, particular in planning law matters. I, I consulted in him and sought his advice on many occasions.

Well, you used him for quite significant pieces of advice other than just planning, didn't you?---There were other bits of advice that he provided as well, yes.

And there was quite a significant payment of Council funds from Council to Maddocks?---I would believe so, yes.

30 And that was your choice, when you chose Mr Baird I'm just wondering about how you went about it. Did you look at the panel and think this one I'll give to Mr Baird or did you just automatically go to Mr Baird?---No, I, I, I did review the documents that were submitted as part of the submission and acceptance process for the panels and in the documents that I picked up from Maddocks I, I noted that they were quite skilled at planning law and that's where I made the decision that I would test them out and use them and once that testing process occurred and, and I was satisfied with the results I was getting I continued to use them.

40 You used them also for employment matters?---Yes, we did.

And by December 2009 Mr Baird describes you as a "good friend" of him. Would you use the same descriptor?---I think I would, yes.

That's by December 2009?---Yes.

When do you say that the relationship moved from strictly personal, strictly professional to being personal as well?---I'm, I'm not sure. I, I don't know that I can really answer that question. It grew over time.

Well, you seem to have, just going on your parking apart from anything else, you seemed to spend a lot of time at Maddocks?---(not transcribable)

10 Would that be correct, during the course of 2007 and onwards?---I did spend a fair bit of time on projects with Mr Baird. He was specifically involved in our library project which was an ongoing project. It was quite complex. There were many, many matters and permutations to that project and I had cause to meet with him frequently.

Now on 17 December, 2009 at approximately 3 o'clock you telephoned Mr Baird and asked to meet him urgently. Do you recall doing that? ---Look, I don't recall that specific conversation, no.

And you said, you then met him?---Yes.

20 He reports that you seemed a little, I'll just make sure I've got the right word, sorry, I withdraw that. And you met him and he, you said to him, this is his record of the conversation which I'm going to put to you now so anything you don't agree with just say so, I just received information that ICAC are alleging that I hired the services of a private detective, Mr Mailey, to undertake surveillance of my wife's workplace and in particular a person employed at that location. Now, do you remember saying that to Mr Baird on 17 November, 17 December, 2009?---I don't remember those specific words but I do remember having a conversation with him about it.

30 But that's what happened, was it, you found out and I'll take you through the course of that, but you found out that this Commission was looking at the surveillance of Mr XXXX to put it in the shorthand?---All right, right, yeah, I did, I was aware that, that the Commission was looking at that issue, yes.

And you became aware of that because Mr Mailey told you?---I don't believe so.

40 Well, what I'm suggesting to you is Mr Mailey contacted you, on or around 16 or 17 December, 2009, and told you that IPP had received a notice from this Commission requiring them to produce documents on the XXXX' surveillance?---I had a conversation over the phone with Mr Mailey. He wanted to come and see our new premises at, at the Council. I invited him to come over and, and have a look at the premises. When he arrived I did ask him if he'd been interviewed, he said yes. I, we didn't talk about any further matters. So, you know, he, he said, look, I'm not allowed to talk to you, I said that's fine and I didn't.

All right. So you say it wasn't Mr Mailey who told you specifically about this Commission looking at the XXXX' surveillance?---I, I guess that having heard he had been interviewed that that would have been something that you would have asked.

But you're saying he didn't tell you?---No.

10 So you don't know what happened that on 17 December you needed to meet with Mr Baird urgently?---Well, I don't know that I needed to meet with him urgently but I, I did meet with him and I did convey to him that there were matters pertaining to the surveillance that I was concerned about.

And Mr Baird records you as sounding distressed and quite agitated. Is that how you remember yourself on 17 December, 2009?---Well, I mean, I wasn't looking at myself, I don't, I'm not saying that to be funny but I don't believe that I was agitated or stressed.

20 Well, Mr Baird by then is your good friend?---If that's what Mr Baird recalls I'm not going to dispute it but I don't recall myself being distressed.

30 But telling him that you had just received information that this Commission was looking at the thing I just read, Mr Mailey and that would be consistent with what you're understanding was?---I can't recall using the words just received information but I did speak to him about the surveillance work. I felt that I needed to tell him about that because he wasn't aware of it. He then ended the conversation quite quickly and said I don't want you to talk to me anymore. This is a compromising issue. You should talk to your lawyer about it.

And you told him that you'd already spoken to Stephen Gorry?---Yes, and Mr Gorry had suggested that I speak to Mr Baird and let him know about it.

And just so the Commissioner understands, Mr Gorry is a partner at Henry Davis York?---That's correct.

And they are your private solicitors?---Well - - -

40 That is, they are acting for you?---Well, they are acting for me. I understood them to be acting for me as the general manager in my, in my interests.

Do you understand they are two quite, they could be two quite separate things?---Look, I understand that they might be but given, given the circumstances and the fact that I am the general manager and that there are issues at I'm contending, I think that the matters are blurred.

So you then go on to say certain other matters to Mr Baird. Do you remember what you told him?---No.

You've just given an outline but do you remember specifically what you told him?---No, I can't recall at the moment.

10 He records you saying, is, "This person was at the time a person that I suspected of undertaking harassment and/or threatening conduct towards me and my family?"---I don't know that I said those words specifically, I might have used the words could have been because I at that point did not know.

