

JCW(s) - 11

**Avey, Lisel**

**From:** Whalley, Justin  
**Sent:** Wednesday, 28 September 2011 9:10 AM  
**To:** CDW  
**Cc:** Avey, Lisel  
**Subject:** RE: CDV matter

Dear CDW

Thank you for your email.

As you appear to have anticipated I am unable to provide any recommendation to you as to the advisability or otherwise of seeking independent legal advice in connection with your negotiations with REDACTED. That is not because of any reluctance on my part to assist but rather because I am simply not qualified either by occupation or experience to express an opinion and I would be doing you a disservice if I did so.

As for the dissemination of the letters referred to in your email. These (with the exception of Ms REDACTED's letter,) were read out in open Court and are not specifically the subject of a suppression order so there is no specific prohibition on showing them to third parties.

I would however draw your attention to *Evidence Act (WA) s.36C* which makes it an offence to publish any matter likely to lead members of the public to identify the school attended by a complainant in a sexual offence unless the complainant (who must be over 18) authorises such publication in writing. Whether or not the showing of the letters to third parties represents "(publication) in a written publication available to the public" (which is what s.36C prohibits) is an open question to which I am unable to provide a definitive answer. Out of an abundance of caution it may be advisable for you to remove the names of the complainants and the school from the letters before showing them to anyone but that is a matter for your discretion in respect of which you may wish to seek independent legal advice.

I apologise that this response may not be as helpful as you might have liked but I'm sure you understand the constraints that prevent me from providing more detailed and specific advice in response to your questions.

Regards,

**Justin Whalley**  
 Senior State Prosecutor - Trial Team 1  
 Office of the Director of Public Prosecutions  
 Level 1, 26 St Georges Terrace,  
 Perth. 6000

REDACTED

**From:** CDW <mailto:REDACTED>  
**Sent:** Tuesday, 27 September 2011 11:45 AM  
**To:** Whalley, Justin  
**Cc:** Avey, Lisel  
**Subject:** CDV matter

Dear Justin

I hope you don't mind me emailing you in regards to our matter. I have a couple of questions and am hoping you will be able to help me in clarifying these few points, that is, if you are in the position to do so.

Firstly, as you are no doubt aware, we are in negotiations with the school in order to seek compensation for the boys in our case and several of us are under clinical psychologists as a result of our situation. It has been suggested to us that we may be wise to contemplate independent legal advice from our lawyers before we agree to signing off on anything, as is required under the Family Law, because even though we are working as a group, there are different considerations to be taken into account and not all individuals may be satisfied with the same outcomes. The school is also looking to treat the complainants and parents differently. I am not asking for your advice on this, however.

What I want to know is, is it the Bar Association we approach for this independent advice, or other lawyers and are we required to inform our own lawyers of this possible action? Can you say if you would seek independent advice if you were in our position?

Are we permitted to show other lawyers the three formal warning letters, REDACTED ( 1999 ), REDACTED ( 2001 ) and REDACTED ( 2004 ) and REDACTED's letter of Dec 2001? The latter was obtained through Police Freedom of Information. If we were able to show any other lawyers these letters would we have to remove all names and the school's name from them before doing so? Would it breach the suppression orders to show these letters to other lawyers?

Are we permitted to show any of these documents to a consultant, who is a professor in the field of mandatory reporting and child sexual abuse, but who has, as yet, not been engaged as our consultant through our lawyers in these matters? We are already working with one world-renowned expert.

I am sure that you understand how difficult this journey has been for us all, and continues to be so. I also acknowledge and appreciate how hard everyone is working towards the best result and I do not wish to put you in a difficult or compromising position. I figure that there is no harm in asking the questions I have - as to whether or not you can provide me with the answers I require, is another matter.

Kind regards

CDW

REDACTED