Police digital communications and the media

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Abstract

The Crime and Misconduct Commission of Queensland is conducting an inquiry into the move by the Queensland Police Service to introduce secure digital radio communication systems which will have the effect of preventing the news media from monitoring police communications to the extent that they have over the past several decades. Some other jurisdictions have already taken this step. This stands to make journalists more reliant on police media offices for their newsgathering and less able to monitor police action at the scenes of crimes and other events threatening public safety. This paper examines this step in the light of the important issues of press freedom, open justice, the public interest and prior restraint. It ends with a postscript bringing readers up to date with developments in the inquiry up to the point of publication.

Introduction

The relationship between the police and the media has been under scrutiny throughout 2004 as Queensland’s Crime and Misconduct Commission has undertaken a public inquiry into police radio communications. The CMC announced the inquiry in early May after a referral from Premier Peter Beattie. The commission is due to complete its report and recommendations to Parliament by year’s end.

I was commissioned to write a background paper for the inquiry on issues of press freedom, its relationship to privacy, anti-terrorism and security, and the bearing of these issues upon news media access to police radio access. A draft of my background paper was submitted before I gave evidence to the public hearings in July 2004 and the final version was submitted after those hearings. The purpose of this presentation is to report to you on the inquiry and to explain my own contributions and formative views.

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The central issue facing the CMC is the extent to which the media should have access to police radio communications, a de facto privilege they have had throughout the era of analogue technology. Radio rooms have been an institution in major news organisations as generations of cub reporters have cut their teeth on news values and accuracy by monitoring police and emergency communications on scanners. Brisbane’s Courier-Mail submitted to the inquiry that the news media have accessed police radio communications via scanners for at least 50 years (The Courier-Mail, 2004a). It has certainly been more than 40 years. Hurst (1988, p. 31) relates the story behind the Walkley Award-winning piece of reporting by David Halpin of Sydney’s Daily Telegraph which won him the 1963 best news story award. Halpin reported on Australia’s first machine-gun murder and Sydney’s gang wars after hearing of the killing on the police radio.

All that changed when Brisbane journalists discovered their police radio scanners had gone silent in October 2003 because Queensland Police had introduced encrypted digital communication without consultation (Queensland Television Ltd., 2004, p. 4). The sudden switch to digital radios prompted an outcry from media organisations, meetings with the police commissioner, and ultimately Premier Beattie’s referral of the matter to the CMC for a report. The CMC (formerly the Criminal Justice Commission and the Queensland Crime Commission) is the watchdog body which owes its origins to the Fitzgerald Inquiry into police corruption conducted in the late 1980s, sparked by investigative reporting by The Courier-Mail and the ABC’s Four Corners. That historical fact makes the police-media relationship a contentious issue in Queensland and explains the Premier’s referral on public interest grounds.

Over four days of hearings, the CMC received 47 submissions and heard testimony from 26 witnesses, including major stakeholders the Queensland Police Service and unions, metropolitan and regional newspaper organisations, and television and radio networks. Counsel Assisting, Mr Russell Pearce, QC, presented his final submission on September 1. Not surprisingly, there was a significant divide between the views of the media sector and those of the police and emergency services on the appropriate level of access for the media. Somewhat more surprising was the extent to which other parties, including the Attorney-General’s office and the Queensland Law Society, placed emphasis on issues of privacy and security over open justice and the public right to know (CMC, 2004a).

Police arguments

The police argued they had never authorised media monitoring of their radio communications under the analogue system and that it would be fraught to allow them to do so under the new system. Police have digitised their radio communications in Canberra, Darwin, Adelaide and Hobart without major

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debate. In their main submission (Queensland Police Service, 2004), the police cited public and police safety, effectiveness of police operations and privacy of suspects and victims as their main reasons for limiting media access. They gave several examples of criminals evading police by monitoring scanners and offered a single case of a television cameraman interfering with a siege in East Brisbane in 2002. It is amazing that over four decades of media monitoring of police radio, police could offer only a single instance of abuse of that de facto privilege. The police submission grouped the media with other commercial operations such as tow truck drivers, funeral directors and security firms in having a commercial interest in police information, and argued that it may breach anti-competition legislation to give exclusive access to the media.