"I was not aware of the relationship of this man with my wife in terms of working at the same office when I authorised surveillance." Do you remember saying that to Mr Baird?---Well, that's correct. Yeah, I probably, I would have said words to that effect, yeah.

20 "I suspected that this may have been a person who had dealings with Burwood Council and therefore consistent with my earlier suspicions that persons who currently had matters before Council were undertaking this type of conduct." Do you remember saying that to Mr Baird?---I don't recall that, no.

I was informed that after a period of weeks if not months of surveillance Mr Mailey was finally able to confirm the identity of this man and the context in which he worked. Do you remember saying that to Mr Baird? ---No.

Because that wouldn't be right, would it?---No.

30 You'd given the name of John XXXX to Mr Mailey, not the reverse proposition?---Well, as I explained earlier, I gave a number of names to Mr Mailey.

Yes, just focussing on Mr XXXX if you would, please, Mr Romano. Going back to what Mr Baird records you saying to him, "I was informed that after a period of weeks if not months of surveillance Mr Mailey was finally able to confirm the identity of this man." That's simply - - -?---I did not say that.

40 - - - not correct, is it?---I did not say that.

So you're sure now you didn't say it, "and the context in which he worked." Now, if we go back to the earlier reports that I showed you earlier, the 4 November one, that's clear where he's going to work, isn't it?---I don't understand what you're asking me.

Well, surveillance operatives followed Mr XXXX to his work from 26 September, didn't they?---Yes.

And you weren't in any doubt about where he worked, where you?---No, I knew before the surveillance was started where he worked, yes.

Yes. You'd been sending emails and writing letters about where he worked?---Yes, that's correct.

There was never any doubt in your mind that he worked in the same place as your wife?---Absolutely.

10 So if you'd said to Mr Baird they were finally able to confirm the identity of this man that would have been a false statement, wouldn't it?---The meeting was a very short meeting. We, we did not go to that length of detail.

He then records that you said "He," meaning Mr Mailey, "confirmed this to me that the person in question didn't have any dealing with Burwood Council. At that point in time I terminated the surveillance of this person by Mr Mailey?"---I didn't have that discussion with him.

20 You say you didn't say any of that to Mr Baird?---No.

So if Mr Baird in a statement to this Commission has recorded that statement you'd say that's wrong?---I don't recall having that discussion with him.

Then Mr Baird records that he asked you how much did the surveillance cost. Remember Mr Baird asking you that?---No.

30 And you said in the order of 10 to \$15,000. Do you remember telling him that?---I don't recall that, no.

And you understand that we say that it was \$44,000?---Well, that's a figure I've heard today. I don't know that that's correct or not.

Okay. And Mr Baird records that he asked you who paid the bill and that you said Council paid the bill?---I don't recall having any of this discussion with him.

40 And I said, Mr Baird says that he said to you, "This is problematic, you may be required to repay that amount of the bill that could be attributed to this part of the surveillance." Do you remember him telling you that?---I don't recall that.

And other matters about telling Mr Gorry?---We did definitely speak about talking with Mr Gorry but I had already spoken to him.

And I'm not asking about that. Now, so you were concerned enough to speak to Mr Baird about the surveillance of Mr XXXX?---I felt obliged and I had also received advice from my lawyer that I should tell him so I did.

And what did you think you needed to tell him?---That there had been surveillance work done and that John XXXX had been the subject of surveillance and I wanted him to know that the person worked with my wife.

And that there was no connection with Burwood Council?---I didn't talk about that. We never talked about that or the detail.

10 So Mr Baird would have got that wrong if that - - -?---I can't recall that.

So you told Mr Baird. Did you discuss it with the mayor on or about 17 December, 2009?---I don't recall having a discussion with the mayor.

Did you or didn't you or you don't recall?---I don't recall.

If it was important enough to talk to your lawyer about and it is enough to talk to, I'm sorry, I'll go back step. Were you talking to Mr Baird as a friend or were you talking to him because you understood he was the
20 Council lawyer in relation to the- - -?---I think it was a combination of both. He was a friend but he was also Council's lawyer.

And so you thought it was important to talk to Mr Baird because he was Council's lawyer, and you thought it was important to talk to your own lawyer and they both said certain things to you. And – sorry, you have to agree or not?---Well, they said certain things, yes.

And I'm asking you, who else did you tell then?---I don't believe I told anyone else.
30

Did you ask for a review of the file to determine the cost?---In January this year, I sought information from my accounts area. I specifically received invoices from IPP, I was reviewing them, I wanted to refresh my memory and to get an understanding of the quantity of dollars that might have been involved. I then proceeded to ring John Curtis at IPP and also Mr Neil Webb at ACP. Mr Neil Webb said to me that he wasn't allowed to talk to me. I said to him, "Look, I'm just looking for this information I don't want you to talk to me." He suggested that he needed to get permission from the Commission, I agreed. He got that permission and then he released the
40 information to me.

But that was about the home security alarms wasn't it?---Um, and (not transcribable) a lot more (not transcribable) surveillance and the alarm and Mr Curtis gave me the invoices that related to both those activities and Mr Webb in relation to the other ones.

So did you discuss it with the Mayor at any stage?---Um, I can't recall speaking to the Mayor specifically about um, um, surveillance. I might have had discussions with him about the alarm system.

