EXTERNAL REVIEW OF INVESTIGATION


REPORT

BACKGROUND
On 24 April 2017, Territory Families (TF) became aware of the discovery of departmental records, containing sensitive client and third party information, at the Alice Springs Waste Management Centre (the WMC). Records affecting at least 46 clients and third parties directly, and other persons indirectly, were recovered from the WMC between 24 and 26 April.

On 26 April 2017 TF commenced an internal review of the incident conducted by Ms Leonie Warburton, Acting Executive Director Governance.

A detailed background of the circumstances leading to the loss, and subsequent discovery of TF records at the WMC is set out in the Internal Review Report.

In summary, it is confirmed that the records in question were inadvertently delivered to the WMC by a contractor, s.57 (1)(b) on 20 and/or 21 April 2017 in the course of disposing of furniture located in the TF offices at Level 1 Mwerre House, Hartley St, Alice Springs.

REQUEST FOR EXTERNAL REVIEW
Recommendation 7 of the Internal Review was for immediate consideration to be given to the appointment of an independent external investigator to conduct further investigation of the information loss, with the aim of providing internal and external assurance that the matter has been fully investigated and strategies to prevent a recurrence of the incident. On 11 May 2017 Solicitor for the NT was tasked with conducting the external investigation.

Attachment B to the Internal Review Report set out the Scope of External Investigation including the following outcomes:

1. Assess Territory Families review and ascertain if there are any gaps in the process and/or analysis.
2. Conduct any additional review work required to fill identified gaps.
3. Review the internal review recommendations and provide any additional recommendations necessary to mitigate against the recurrence of future information loss.
4. Provide any additional analysis of the risks associated with the information loss.
5. Provide advice whether the information loss is assessed to be a breach of legislation or other information management requirements / standards.
6. Provision of advice on strategies to communicate with any party affected by the information loss.

PROCESS
The process followed in conducting the external review included the following steps:

- Review of the Internal Review Report;
- Discussions with Ms Warburton;
- Discussion with relevant TF officers, being:
  - Sheriden Appel;
  - Victoria Dalgleish;
  - Taylor Walker; and
  - Peter Lilliebridge.
- Reviewing TF records recovered from the WMC;
- Reviewing the Office of the Australian Information Commissioner - Data breach notification guide; and
- Reviewing relevant legislation.

OUTCOMES

Outcome 1 Assess Territory Families review and ascertain if there are any gaps in the process and/or analysis;

The Internal Review Report is thorough and, to the extent that there are any gaps in the process and analysis, they have predominantly been caused by the disorganised circumstances of the Mwerre House office relocation on 20 April 2017. A number of those gaps cannot be resolved retrospectively.

I make the following comments in response to the Internal Review Report:

a) At page three of the Internal Report it is noted that s.57 (1)(b) removed items “marked for disposal” to the WMC “within its scope of works”. I have reviewed the s.57 (1)(b) Request For Quotation – Mwerre House Office re-fit Stage 1 (T17-1445) document (the RFQ) and discussed this issue with Peter Lilliebridge and note that:

i. Based on the information I have seen it is very unlikely that all items removed to the WMC were marked for disposal;

ii. There are aspects of s.57 (1)(b) RFQ that relate to salvage (Paragraph 3.8) and removal of demolished material (Paragraph 8.1) that could have brought disposal of furniture within the s.57 (1)(b) scope of works;

iii. However, Mr Lilliebridge's view is that removal of furniture for disposal was not within s.57 (1)(b) scope of works and they would not have undertaken that activity on their own initiative, as they would not have been paid for it;

iv. Mr Lilliebridge advises that s.56 of s.57 (1)(b) told him that TF staff requested or directed s.57 (1)(b) employees to remove or dispose of furniture on Level 1 Mwerre House; however, s.56 could not identify those staff;

v. It is not clear why s.57 (1)(b) would have engaged in activities outside of its scope of works, considering that it would not be paid for those activities; however, it is possible that it was convenient to do so, to facilitate s.57 (1)(b) commencing refurbishment works on Level 1 Mwerre House. Alternatively it may be that s.57 (1)(b) agreed to provide ad hoc assistance to empty Level 1 Mwerre House.

vi. There is no information suggesting that any other contractor or employee removed assets or furniture from Level 1 Mwerre House to the WMC.