The police service suggested a range of options for advising the media of breaking crime and emergency news, including a user-pays SMS messaging system for media outlets, a telephone voice message relay system allowing for radio voice grabs, an enhanced 24-hour media unit operation, an audio message board, and real-time website information with downloadable images. All would involve using the police media and public relations unit as an intermediary.

The media groups rejected such mediated methods and are demanding continuation of their current levels of access, which usually preclude them from monitoring top security operations. The Courier-Mail suggested the police options would transfer news decision-making from journalists to the police. "While it may be in the interests of the police service to filter information available for public consumption, it is not in the public interest or in the interests of police accountability," its submission stated (The Courier-Mail, 2004a).

Media arguments

The media, of course, raised strong public interest and Fourth Estate arguments in favour of retaining the right to eavesdrop on police radio talk, just as they have for the past few decades. They also pointed to their record of co-operative and responsible use of the analogue scanning system. All media submissions made strong arguments for a privileged access for the media. The Courier-Mail submission (2004) referred to the media's special access to the courts and special seating in Parliament as examples of recognition of the special role the media play in informing society. "It is not just another business," the newspaper stated.

Network Ten Brisbane's general manager, Robert Osmotherly, argued in his submission (Network 10, 2004) that ongoing access to police communications is in the public interest. With the alternative to scanner access being reliance on police PR, the media submissions were critical of the police media unit's processes. Network Ten cited two recent incidents where delays in communication between the police and the media had hampered coverage and threatened
public safety. Mr Osmotherly submitted the relationship between the media unit and the media "could be substantially improved". The Courier-Mail submission cited 10 recent examples where poor police-media communication had hampered newsgathering or concealed the truth. Radio station 4BC told of its difficulties getting basic information from police for public safety announcements in Brisbane's post-scanner era (Radio 4BC. 2004).

Key insights of background paper

As mentioned above, I was commissioned to look at the following areas of relevance:

- The historical context to press freedom;
- Privacy and its relationship to press freedom;
- Anti-terrorism, security and press freedom;
- The news media and police radio access.

The first main point of my background paper focused on the uniqueness of the opportunity for the media to argue for press freedom, open justice and the public interest in such a public forum. It is indeed a rare occasion when a public body sets out to navigate a pathway between important values in modern democratic society, values which are often portrayed as being in competition with one another. The concepts of press freedom, privacy and security do not, however, always have to be at odds. I identified some important common interests between the key stakeholders involved, such as:

- Police, media and citizens: crime minimisation, efficient and honest policing, publicising fair and effective justice system, demonstrating deviant behaviour;
- Police and media: Speedy identification of suspects to assist arrest, visual evidence of crime scenes and accidents, public safety announcements, accounts of police successes;
- Media and citizens: Media's watchdog role, curiosity about crime, concern for civil liberties, separation of powers, appetite for instant news.

Given the commonalities between these groups, there may be creative solutions which can allow principles such as press freedom, security and privacy to co-exist in most circumstances, with mechanisms for intervention and adjudication when they occasionally conflict.

Much of my background paper was devoted to backgrounding the important foundational issues of press freedom, open justice and the media's Fourth Estate role, as explained in my media law text (Pearson. 2004a). I went on to offer important examples of investigative reporting in Australia in recent years demonstrating the modern form of this Fourth Estate role, citing the outstanding-
ing example of investigative reporting as the series of reports by *The Courier-Mail* newspaper and the “Moonlight State” episode of the ABC’s *Four Corners*, which together exposed endemic corruption in Queensland and led to the Fitzgerald Inquiry to which, ultimately, the CMC owes its existence.

