

Anne Barwick

From: Anne Barwick
Sent: Thursday, 26 March 2009 16:25
To: 'Adrian'
Subject: TRIM: RE:
TRIM Record Number: 2009/034620

Adrian

In my email of 11 March 2009, I have endeavoured to explain to you the reason that I cannot provide any specific information about our oversight of the Knox College investigation. In so doing, I have set out in some detail the statutory constraint that this office operates under in relation to providing information about the matters that we deal with, namely section 34 of the Ombudsman Act 1974.

I have carefully considered this office's position under section 34 and have provided you with as much information as I am able within the constraint of this strict obligation of non-disclosure. I regret that I can be of no further assistance. You may, however, be able to obtain additional information pursuant to an application made to the school under the Freedom of Information Act 1989.

Sincerely

Anne Barwick

From: Adrian [mailto:ads1969@optusnet.com.au]
Sent: Tuesday, 17 March 2009 12:30
To: Anne Barwick
Subject: RE:

Anne

Thanks very much for your prompt reply, and I certainly respect the confidentiality that your office must observe.

However, your response, or more to the point lack of response, to my specific queries is unsatisfactory.

For ease of reference, I have copied and pasted my specific queries below:

1. If there was enough information in my statement to the police last Thursday February 19 for them to arrest Adrian Nisbett 4 days later, what was missing from the report submitted by KGS in 2004, for the Ombudsman to decide to take no action?
2. In the report that the Ombudsman's office received in 2004 from KGS, was there any supporting documentation included in the report e.g. transcripts of interviews, witness statements etc.
3. Is the Ombudsman's office willing to provide a copy of the report (or parts thereof) to me?
4. If the answer to Question 3 is no, what are the reasons for not providing it.
5. What information regarding the report are you willing to provide?
6. Was the report merely a summary of their findings, or a full and detailed report?
7. In my interview in 2004, I also gave information regarding a second teacher at KGS (who had left the school prior to 2004). Was information regarding this second teacher provided in the report?

22/05/2009

Question 1 remains unanswered.

Question 2 remains unanswered.

Question 3 has been answered with a no.

Question 4 has been answered with the reasons being confidentiality.

Question 5 has been answered with no parts of the report due to confidentiality reasons.

Question 6 remains unanswered.

Question 7 remains unanswered.

In relation to the queries that remain unanswered, I don't see any confidentiality issues that would prevent you from providing them.

I now refer to your email below, and have further queries.

"In addition, the Ombudsman must ensure that appropriate action is taken by the organisation as a result of the investigation"

What, specifically, does the Ombudsman do to ensure that appropriate action is taken? Was the Ombudsman's office satisfied that the appropriate action had been taken?

"If the reportable allegations appear to involve criminal conduct, we advise agencies to notify police"

Is it the case that, the Ombudsman's office does not take any actual action themselves, but advises the agency to do so? And what if the agency does not follow your advice? Is it just advice, or are they obligated legally to act on this advice? Are there follow up procedures within the Ombudsman's office to ensure that this advice is acted upon? My transcript alone gives more than just the appearance of criminal conduct. Did you advise the agency to notify the police? If not, why not? Is the Ombudsman's office allowed to bypass the agency and take the matter to the police directly?

"We provided certain advice to the school and the reportable allegations were investigated by an external investigator engaged by Knox College".

What was the advice that you provided to the school at the completion of their investigation? Did you advise them to contact the police? Did you feel that the mere sacking of the teacher under investigation was punishment enough? I refer my original question 1, and reiterate, if there was enough information in my statement to the police last Thursday February 19 for them to arrest Adrian Nisbett 4 days later, what was missing from the report submitted by KGS in 2004, for the Ombudsman to decide to take no action? As also stated in my original letter to you, the statement that I gave to Grahame Wilson in 2004, was almost word for word the same as my statement to the police.

" We were satisfied with the adequacy of the school's investigation and the actions which the school informed us that it had taken in light of the investigation".

While the school's investigation may have been adequate, the actions the school took in light of the investigation were certainly not. And to hear the Ombudsman's office say that you were satisfied with those actions is highly alarming. Despite however many steps the school took to ensure this type of thing can't happen again, or any other programs or plans they put in place, at the end of the day a school teacher who sexually assaulted more than one student was not punished. He was merely sacked!

22/05/2009

Anne, I make no apologies for the pugnacity or confrontational tone of this correspondence, as I am determined to put this whole episode behind me, and a major step in achieving this, is to get some answers from the institutions which allowed it to happen. I realise that the steps that I may be forced to take could lead me to lose whatever anonymity I may currently have, but I will have no hesitation in doing so if needs be.

“I understand that your situation is a difficult one and trust that the above is of some assistance”

No, it is of no assistance whatsoever.

I look forward to your response.

Regards

Adrian Steer

From: Anne Barwick [mailto:ABarwick@ombo.nsw.gov.au]

Sent: Wednesday, 11 March 2009 11:57 AM

To: ads1969@optusnet.com.au

Subject:

Dear Adrian

I refer to your recent e-mail in which you sought certain information in the context of the recent arrests and charges against former teachers of Knox College, including Mr Adrian Nesbitt. I understand the nature of the allegations you have made against Mr Nesbitt and the information that you provided to Mr Grahame Wilson in 2004. I note that you have recently provided information about this matter to police.

Let me say at the outset that I acknowledge the effect that the reported incidents at Knox College have had on your life and the lives of others, and would wish to assist you in so far as possible. However, as I foreshadowed in my initial response to your email, in relation to much of the information you have requested we are bound by the strict non-disclosure provisions of the Ombudsman Act 1974. These provisions apply to all of the work of this office and, in particular, section 34 of the Act prohibits the Ombudsman and an officer of the Ombudsman, from disclosing any information obtained by the Ombudsman or that officer in the course of the Ombudsman's or officer's duties. The Ombudsman Act offers only very limited exceptions to our obligation of non-disclosure.

You should also be aware that the Ombudsman's primary role under Part 3A of the Ombudsman Act is to ensure that an investigation of an allegation of reportable conduct (generally referred to as a "reportable allegation") is properly conducted by the organisational employer of the person against whom the allegation is made. Heads of agencies, including school principals, are required to notify the Ombudsman within 30 days of becoming aware of any reportable allegations against persons they employ or engage, including teachers, foster carers, volunteers, clergy or contractors.

In addition, the Ombudsman must ensure that appropriate action is taken by the organisation as a result of the investigation. An agency has to investigate the allegation and act upon the findings of its investigation, that is, develop a risk management plan, notify the Commission for Children and Young People and take disciplinary action if appropriate, amongst other things. At the completion of an investigation, the head of agency must provide us with information that enables us to assess the

adequacy of the investigation and any actions taken. If the reportable allegations appear to involve criminal conduct, we advise agencies to notify police.

I am unable to provide you with any of the documents you have requested but can, within the constraints of section 34 of the Act, confirm that Knox College notified the Ombudsman of reportable allegations made against Mr Nesbitt in 2004, within the required timeframe. We provided certain advice to the school and the reportable allegations were investigated by an external investigator engaged by Knox College. We were satisfied with the adequacy of the school's investigation and the actions which the school informed us that it had taken in light of the investigation.

I understand that your situation is a difficult one and trust that the above is of some assistance.

Yours sincerely

Anne Barwick

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