b) Page 3 of the Internal Review Report sets out a list of reasons why the Mwerre House relocation did not proceed smoothly. In addition to that list I understand that:

i. Tradespersons/staff from a range of organisations including, s.57 (1)(b) the Department of Infrastructure Planning and Logistics, the building owner, and TF were on site at Mwerre House simultaneously, adding to confusion;

ii. The TF Corporate Services Coordinators, Mr Lilliebridge and Mr McConnell, were managing relocations and fit-out, at Mwerre House and Minerals House simultaneously and were not able to supervise activities in Mwerre House continuously; and

iii. Late changes to Mwerre House coordinators/contact personnel may not have included substantial handover or guidance.
c) At pages 3 and 4 of the Internal Review Report there is reference to filing cabinets located in a storage room on Level 1 Mwerre House and reference to that storage room being locked. In discussion with TF mangers it was revealed that:

i. Records held in that storage room would have come from a number of different work areas and there was no 'ownership' of the storage room or its contents by any one work area;

ii. Perhaps not surprisingly, there was no inventory of items and records held in that room prior to the relocation of 20 April (which is consistent with the majority of Level 1 Mwerre House in any event);

iii. In the course of the office relocation on 20 April 2017 TF staff, including Sheriden Appel conducted a walkthrough, of Level 1 Mwerre House with s.57 (1)(b) staff. In the course of that walkthrough the storage room was unlocked, possibly by TF employee Somsy Lee;

iv. At that point the Storage room still contained filing cabinets and boxes that were not labelled for removal or disposal;

v. Sheriden Appel recalls that a couple of hours later, during a further walkthrough with s.57 (1)(b) she noted that the boxes in the storage room had been removed, but the filing cabinets remained. Ms Appel checked the filing cabinets at that time and removed client files to the Out of Home Care Team workplace at Minerals House, however she cannot confirm that she checked all of the filing cabinets.

vi. That information is consistent with WMC CCTV footage establishing that s.57 (1)(b) delivered furniture to the WMC at 3:38 pm on 20 April and again at 10:41 am on 21 April.

vii. WMC CCTV Footage has not been reviewed thoroughly; however, advice from Ms Warburton, who has reviewed some footage, indicates that the CCTV footage does not allow complete identification of TF furniture in any event because:

1. The stacking of furniture in s.57 (1)(b) vehicles does not allow all items to be seen or identified;

2. The WMC does not keep records of items delivered to it for disposal;

3. There is no CCTV footage in the 'woodpile' section of the WMC where items are dumped/destroyed; and

4. The Rediscovery Centre does not keep records of items sold to the public, other than by price. Consequently it would be very difficult to cross-check Rediscovery Centre sales records against outgoing CCTV to identify any TF furniture (Filing Cabinets) sold to the public. TF staff, with the assistance of WMC staff, conducted a process to check for items sold on 23 April 2017; however no office furniture that may have belonged to TF was identified leaving the WMC on the CCTV footage that was viewed.

d) At page 4 of the Internal Review Report it is noted that no disposal schedule was prepared at the time that items were taken to the WMC. In addition I note that:

i. There was also no inventory of all items of furniture located on Level 1 Mwerre House prior to the office move (Ms Appel provided an inventory for her work unit);

ii. s.56 from s.57 (1)(b) advised Mr Lilliebridge that he took contemporaneous notes of the items delivered to the WMC by s.57 (1)(b) however, he did not retain those notes; and

iii. A list of furniture items was prepared retrospectively by Mr Lilliebridge based on s.56 notes;

iv. Mr Lilliebridge's list of furniture cannot be reconciled with the items located at the WMC between 24 and 26 April. In particular Mr Lilliebridge recorded 10 filing cabinets having been located on Level 1 Mwerre House before the relocation; however a maximum of three appear to have been located at the WMC.
Outcome 2
Conduct any additional review work required to fill identified gaps;

a) If TF wishes to narrow the knowledge gaps identified above it could arrange to:

   i. Review all WMC CCTV footage from 20 to 23 April 2017;
   
   ii. Interview TF and s.57 (1)(b) staff who were on site at Level 1 Mwerre House on 20-21 April 2017 to seek further information about any instructions given to s.57 (1)(b) staff to dispose of furniture items; and
   
   iii. Interview WMC staff to identify which furniture items were destroyed or sold between 20 and 24 April 2017;
   
   iv. However; in the absence of a full inventory prepared prior to the relocation, or contemporaneous records of items delivered to WMC, it would appear impossible to establish, with certainty, what items were delivered to the WMC, what items were destroyed at the WMC, what items were sold by the WMC and what items are missing;
   
   b) In my opinion further investigations may obtain some additional information; however, they will not provide certainty that all records disposed of at the WMC have been recovered. At best those investigations will allow TF to advise that it has done everything possible to investigate the information loss.