But you're concerned that this Commission was looking at the surveillance issue, that's what you told Mr Baird.---Ah hmm.

10 And that's on the 17th of December, so I'm just trying to explore what internally you did after you had talked to two lawyers. Did you discuss it with the executive team?---No.

And you don't recall, so it's unlikely is it, that you discussed it with the Mayor on or around 17 December, 2009?---I don't recall speaking to him.

20 Sorry, if I could just have a moment please. Now I've just mentioned the home security alarm systems, I want to turn to that issue now if I may Mr Romano, just bear with me one second. Now, Council paid for you and Mr Faker to have home security systems installed in late '07 and early 2008. As such, that's the proposition. Would you agree?---Yes.

And Mr Faker, was at that point, Mayor?---Yes.

And you had some discussions in October 2007 with Mr Faker about alarms?---And Mr Baird.

Yes, let's just do them one at a time Mr Romano. Do you say you had a discussion with Mr Faker and Mr Baird simultaneously, that is, they were all there together?---Yes.

30 Mr Baird is often, was often at the premises of the Council. Is that correct? ---Yes.

And so a number of discussion that you have with him are not recorded as meetings at Maddocks because he's actually at the Council's premises? ---Um, yes.

40 Now, you detailed earlier, your evidence about what you say was the harassment of you and your house, just bear with me while I find my notes so that I don't mis-state what you said. Do you recall that?---I gave evidence to that effect, yes.

And you say you discussed that with the executive?---At some point I did, yes.

Do you recall telling the executive that your wife had received accusations via an email that you were having an affair?---No.

Is that possible that you said something like that?---I don't recall saying words to that affect, no.

And do you recall telling members of the executive including Mr Cummins that there was an accusation that you had had an affair?---No.

And that that was a false accusation?---No, I don't recall those words at all. What I said on the day was that - - -

10 Sorry, which day is that?---On the day that I spoke to my executive, what I said to them was that I was receiving harassing calls and harassment at my home and described some of the things that had occurred to me. And I said to them that I didn't know whether they were related to business or a personal matter. I didn't elaborate.

All right. If others recall you saying that there was an allegation in an email sent to your wife that you were having an affair, that would be wrong would it?---Well, I don't, I don't recall that, no.

20 And there was in fact no email sent to your wife as far as you know alleging you were having an affair?---No.

In fact the only emails about affairs were the one's you'd initiated- - -?
---That's correct.

- - -and sent anonymously.---That's correct.

Now in October, 2007 you told Mr Bob Howe that unknown persons were attacking you recall that – and threatening you?---I used the words harassing
30 me I don't think I used the words attacking me.

Now, can you just explain to the Commissioner who Mr Howe is and how come he fits into the Burwood Council mix?---Um, Mr Bob Howe was the recruitment consultant at the time that I was employed at the Council. After I was appointed as the General Manager, I retained Mr Howe and the mayor of the day retained Mr Howe as well. The mayor of the day retained him for the purpose of reviewing my performance reviews. I retained him to do other type of human resource type work at Council which included a new structure, appointing senior staff that would report to me and the like.

40 And you consulted him about this issue didn't you, about the alarms?---Yes, I did.

All right. I'll just show you this document. You'll see there, there's an email from Mr Howe to you dated the 24 October, 2007. I'll show you the hard copy if you like. So the surveillance of Mr XXXX starts on the 26 October, 2007 but this is 24 October, 2007. He says, "Pat, please find attached my assessment." And then you send it to John at that instance, if I

could take you to the top bit of that email, reading from the bottom up, is Mr Faker. Is that correct?---Yes.

Right. Upon receiving advice from Maddocks our action, implementation of the security system. So you've already made a decision have you by then that you will action the implementation of the security systems?---What I meant in that email was that subject to the advice I received from Maddocks, I will then look at implementing the security system, depending on the advice I received.

10

So you agree that's, it's not as vague as that is it? It's not as general as that is it?---No. But I can - - -

Sorry, I'll withdraw that, it's not as conditional as that is it?---Well, it's not definitive.

It says that upon receiving advice from Maddocks, I'll action implementation of the security system?---Yeah, I was referring to advice that I was waiting on from Maddocks, yes.

20

It sounds like you've already made your decision?---No.

So could I ask you to turn to the next page. Under the heading Strategic Consulting Solutions Pty Limited, there's a, you'll see addressed to you? ---Yes.

30

And it sets out several matters in relation to Mr Howell. Now given what you've just outlined his background in terms of your recruitment and your performance et cetera, what particular expertise did he bring did you think to this matter about whether you were entitled to do it or not?---What I was seeking to find out was specifically whether or not General Managers had had security systems put into their homes.

That's not an issue who traverses in this is it? I understand that's an issue you raise later. Just take a moment to read it Mr Romano. I don't want you to, it's probably a while since you looked at it?---Yes.

40

Oh, sorry, he does refer to it in the last, in the fourth, third paragraph, the last sentence, my understanding, but the focus of it is really about whether it fits within your contractual terms and whether it should occur?---I (not transcribable) your questions, I mean, is it something that I'm entitled to, that is detailed in my contract and he was familiar with my contract, 'cause he prepared it and reviewed it a number of times over the course of the years.

Ah hmm?---And secondly I wanted to know whether or not other General Managers were, had faced similar situations and had alarm systems or upgrades done on their home.