The Australian media’s Fourth Estate role has been exercised time and again to expose corruption and wrongdoing in the police, government and business. Examples of such reportage related to the political or criminal justice process include:

- The Perth *Daily News* revelations of corruption, inefficiency and dis- sension in the West Australian police force by Walkley Award winner Dan O’Sullivan in 1960 (Hurst, 1988, pp. 86-87);

- Evan Whitton’s 1969 expose of Victorian police corruption in his Melbourne *Truth* investigation into a backyard abortion protection racket (Hurst, 1988, pp. 37-39);

- An account of West Australian police cruelty to Aborigines by Jan Mayman of the Melbourne *Age* in 1983 (Hurst, 1988, pp. 63-66);

- Chris Masters’ 1983 expose of corruption in sport and government in “The Big League” documentary for *Four Corners* (Hurst, 1988, p. 419);

- Alan Hall and David Marr’s *Four Corners* account of Aboriginal deaths in police and prison custody in their “Black Death” program in 1983 (Hurst, 1988, p. 426);

- *National Times* journalist Wendy Bacon’s 1984 investigations into secret police tapes which led to the conviction of chief magistrate Murray Farquhar (Hurst, 1988, p. 159);

- The 1984 story by Mike McEwen of the Adelaide *Advertiser* exposing a police cover-up of facts related to the murder of a homosexual man because vice squad officers were implicated (Hurst, 1988, pp. 63-64);

- The ABC’s 1991 award-winning documentary *Cop it sweet*, which resulted from a ride-along with police in Redfern, NSW, and exposed police attitudes to Aborigines;

- *The Courier-Mail* Insight team’s breaking of a series of stories in 1999 about the Net Bet affair, where prominent government figures were shown to have a stake in the awarding of an Internet gambling licence (*The Courier-Mail*, 2004);

- Hedley Thomas’s 2003 *Courier-Mail* insight into the crisis in the Queensland magistrates court – “Court in Crisis” (Walkleys, 2003).
Criticisms of the media’s role

I also addressed criticisms of the media’s role, several of which surfaced during the inquiry. Such views are gaining currency in an era in which media corporations are often seen to be operating as “just another business”, rather than as important public institutions with duties to the wider citizenry, not just their shareholders.

Law Society president Ferguson's submission was scathing of the news media’s argument that maintaining the current level of access to police communications would ensure external scrutiny of the police and uphold public faith in the police service. He wrote to the inquiry:

I do concede that the argument by the media may have had some veracity and acceptability in the past but the current accountability processes are far better able to monitor police behaviour and allegations about police misconduct than any eavesdropping reporter.

It would be interesting to see if any media organisation could identify definitely any proven example of police corruption or even unethical or unprofessional conduct uncovered by them as a result of listening to police communications in the post-Fitzgerald era. (Ferguson, 2004, p. 2)

He said media access to police communications facilitated sensationalist and tabloid-style coverage. He dismissed such claims as “specious and self-serving” and argued that post-Fitzgerald internal processes in the police force combined with the extensive powers of the Crime and Misconduct Commission left the media with little role to play in the process.

Rather, the media enjoys this apparently unfettered access for one purpose. It allows them immediate access to news of a police operation arising from crime, tragedy or disaster and to send a news crew to the incident. This certainly raises questions about the integrity, safety and effectiveness of police operations, especially if there was a terrorism-related incident. There can be no debate about what should take precedence – public safety or the public right to know – and one life at any risk is worth infinitely more than concern about any ban on media access to police communications. (Ferguson, 2004, p. 2)

He pointed to privacy concerns at the scene of an arrest:

The tabloid nature of virtually all media outlets presents an arrest – especially one with the “benefit” of gripping television coverage – as actual “evidence” that a crime has been solved. … It is our considered view that the introduction of new police
communications systems is an appropriate time to ensure that nobody – media included – be allowed access to police communications except police and other agencies which may be permitted specifically by law.

This unashamed public posturing against the media on a matter where there are clear public interest elements up for balance and debate is indicative of the extent to which the pendulum has swung away from press freedom interests in recent times.