And he says at this time I understand there's no clear identification of the person or persons involved nor the extent of the risk. So that's 24 October, so Mr XXXX was being followed but, so he's not referred to there is he, because he's been clearly identified?---No, he wasn't identified in this letter.

However, it would be unwise to disregard potential risk to the two families involved especially with children. So you then sent that on to Mr Faker and to Mr Baird?---Yes.

10

All right. And then you had a discussion, do you recall with Mr Mailey?---I had many discussions with Mr Mailey. Can you be more specific or - - -

Well, about security of your home?---Throughout mid October and the ensuing weeks I had a number of discussions with Mr Mailey about my security at my home.

And Mr Mailey came to your home to do an assessment of your home. Do you remember that?---Yes, that's correct. Yes.

20

And that's about 24 or 25 October?---Look, I can't recall just as this moment, but in my statement I did clearly indicate the days because I had access to my diaries and so on.

And then on 24 October he sent you an email about security systems. Do you see that one? So that would be consistent with having had a conversation - - -?---Yes.

30

- - - and then he sent you certain material about it?---Yes, that's correct.

So it was on or about that date. Right?---Yes.

Okay. And you then sought legal advice from Mr Baird?---On the same day that I spoke to Mr Howell, I also emailed Mr Howell and I emailed Mr Baird.

40

Right?---The email to Mr Baird was slightly different in that I'd had discussions with him a couple of weeks earlier with the mayor. So, I was waiting on that advice, I hadn't received it and was seeking to expedite that matter.

So why did you go to Mr Baird at that point?---I wasn't clear at that point in time as to what authority I had in terms of exercising or sorry, approving surveillance and or approving the alarm systems. I, I wanted to get some clarity from a legal sense as to whether or not I had that authority to move forward.

I understand that. I'm asking you why you went to Mr Baird. I think you've told us Mr Baird was a planning lawyer?---Well, he was someone that I worked with closely. I trusted in his judgment. I, I didn't think otherwise not to use him.

Did you look at the panel and think that no one else - - -?---No, I didn't, I didn't look at the panel, no, I immediately thought of him.

10 And Mr Baird, or those acting on his behalf, sent you a draft advice dated 7 November, 2007. Do you remember receiving that?---Yes.

Now, if I could take you to the background on page 2, sorry, do you need a moment just to look through it and refresh your memory about it?---No, I, I recall the, the document.

Now, the background you told Mr Baird that you and your wife had suffered harassing telephone calls and emails over a period of weeks from an unknown source?---Yes.

20 Now, I've not seen any emails. Did you keep any copies of any emails?
---The emails and the package that I refer to in this or that's referred to in the background are fabricated, they're not right. The remainder of the background is, is roughly correct.

So you didn't tell Mr Baird, you didn't give Mr Baird accurate facts upon which to base his advice. Is that correct?---I would agree with that.

30 So at best you exaggerated the degree and level of harassment that you say the family was subjected to or the family home had been subjected to?---I, I may have put a bit of exaggeration on it but I was very, very concerned. I was quite emotionally upset and mentally fatigued at the time.

And you exaggerated your position?---I may have exaggerated my position.

So number 2, paragraph number 5, you have received hand-delivered packages to your home which caused your family much distress. That never happened, did it?---There was a letter that I received in early September in the mail.

40 Where's that, Mr Romano?---I threw it away.

What did it say?---It referred to the weekend, I can't remember the exact words but I've written it in my statement. If you'll allow me to have access to my statement I can read the words to you.

Doing the best you can?---Words to the effect, something about the weekend, you had a good weekend or something along those lines.

Why did you throw it away?---I was angry, I was concerned at my wife's well-being. She, she suffers from depression. She was on medication. We'd been experiencing enormous difficulty in our life during that year. I thought this is just another, another issue that I had to worry about.

It was a private matter, wasn't it?---Yeah.

Sorry?---What, sorry?

10 It was a private matter between you and your wife?---What was?

The matters you've just indicated?---There was a lot of stress in our private life but the harassment wasn't private, someone was harassing me and my family, you know, we got a letter in the mail and I'd been, the weekend before my home had been violated. I was quite upset.

All right. But you agree that hand-delivered packages is an exaggeration? ---It was a letter in the mail, it wasn't a package.

20 The only package that was ever delivered was delivered by, on your behalf to Mrs XXXX?---They were letters but there was, there was a package that I fabricated at my home for my own fruition.

Thank you?---Okay.

Your home had had eggs thrown at it and you've told us about that. You've engaged a private investigator to conduct an investigation and issue a report to yourself?---Yes.

30 Now, as of 7 November or as of receiving this on 7 November the only investigation being conducted was into Mr XXXX, wasn't it?---At that - - -

You didn't have another investigator doing another report that wasn't IPP, was it?---No.

(not transcribable)?---No, there wasn't.

So it was only IPP?---As far as, yeah, yes.

40 And they were only looking at Mr XXXX?---Well, and the others but they hadn't commenced surveillance on the others.

There was never any surveillance on the others, was there?---No.

No. So when this draft advice arrives to you from Mr Baird what did you understand the role of sending a draft advice was?---He had a practice of sending draft advice. I, I would look it, I would ask him questions and if there were elements that he hadn't covered in terms of my questioning he

would go back and renew his advice to cover any questions I might have had.

And one of your roles as general manger was a draft advice from Maddocks was to correct, to ensure that the facts as asserted by you to Mr Baird were correct?---That's right.

And you left these facts, these same facts appear in the final advice just for a shortcut?---Yes.

10

So you didn't correct them to him?---No.

You didn't tell him they were wrong?---No.

Now, "You have reported the events, the above events to the local police including the conclusions of the investigator," you hadn't done that, had you?

---I'm sorry, could you ask that question again.

20

Number 8?---Yes.

"You have reported the above events to the local police including conclusions of the investigator." You hadn't done that, had you?---I had rung the local police. I don't understand what the words "including the conclusions of the investigator," I don't know what that means.

30

Well, one refer, the one above, number 7, talks about issuing a report to yourself. It appears that what you must have told Mr Baird was that there'd been a report with some conclusions?---Look, I, I didn't look at the background in that level of detail but there was no report. I hadn't, we hadn't started the surveillance at that point in time, there was some work that Richard said that he had undertaken which was to check numbers and names and so on but I had no idea what that involved.

Mr Romano, I know you've been in the box a long time, just so you don't get confused, this is 7 November. The surveillance of Mr XXXX was - - -?
---Sorry, my mind is - - -

40

Yes. Do you need a break for a minute?---I think so.

Yes, I think you better. If we could just have a five minute adjournment, Mr Romano seems to have lost concentration.

ASSISTANT COMMISSIONER: Yes.

SHORT ADJOURNMENT

[3.22pm]

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: I'll just tender and for the information of our friends we'll provide these documents at the end of the day. I tender the Bob Howe email with the attachment, that's 8 I think.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 8.

10 **#EXHIBIT 8 – EMAIL FROM MR HOWE TO MR ROMANO
DATED 24 OCTOBER 2007 RE SECURITY FOR GENERAL
MANAGER AND MAYOR**

MS RONALDS: The Pat Romano and Richard Mailey exchange about security systems on 25 October.

ASSISTANT COMMISSIONER: Exhibit 9.

20 **#EXHIBIT 9 – EMAIL DATED 25 OCTOBER 2007 FROM MR
ROMANO TO MR MAILEY RE INTERCOMS HOME**

MS RONALDS: And the draft legal advice from Maddocks, the one that we're going through at the moment.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 10.

30 **#EXHIBIT 10 – LETTER TO MR ROMANO DATED 7 NOVEMBER
2007 FROM MR BAIRD**

MS RONALDS: Are you right Mr Romano?---Yes.

You have the draft advice still in front of you.---Yes.

40 You see that we're on page 2 and we've got to 8. You say that you reported it to the local police. Now there was no formal, there's nothing recorded. The police run a system called the COPS system, I don't know that you know that and any formal report made to them is always recorded in the police system.---I need to correct myself, I rang the local police, I didn't file a police report.

And there's no COPS record of any formal, there is for the other matter that we'll get to later.---Yes.

The texts and you know what I mean by that, later.---Yes.

But at this stage there doesn't seem to be any sort of report according to our research- -?---I didn't file a police report.

And you didn't ever tell them what the conclusions of the investigator were whatever they may have been?---Um - - -

10 And we don't know what that means. Is that right?---I'm not sure what that means, I may be I was mis-interpreted when I briefed Mr Baird or others about this, I'm not sure but those words may - - -

Now this says a security system has been installed at your home and at the home of the Mayor, that wasn't quite right by the 7 November. Was it?--- That's correct, that's why I'm saying, I think some of the words that I may have said may have been mis-interpreted or recorded incorrectly in this brief.

20 And when sent to you as a draft you didn't review it?---I didn't pick it up, no.

And then the last one, it's unclear who is behind the harassment and whether it's related to your Council function as general manager. Because of this uncertainty considering the high public profile of your role of general manager and that of the Council's Mayor, it was considered wise to install security et cetera. Now, that's got problems with about timing it doesn't attend your issues because it hasn't been- -?---That's correct.

30 Now, if I could ask you to turn page 4 paragraph 18. You see that, it's about point 6 on the page. We advise that considering the possible risks faced by the Mayor – now what was alleged to have happened to the Mayor that you knew about?---Um, when we met, when David Baird and I met with the Mayor and me and John Faker I believe it was sometime in mid October, I've detailed the exact discussions and dates in my statement. But when we met with the Mayor I proceeded to tell the Mayor that I had been experiencing harassment at my home. I don't remember how much detail I told him on the day but within the discussion that I presented the information to him that he responded to me and Mr Baird by saying, it's
40 funny or words to this effect, "It's funny that you are experiencing this because I've been experiencing similar type of issues at my home." And he proceeded to describe events whereby people would run up to his door and bang on his door and when he's open the door there was no one there. And that had happened in the preceding weeks prior to me meeting with him on that day. At that point, I felt that, almost vindicated in that someone else had been experiencing similar type of activities. He conveyed that to us and we listened.

And was he asked to write it out in a statement or anything?---No.

Did you ever write out what had happened to you in a statement or anything?---No.

If I could ask you to turn to paragraph 23 and 24. You've given advice in 23 and then you say, then in 24 you'll see it says, "Considering the paragraphs above, the engagement of a private investigator" and apart from Mr XXXX being followed and reports to you on that, that was the only private investigator.---Yes.