Mr Ferguson's comments echo those of former Queensland QC, High Court Justice Ian Callinan, in his 2001 Lenah Game Meats minority judgment where he said the modern media's business interests needed to be factored into discussions of free speech and that commercial considerations often drive the media's so-called public interest role (Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd [2001] HCA 63). "The asserted urgency as often as not is as likely to be driven by commercial imperatives as by any disinterested wish to inform the public," Justice Callinan said at para 267. "It will be rare in fact that the public interest will be better served by partial truth and inaccuracy this Tuesday than balance and the truth on Friday week." Justice Callinan also said the media's claim to freedom of the press had taken on an "air of dogma", as if this was a right superior to all other rights. Sadly, the tenor of many of the media submissions to this important inquiry reflects this "air of dogma" approach, or at least a righteous indignation that other public interests such as privacy and security might be considered alongside the freedom of the press.

Such polemics might have won the day in 19th and 20th century battles over the public interest terrain. But one suspects more sophisticated arguments are needed in the 21st century, where police powers are being bolstered during the so-called war on terrorism, and when the privacy rights of individual citizens are being elevated by courts throughout the Western world. Media organisations need to recognise that their arguments for the public's right to know and the media's Fourth Estate role can be convincing and can ultimately win the day in these kinds of forums. But the counter-arguments need to be taken seriously and defeated point by point, and sometimes the media will need to make some concessions to competing interests. Hollow rhetoric and righteous indignation are strategies for a bygone era, when press freedom had less competition in a far less complex world.

While the Courier-Mail submission stated the media was "not just another business", research supports the view that the press freedom ideal is being undermined by the operations of the media as a business. Schultz (1998) found "political purpose" and "independence of the Fourth Estate" to be important elements of the occupational self-definition of Australian journalists, but that there was a conflict between the responsibilities of the Fourth Estate and the demands of commercial success. In that regard, while the news media has long
played an important public service "Fourth Estate" role, and is "not just another business" in that sense, there is no doubt it is operated as a commercial enterprise by powerful multinational and multifaceted corporations which answer ultimately to their shareholders' needs. The editor of The West Australian summed up this perspective in an interview published in the Media section of The Australian on August 5:

I'm a cog in the wheel that helps maximize shareholder returns. This whole game is about shareholder return, be that capital growth in the share price or the dividend. (King, 2004, p. 18)

My paper then traced the origins of privacy as a social value and analysed its relationship to press freedom. This was important to the commission, given that a key criticism of media access to police communications was the potential for the invasion of the privacy of victims, witnesses and suspects at the scene of criminal incidents. I pointed out that a Queensland District Court judge ruled in July 2003 that a tort of invasion of privacy existed when he held that the former mayor of the Sunshine Coast’s privacy had been invaded by a former lover who had continued to harass her after their affair had ended. Grosse v Purvis [2003] QDC 151. However, no superior court has ruled on the matter, although the High Court discussed the issue in ABC v. Lenah Game Meats Pty Ltd [2001] HCA 63 (November 15, 2001).

I noted that the Lenah case reinforced the view that in Australia and internationally, the media are finding courts increasingly placing a higher value on private rights such as privacy and reputation over traditional public values such as press freedom. O'Neil (2001. Chapters 5 and 6) records several instances where US courts have favoured individuals' rights to privacy over the media’s First Amendment rights in recent years. The US Supreme Court was particularly critical of the media’s infringement of citizens’ privacy rights during “ride-alongs” with police (see Wilson v. Layne, 526 US 603 (1999)). Press lawyer Bruce W. Sanford was scathing in his criticism of this development:

The presumption of privacy becomes a sacred cow. The home becomes off-limits to the media even when the government has probable cause to enter. Wait until some police brutality or misconduct occurs within these sacred palaces of privacy. Then we will see how glorious this new body of law is. How odd to believe that people need protection from the media, but not from the police. (Sanford, 1999, pp. 138-139)

The NSW Supreme Court came to a similar conclusion to the US court when ruling against Channel 9 in a trespass suit by a man filmed by A Current Affair during a ride-along with the Environment Protection Authority during a raid on his property (see TCN Channel Nine Pty Ltd v. Anning [2002] NSWCA
82 (March 25, 2002)). The court warned public authorities against the practice. That said, the practice can reveal important insights very much in the public interest into the practices and attitudes of the authorities, as exemplified by the Cop it sweet ABC documentary mentioned above.

I described the individual’s so-called “right to privacy” as a 20th century phenomenon which has gained support throughout Western democracies, particularly over the past two decades. It may well evolve into a tort of invasion of privacy in Australia in the near future. Nevertheless, it is fundamentally a value assigned to individual citizens in their private capacities. In short, if it is a right, it is a right of the citizen, whereas other rights relevant to this inquiry, such as press freedom, are rights of the citizenry. As such, it is difficult for a public body such as the CMC, concerned with public interests, to weigh this private value against broader-based democratic principles such as press freedom and open justice. Occasionally, as some of the greatest philosophers have noted, individuals are called upon to make personal sacrifices for the greater public good. That said, mechanisms are required to ensure public enterprises such as the media and public servants such as the police respect the privacy of individual citizens except where important matters of public interest override it.

On the issue of security and terrorism, I pointed out that there are strong arguments as to why the media’s Fourth Estate role is more important today than ever before. In the age of terrorism, governments are passing legislation and taking decisions in the name of national security which deserve close scrutiny to ensure they are not merely political devices to advance their own interests at the expense of hard-fought democratic rights and values. The ABC’s Media Watch program (Media Watch, 2004) exposed an episode of “media management” by the Commonwealth Department of Immigration to prevent photography of refugees who had landed on the West Australian coast. The program raised serious questions about the involvement of the Immigration Minister’s office in that incident as a political measure.

In the new era of terrorism that followed the September 11, 2001, attack on the United States and the 2002 Bali bombings, the Australian Government introduced legislation containing provisions for the arrest and detention of citizens (including journalists) who might have information on terrorists and terrorism activity, and which render criminal communication by people with detainees, their families and lawyers. This was contained in the ASIO Legislation Amendment (Terrorism) Act 2003, which involved amendments to the Australian Security Intelligence Organisation Act 1979. Despite a combined media submission by several competing major groups, the legislation allowing anyone over the age of 16 to be detained for up to seven days for questioning (s 34HC) by ASIO was passed in 2003 (PANPA, 2003, p. 15).

Interestingly, this brings into alliance the two competing interests of press
freedom and privacy. With individual citizens (and journalists) subject to
greater powers of arrest, detention and questioning than ever before, their pri-

vacy and very freedom is under threat for the sake of the greater public inter-

est in security and public safety. There seems to be no identifiable public body
authorised to watch over the implementation of these new anti-terrorist powers.
This brings to the fore the media’s watchdog role in reporting upon breaches of
this special new power which unnecessarily compromise citizens’ privacy and
freedom.

As press lawyer Bruce W. Sanford wrote when criticising the ascendancy of
privacy laws over press freedoms:

In other places on the planet, people fear repression more than
a camera lens. If there were a free press, they would gladly
invite the media to witness police action. (Sanford, 1999, pp.
138-139)

I advised that terrorism and security are a double-edged sword in this debate.
Both the media and the police can (and have) put public interest arguments for
greater rights and privileges in the era of international terrorism and concerns
for national security. The police can argue that media access to their communi-
cations might jeopardise sensitive operations related to terrorism and threats to
public safety. The media, on the other hand, can argue that there is no greater
need for speedy and open communication to the public than when their lives
might be endangered by an act of terrorism and also that their Fourth Estate role
comes into play as they act as a watchdog over police and intelligence agen-
cies’ use or abuse of their special powers.