10

Thank you. And then certain advice is given to you and you'd agree with me that some, at least, of the factual basis upon which Mr Baird gave you advice was incorrect.---I think the essence of what I'd expressed to him was quite correct. Some of the detail in the background might not be quite accurate but I do believe that, that the (not transcribable) effects the advice.

20

I don't want to waste any more time on it but I suggest to you that you say, saying you had reported something to the police elevated it in seriousness, didn't it?---I rang the police, I explained to the police officer what had happened and what was going on in my life. He suggested that the approach was to lodge a police report. I asked him what would result from a police report. He said, "It's just a record of what has occurred to you." I said, "Well, what would you do with that." He said, "We probably wouldn't do anything at this stage because we don't have the resources to look into these sorts of issues." He almost made it out as it was trivial. And - - -

30

In, thank you. In relation to Mr Faker, you'd agree that none of the facts as asserted by Mr Faker are included in this advice?---Um, I believe you're correct.

Now, Mr Baird was out visiting Council after the provision of this advice and you and Mr Faker had a discussion with him. Do you recall that?---It was a meeting in mid-October if that's what you're referring to, yes.

So you say it was before the provision of the draft advice?---The meeting with Mr Faker or (not transcribable) Faker at the time was mid-October.

So there was just one, you, Baird and Faker?---That's right.

40

Okay. And do you recall that Mr Baird said to you that you could authorise the expenditure on the mayor's house and the mayor could authorise the expenditure on your house?---I don't recall those words but any advice that I've seen detailed how those expenses might be processed. It's not this one, it's a latter version.

Leave that for a moment, just concentrate on the question. Do you recall a meeting with Mr Baird and Mr Faker where Mr Baird suggested that you could authorise the mayor's expenditure - - -?---No, I can't recall that, no.

- - - and the mayor could authorise yours and that you should put that in a record, in a minute or a file note?---I don't recall that discussion, no.

And do you remember Mr Baird advising you to inform the full Council about the expenditure?---Only in advice that I've seen but I don't recall a discussion with him, no.

10 And asking Council to confirm and authorise your actions?---I don't recall that. He, he may have said it.

But that never happened, did it?---Sorry?

That never happened, did it?---What never happened?

The expenditure on the two alarm systems for your house - - -?---No, I, I did not bring those to Council, no.

20 Why not?---On the 15th or thereabouts, sorry, on 26 November or thereabouts I, I was in receipt of an email with further, a final draft, a final advice from Mr Baird in relation to this matter and I acted in accordance, I believed I acted in accordance with the advice that I received.

Well, we'll go through that in a moment but if you can just put that up for a moment. Now, after the draft advice was received you circulated it, didn't you?---I did distribute the email to others in my team, yes.

30 And members, when you say your team do you mean the executive or wider than that? Well, Mr Walker responded so it was wider than that?---Well, it was the wider executive team. There was the core team which was my direct reports but the wider team included Mr Walker and Mr Macklin.

I'll just show you this email exchange and if I could ask you to start down the bottom of the first page which is your email around. You say, "Gentleman, as you know I have had considerably undue stress and anxiety placed on my family and me over the last two months. As a result of the circumstances I've faced I have obtained et cetera et cetera." Do you see that, that's your email?---Yes, yes.

40 And then you tell Les, that means Mr Hullick - - -?---Yes.

- - - to make an adjustment to the budget?---Yes, yes.

Okay. Now, you then receive an email from Mr Cummins?---Yes.

And he expresses some concern, doesn't he?---Yes.

He says, "I strongly recommend this matter be taken to Council or an alternate independent body for determination?"---Yes.

"In order to protect both yourself and the mayor from possible oh, potential negative perceptions for the community?"---Yes.

And then further down, "I don't make these recommendations lightly. I have reviewed the Maddocks' advice and consider it extremely weak?"
---Yes.

10

"It's not sufficiently protective of your interests, those of the mayor or those of Council?"---Yes.

Now, you didn't like that advice, did you?---I wasn't happy about it.

You have a person who was, he was the director responsible for corporate governance, wasn't he?---Yes.

20

And this was an issue of corporate governance, wasn't it?---Um, it could be, yes.

It was a matter of expenditure of funds and he was raising serious concerns with you, wasn't he?---Yes, that's correct.

And you didn't address that seriously, did you?---I did.

You just dismissed them?---No, I didn't.

30

Well, you didn't ever take it to Council?---I did take action in regards to his email. I took very positive action. I took his advice very seriously and I did not dismiss it.

40

Well - - ?---I, I discussed the matter with Mr Baird by phone and I had arranged with Mr Baird to finalise his advice and I instructed Mr Baird not to finalise his advice until he had discussions with Mr Cummins and addressed his issues. My understanding is that those discussions took place. Now, I don't know who Mr Cummins spoke to at Maddocks but I am aware of an email on 26 November which was forwarded on to me by Mr Cummins which contained a final advice from Maddocks whereby he had had dialogue with, I believe, Mr Todd Neill.

I think that's right, yes?---And in my mind and in my opinion at that point in time when I thought I'd taken positive action in relation to Mr Cummins' concern and Mr Walker's concern, as there's an email from Mr Walker as well, and allow him the opportunity to dialogue with people at Maddocks in order to air his concerns and have those concerns addressed.

Well, that's - - -?---In his response back to me there was no indication from him at all that he was unhappy with the advice, the final advice that had been received.