In explaining how all this relates to the implementation of a new system of
media access to police communications, I pointed out that the literature on
police-media relationships (Ericson, Baranek & Chan. 1989) shows that prob-
lematic issues arise in communications between police officers, police-media
intermediaries and the media themselves. Police roundspersons develop “cosy”
relationships with the police or public relations personnel they are dealing with,
a situation which can work markedly against reportage of matters of larger pub-
lic interest which might not necessarily be in the interests of individual officers.
Cosy relationships also develop between officers and police media personnel,
which can affect the selection and flow of information to the media. There are
few better examples of that than the NSW police media unit’s role in the pub-
licity surrounding the arrest, charging and ultimate dropping of charges against
former detective Harry Blackburn in 1989 (Lee, 1990). There, at the behest of
the assistant police commissioner and with the approval of the commissioner,
the media unit organised a full scale and potentially subjudicial coverage of the
suspect’s arrest, complete with pre-arrest media lock-up and footage of the sus-
pect being “walked” to the watchhouse. The royal commission totally exoner-
ated the accused and was highly critical of the media unit’s role in the episode.
This background does not support a system, as suggested by the police, of channeling all information about crimes via the police media unit.

Whether or not the practice of media monitoring of police communications is illegal, the fact is that it has been condoned by police for at least the past four decades. While it is unlikely that the media could mount a legal argument that the shift to digital communication and the subsequent deprivation of their ability to hear police communications is a "prior restraint" on their newsgathering activities, I suggested there was a strong moral and public interest argument that this is indeed the case. Assessing the media's case for access on the same terms as the case for tow truck drivers, funeral directors and other parties as proposed in the QPS submission (p. 17) flies in the face of four centuries of legal and philosophical support for the media's Fourth Estate role.

On the first day of the inquiry's hearings, Mr Spiros Nikolakopoulos, director of Motorola Australia Pty Ltd, suggested digital technology would reduce the amount of voice communication in the medium term. I later interviewed the news director of NBN Television, Mr Jim Sullivan, on this issue (personal communication, 2004). Mr Sullivan has inspected emergency services technologies in Seattle, Washington, which featured extensive portable data communications capacity. Mr Sullivan said much of the basic communication was still being conducted by voice — certainly the kind of essential information about an incident the media requires for coverage or for follow-up inquiries with the police. When you think about it, the introduction of data communications into police cars actually works in favour of media access to radio communications: basic information about the incident, for example, "we are at Queen Street mall and a youth has been injured badly in a fight" will still be relayed by voice. Police are unlikely to have the ability, the inclination, or the time to type such simple communications. However, all the data about the suspects, victims, witnesses and so on would most likely be sent via data communication, keeping private details from media scrutiny but still alerting them to the newsworthy incidents.

Channelling all crime and public safety information through a police media unit is fraught, particularly when the underlying mission, purpose and allegiances of this unit have not been clearly defined. Based upon its website information at http://www.police.qld.gov.au/pr/about/div_comm/media.shtml, the "Media and Public Relations Branch" has a dual role:

1. That of public relations operative in the corporate sense of "managing" the public image of the QPS and its senior personnel. (Relationships with the Police Minister’s office and the Premier’s office may also be relevant here.)

2. That of the channel for truthful information of public interest about crime and public safety to the media (limited only by genuine legal constraints such as defamation and contempt of court).
In the QPS organisational structure, the branch reports directly to the Commissioner (Queensland Police Service, 2005). If there is going to be any progress in ensuring the flow to the public of truthful information which has not been sanitised for “image” purposes, there are strong arguments for these roles to be decoupled, given their potential for conflict as has been implemented in South Australia. The best solution would be to have a police media unit whose personnel were rewarded for the speed and efficiency with which they could deliver crime and public safety information to the public via the media.

I made this point both in my report and in my testimony to the inquiry. It was met with a strong rejection by the director of media and public relations at the Queensland Police Service, Mr Leon Beddington, in his testimony on Day 3 of hearings (CMC Hearings, 2004, Day 3, p. 280). In defending the existing system, Mr Beddington cited two recent incidents where police officers were being investigated for sexual and child pornography offences. In explaining the speed with which his office advised the media of these incidents, he also advised that the procedure of advising the media involved a preliminary “clearance” with the police commissioner. To my mind, this is exactly the problem with the existing mechanisms. The police commissioner is consulted as part of a “crisis management” strategy, in much the same way as might be done in a private corporation.

A working model for media access

I concluded with a suggestion of a model under which media access to police communications might operate. It is clear from the very creation of this inquiry and from the submissions that there are markedly different interpretations of the value which should be placed on the competing public and private interests at stake on the topic of media access to police communications.

If this were another tribunal, perhaps even a court or royal commission, different emphasis might be placed on the value of the media’s Fourth Estate role. However, this is an inquiry established by a commission in the state of Queensland, a state with a relatively recent history of endemic police and governmental corruption which was exposed by media organisations playing that very Fourth Estate role. Despite major public mechanisms being put in place to oversee police operations and minimise the opportunity for corruption, there are no doubt substantial public benefits in having the media operating as an independent watchdog, outside this official system. Arguments like those in the Queensland Law Society submission that the media no longer need to play a watchdog role in the era of public checking mechanisms like the CMC are naive and, quite frankly, worrying. There are all sorts of reasons why whistle-blowers might talk to journalists rather than public authorities, and it is hardly likely the CMC will have the resources to monitor police behaviour at the scenes of crimes and public disturbances. For example, the recent debate over
whose “truth” should have been accepted about the events leading to the death of an indigenous youth in Redfern, Sydney, might have been clarified if a news crew had been at the scene as a result of routine scanner monitoring.

Media access to police radio communications has been a central tool of newsgathering for media organisations for at least four decades. While it may have been technically illegal, the police have known about this media practice throughout that period and have condoned it. There is little evidence that media organisations have acted negligently or jeopardised police or public safety in using this technology to report such events. To the contrary, it seems they have almost always acted responsibly and complied with police policies and requests. To take away that privilege by using encrypted technologies represents a de facto form of prior restraint, a censorship of the media’s ability to act quickly to be at the scene of a news event while it is happening or soon after it has occurred.

There are major shortcomings in channelling such information through a police media and public relations branch, particularly given the examples of shortcomings of such a unit highlighted in the media submissions. That unit’s processes and mission statement also need serious review. It should be the role of such a unit to enhance the transparency of police operations and improve the communication channels between the police and the public via the media. It should not be to protect the interests of the police generally or individual police officers or the government’s police policy. Whereas a private corporation’s public relations department might seek to manage the public image of its company by stonewalling the media or selectively releasing information, the police media unit should be accountable to the public for its actions in facilitating the information flow between the police and the public. The unit and any relevant police personnel should be called to account for occasions where such information flow has been delayed or impeded.

All that said, there are other interests at stake in 21st century Australia, interests which should not be dismissed lightly. We live in a high security era where some operations have to remain secret. Police and public safety may be at risk in some situations. Society and the courts are becoming more conscious of citizens’ privacy, and may even be working towards a so-called “right to privacy”. The media have not been very effective in regulating their own behaviour in this regard; their self-regulatory and semi-regulatory systems have been weak and have often been ignored in the search for ratings and circulation.

The following model might work as a starting point for discussion at this point in the inquiry:

1. In recognition of the media’s Fourth Estate role, media organisations should be channelled all routine police communications in their new digitised form so they have no less direct access to such communications than they have had in the past. The media should pay for any equipment and

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installation costs involved in this process, but police should give full technical assistance. Other communication methods, such as SMS messaging, bulletin boards, broadcast telephone systems and website updates should be seen as useful ancillary methods supplementary to the maintenance of basic radio communication access.