Just read your email to him, Mr Romano, and I'd suggest to you that whatever action you might have taken the email was dismissive. "My email to you was simply to advise you of budget impacts not to seek your approval or advice on the matter?"---Yes, I was angry.

10 Yeah?---Yeah, but my actions - - -

The director of corporate governance is raising serious matters with you and you respond in an email that has a dismissive tone to it telling him to get back in his box, weren't you?---If I may respond by completing what I had started before you asked the question there, I, I was angry but I did not dismiss his concerns. I took positive action. He may not have been aware of the positive action that I took but I believe my actions were stronger than the emails that expressed my anger - - -

20 What - - -?--- - - - and in any, if I may - - -

Please go on?---Is that okay? I don't want to interrupt you.

(not transcribable) your answer?---Yes, I don't want to interrupt you but I was under much stress and, and anxiety at the time.

What possible reason on the basis - - -

MR BLAKE: (not transcribable)

30

MS RONALDS: I'm sorry, I thought he'd finished. He was being entirely unresponsive to the question and I thought he'd completed his answer? ---No, I was trying to respond to you, I'm trying to help you in, in your investigation and give you as much knowledge as I can and give you my state of mind as well so I think that's relevant. I, I did take positive action and I did give him the opportunity to speak to people at Maddocks. Yes, my tone and my emails were being dismissive but I was very angry and upset and concerned about my family and what was happening to me.

40

Notwithstanding that, you know, I, I, I had become aware of a personal problem that existed between myself and my wife and others. It was extremely, extremely stressful for me and I was angry.

Well, that - - -?---It doesn't excuse my (not transcribable) of him being dismissive but I don't believe I denied him the opportunity to have his say.

Well, you said, "With all due respect my email is a directive and did not seek your opinion." A fair unequivocal statement, wasn't it, Mr Romano? ---Yes, that's correct.

And if I could show you an email from Matthew Walker dated 9 November, you gave a cut and paste and, Mr Walker raised with you some matters didn't he that were concerned, Mr Walker's the chief financial officer?
---Yes.

So he raises concerns with you. You see that in the middle of the email?
---Yes.

10 And you sent him back the same email that you sent to Mr Cummins, that is, "With all due respect my email is a directive and didn't seek your opinion?"---Yes.

Thank you. Now Mr Azer then sent you an email. Do you remember that?
---Yes, I do recall that. I don't remember the exact content but I do recall it.

On 9 November, I'll tender all these together, Commissioner so they're just one bundle?---Yeah.

20 And you'll see there that he says, he's tried to put himself in your shoes et cetera. Number 2, noting that the legal advice from Maddocks is not the strongest, at the risk of being embarrassed et cetera, seek tax advice, continue with the investigation, so he's giving you some advice as well, isn't he?---Yes.

Your answer back then to everybody is, "Gentlemen, not that I believe I need to justify my decision," now these were members of your executive who were raising with you and Mr Walker, who were raising with you what they considered serious concerns, would you agree?---Yes.

30 And in fact they're trying to protect your reputation, weren't they?---Yes.

They were concerned that if it became a matter of public affairs it may damage your reputation?---Yes.

So they were acting in your interests, weren't they?---I would believe so.

You wouldn't believe so?---I would believe so.

40 But you didn't listen to what they were saying, did you?---As I explained that period of time was a very stressful period of time.

Thank you.---May I continue or - - -

Well, you have told us now, at some length, Mr Romano, unless you want to say something different, and I don't mean to be rude sir, but, unless it is a different matter that responds to the question.---It's up to you.

And then Maddocks then send, what they call their final advice on 15 November. Do you remember that?---Yes, I do.

Now, I'll just hand you this one. And indeed, it has some variations but nothing that is that startling and the matters that we looked at that were paragraphs 4 onward is now in paragraph 4 but they are the same factual matters that you've agreed and not correct. Do you see that?---Yes.

10 And then, and then Mr Cummins sends you an email later dated the 26 November, do you see that? And I'll just and you that where he says there's a further revised advice which give robust advice as to the merit of providing such facilities to the GM and the Mayor. Let me know what role, if any, you want me to have in this project while Mr Neil, and that's Mr Todd Neil from Maddocks has requested I liaise directly with him. I await your decision prior to taking further action. Do you see that?---Yes.

20 And you respond, no involvement other than to register the legal advice. So as far as you're concerned Mr Cummins was out of any decision making loop in relation to the home security systems. Is that correct?---No, my understanding was that he had had discussions with legal officers at Maddocks and I do appreciate that this email says other than that but my understanding was that he had had discussions with them.

30 And if I could just hand you, now I'll hand you a copy of two accounts from Maddocks which add up to \$6,001 and these appear to relate to the advice that we've been talking about. And if you look at the back on each page, you're probably more familiar with these accounts than I am but you'll see there's a series of dates and meetings et cetera. So the first one for \$2,435.95, the first meeting recorded with Mr Baird is 22nd, do you see that?---Yes.

Of September. You'll see at the back of the second one there, when you're talking about Mr Cummins on 15 November, you'll see in the middle there he spoke to Mr Neil. Then there's further amendments to the advice. And might I suggest to you, this is the bill for the advice in relation to the security system.---It would have been that one, yes.