2. In exchange for the formalisation of this privilege, the media organisations should:

   a. Sign a document indemnifying the QPS and its officers against any civil liability they may incur as a result of this privilege. In other words, if a plaintiff sues the QPS or individual officers over some injury or wrong, and it can be proved that injury or wrong is attributable to media interference or negligence stemming from its scanner access, then the media organisations would agree to pay any resulting court costs and damages;

   b. Agree to participate in a new Media Communication Tribunal process, explained below;

   c. Agree to a Code of Practice for Scanner Access which prohibits such media behaviours as disobeying a police instruction, releasing information to third parties, endangering police or public, trespassing, gross invasion of privacy and so on, to be agreed between the tribunal and key stakeholders at its first meeting.

3. The Police Media Unit’s mission and protocols should be revised to embrace their public interest duties. Their role in this domain should not be to enhance or protect the image of the QPS, but to facilitate the open and speedy flow of information between the police and the community. If these roles are not compatible (as is likely) then they should be decoupled, with perhaps different reporting lines for the different functions, as is the case in South Australia.

4. Police should have written into their duties an obligation to co-operate with the media except when police or public safety is jeopardised, and to formally diarise their reasons for not releasing information to the media when called upon to do so. There should also be a compulsory recording of all police communications which the tribunal could consult when inquiring into media complaints about access. In other words, the emphasis should shift to transparency, except where there is an arguable case for secrecy, based on genuine public interest rather than public image grounds.

5. A Media Communication Tribunal should be established within the CMC, consisting of a retired editor, a retired senior police officer and an independent chair (perhaps the CMC chair?), empowered to adjudicate:

   a. Police or public complaints about media abuses of their scanner access privilege;
b. Media complaints about the performance of the Police Media Unit for breaches of its duty to provide full and speedy communication;

c. Media requests for initial access to police radio communication access or resumption of access after a suspension.

6. Powers available to the tribunal with regards to the media should include: warning of suspension of scanner access; limitation of level of scanner access; temporary suspension of scanner access or permanent suspension of scanner access (for repeated breaches), with facility for the publication or broadcast of a public apology as an alternative remedy if agreeable to all parties.

7. Powers available to the tribunal with regards the Police Media Unit should include the full range of public service disciplinary powers.

8. There should be an appeal channel to the State Ombudsman.

Figure 1: Media Communication Tribunal

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<thead>
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<th>Powers over media to:</th>
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<tbody>
<tr>
<td>- Limit or deprive media access to police communications</td>
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<td>- Adjudicate media requests for access to police communications</td>
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<tr>
<td>- Develop code of practice for media access</td>
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<th>Powers over Police Media Unit to:</th>
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<td>- Define and amend role of this unit, including overall public service mission</td>
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<td>- Handle media complaints about the unit's activities</td>
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<td>- Develop protocols of accountability and transparency of unit's activities</td>
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Postscript: developments to December, 2004

The Crime and Misconduct Commission released its report in December, 2004 (CMC, 2004), and the Beattie Government immediately moved to implement its recommendations (Pearson, 2004b, p. 16). The report outlined a new system of direct data-feed dispatches to the media when police are called to a job. However, several newsworthy police codes would be excluded from the system, including those for incidents involving the mentally ill, children, domestic violence, sexual offences and suspected terrorist activities. A further seven news types would be subject to a one-hour delay of the data feed. These included matters involving an armed person, sieges, hijacks, abductions, bomb threats, sudden deaths and situations where shots have been fired (Pearson, 2004b, p. 16). The police service would be required to fund the establishment
of the dispatch data feed and its operation, while media outlets would have to pay for computers, software and line rental.

Police Minister Judy Spence said she had asked Police Commissioner Bob Atkinson to report to her early in 2005 on how soon the real-time data feed could be operational. She expected the police media unit to be broadened to a 24-hour service by March and said a new SMS and pager messaging system between the unit and the media would be launched in January (Pearson, 2004b, p. 16).

Editors and news directors labelled the new system an impediment to the public's right to know and a retrograde step for police transparency (Pearson, 2004b, p. 16).

References and cases

Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd [2001] HCA 63.


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