40 And had you – prior to seeking the advice – put any sort of fence around the cost that it might be?---Um, in relation to our legal people on our panel, fees and fee structure are pretty set. So the billing should be and generally is in accordance with the agreed billing structure that was approved for them to be on the panel.

But when you give them a new brief, do you say to them anything like – this is only a simple little advice, I don't imagine that we'll run up bills more than \$2,000 say – or something like that?---Um, it's not my practice to do that no.

And now looking at these accounts for \$6,000 for that advice, does that surprise you?---I'm not sure what you're asking me to respond to.

Well, the quantum, does that surprise you?---Well, do I think lawyers charge a lot, I would say yes.

Right.---If you're asking me if this bill seems high to me, I, I could not answer that, I assume that it's a reasonable fee for the services provided.

10 And you signed off, have you got the first one there?---Yes.

You signed both of these.---Yes.

31st of the 10th, that's your signature?---Yes.

Receiving officer?---Yes.

And- - -?---21 November or the 10th? It looks like - - -

20 Oh sorry, I was going off the date on the bill.---It appears that on one of them there's a 19/11 and that was by, I don't know who's signature that is, it must be Mr Cummins.

The one's that GM, is you?---Yes.

And then the next bill has Pat R, that's you?---Yes.

30 And Mr Hullick appears to have signed that as well.---Yes, well, the signature on one of the bills is the approving officer is not the same as the receiving officer on the other.

I gather that one is Mr Cummins and one is Mr Hullick.---That's correct.

40 Thank you. Now, the security systems were put in and I'll go to that tomorrow because I think we're running out of time I'm sure you'll be disappointed to hear. But just before we finish for the day and there's just one other matter and you might need to think about it overnight, I'm not sure. It appears that in April 2008 there was an electronic sweep of your house and Mr Faker's house. Do you recall that happening?---No, I don't recall that.

That's, IPP conducted a sweep to see whether there was any electronic devices.---(not transcribable) normally did provide sweeps at Council and other buildings and including my home from time to time but I don't recall that one.

Well, we'll do the emails in the moment. Why did you have a sweep of your home, assuming you did in April, 2008?---I, we deal with multi-

million dollar contractors. I've always had concerns that people might just, people, being the people that we might be dealing with or others, might listen in to conversations that I or others might have in terms of those contracts and deals that we might be involved in. Having met Richard (not transcribable) several years ago, he discussed many different clients that had similar arrangements happen at their premises and I thought it was a good practice to employ it at our workplace. I didn't see it to be an unusual arrangement given the type of contracts that we're involved in. Particularly on (not transcribable) project and particularly the land size that we were
10 involved in.

I understand that about work premises, I'm talking about your home.---I conduct a lot of work from my home, I do emails, reports, I speak on the phone at home. I spend a large majority of my time doing work at home.

Did you see any authorisation from anyone in relation to conducting sweeps of your home?---No.

And did you seek authorisation from anybody in relation to your
20 authorisation of a sweep of Mr, of the Mayor's home?---No.

Commissioner, I note the time. Is this convenient?

ASSISTANT COMMISSIONER: Do you wish to - - -

MS RONALDS: I have a whole lot of stuff to tender or I'll be in terrible trouble, I meant that really, I knew that. You can stand down if you want to. If I could tender the email which includes the email from Mr Cummins dated 8 November, 2007.
30

ASSISTANT COMMISSIONER: that would be Exhibit 11.

**#EXHIBIT 11 – EMAIL FROM MR CUMMINS TO MR ROMANO
DATED 8 NOVEMBER 2007**

MS RONALDS: The email exchange which includes the email from – they're out of order, I'm sorry, they're out of order, which includes the
40 email from Mr Walker.

ASSISTANT COMMISSIONER: That would be Exhibit 12.

**#EXHIBIT 12 – EMAIL FROM MR ROMANO TO MR WALKER
DATED 9 NOVEMBER 2007**

MS RONALDS: One that includes the email from Mr Azer.

ASSISTANT COMMISSIONER: Exhibit 13.

**#EXHIBIT 13 – EMAIL FROM MR AZER TO MR ROMANO
DATED 9 NOVEMBER 2007**

10 MS RONALDS: The, what was said to be the final legal advice but though
it appears there may have been another one. The final legal advice dated 15
November, 2007.

ASSISTANT COMMISSIONER: Exhibit 14.

**#EXHIBIT 14 – LETTER FROM MR BAIRD TO MR ROMANO
DATED 15 NOVEMBER 2007**

20 MS RONALDS: Email from Mr Cummins dated 26 November, 2007, I'm
sorry, excuse me.

ASSISTANT COMMISSIONER: That's Exhibit 15.

**#EXHIBIT 15 – EMAIL FROM MR CUMMINS TO MR ROMANO
DATED 26 NOVEMBER 2007**

30 MS RONALDS: And the accounts in relation to the security advice to
Maddocks, two of them.

ASSISTANT COMMISSIONER: That will be Exhibit 16.

**#EXHIBIT 16 – TWO INVOICES FROM MADDOCKS TO
BURWOOD COUNCIL DATED 31 OCTOBER 2007 AND 30
NOVEMBER 2007**

40 ASSISTANT COMMISSIONER: Yes, well we'll adjourn at this stage until
10 o'clock tomorrow morning.

AT 4.00 THE MATTER WAS ADJOURNED ACCORDINGLY[4.00PM]