Outcome 3
Review the internal review recommendations and provide any additional recommendations necessary to mitigate against the recurrence of future information loss;

I have reviewed the internal review recommendations and make the following comments and additional recommendations:

a) I understand from discussions with Peter Lilliebridge that Recommendation 1 has already been implemented or will be implemented for the next round of office relocations. I also recommend that full asset/furniture inventories are taken prior to any future office relocations;

b) Recommendations 2 to 4 are appropriate and I recommend that they are supplemented by an audit of TRIM files held by TF Teams in Alice Springs to ensure that all official hard copy files are held by the employee and/or in the location recorded in TRIM;

c) Recommendation 6 is appropriate and I have addressed the communication strategy and notification priorities under Outcome 6 below;

d) Once the high priority notifications are made TF will need to identify all other persons named in the recovered documents and assess whether they all need to be notified individually or whether some have been named in a context that does not constitute interference with their privacy such that they do not need to be notified;

e) With respect to Recommendation 8, it would probably not compromise any future investigation by the Information Commissioner’s office if the Internal Review Report is provided to the Commissioner. However, there is a reasonable prospect that some of the affected individuals named in Attachment A will complain to the Information Commissioner about the information loss incident. Consequently the information in Attachment A should not be disclosed to avoid the risk of creating a conflict of interest; and

f) For reasons discussed under Outcome 6 below, I recommend that TF designate a senior officer in Alice Springs to act as a single point of contact for persons notified about the loss of personal records, including children for whom TF is the legal guardian.

There is a reasonable prospect that notifying affected persons and/or their representatives could lead to media attention and enquiries in relation to the information loss incident, particularly as it may be perceived to relate to the Royal Commission. There is also a risk that representatives of TF clients, or former clients, involved with the Royal Commission may complain directly to the Royal Commission about the incident. Consequently I recommend that:

   g) The Minister for Children and Families is briefed as soon as possible, prior to affected parties being notified;
h) The TF media unit coordinates with Ms Jo Brosnan in the Department of the Chief Minister to prepare for potential media interest in the incident, related to the Royal Commission; and

i) The Chief Executive of TF or a senior delegate contact Ms Kirsty Windeyer, Official Secretary to the Royal Commission, to provide a briefing on the incident and subsequent actions to mitigate the information loss, prevent a recurrence and notify affected parties.

Outcome 4 Provide any additional analysis of the risks associated with the information loss

a) Considering that a small number of original files were discovered at the WMC there is a risk that additional original files were delivered to WMC but have not been located. A full TRIM audit of the location of TF hard copy TRIM files in Alice Springs should be conducted to establish whether all TRIM files are accounted for.

b) It is possible that copies of TF records have been disposed at the WMC and not discovered. The destruction of copies should not present a legal risk or a risk of loss of records, so long as all original TRIM files are accounted for.

c) It is possible that further TF records will be discovered at the WMC; however that risk will diminish over time and would be mitigated by the high likelihood that WMC staff will contact TF if any such records are discovered (a request to be notified of any future discovery should be made if it has not been already).

d) There is a possibility that TF records have been disclosed to a third party through the sale of TF filing cabinets by the Rediscovery Centre between 21 and 23 April. The risk of this outcome is low and it appears that, at most, only one TF filing cabinet could have been sold. Greater certainty could be obtained by reviewing all CCTV of vehicles leaving the WMC between 21 and 23 April; however, there is no guarantee that this CCTV footage will assist. It should be noted that the Rediscovery Centre held filing cabinets from other sources at the relevant time and any CCTV footage of filing cabinets leaving the WMC would not necessarily show cabinets sourced from Mwerre House.

e) In summary, it is unlikely that any records have been disclosed to third parties, but more likely that some records (most likely copies) have been destroyed.

f) Consequently it would not be accurate or appropriate for TF to advise any party that it is satisfied that all records have been recovered.

g) There is a risk that TF or individual employees could be prosecuted for an offence under various legislation; however the absence of intentional conduct reduces the risk substantially.

Outcome 5 Provide advice whether the information loss is assessed to be a breach of legislation or other information management requirements / standards.

The information loss incident gives rise to a number of potential breaches of legislation and offences as follows:

a) Information Act - Information Privacy Principle 4 - Data Security

IPP 4 provides as follows:

4.1 A public sector organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

4.2 A public sector organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.

i. The circumstances of the loss of information incident establish a failure to take reasonable steps to protect personal information contrary to IPP 4.1 and a potential failure (by unknown employees) to destroy copies of documents containing personal information contrary to IPP 4.2.
ii. Breaches of IPP 4 constitute interference with privacy under s 67 of the Information Act and give each affected person a right to complain to the Information Commissioner, under s.104 of the Information Act, about interference with their privacy.

b) Information Act - Information Privacy Principle 2 - Use and disclosure

i. IPP 2 provides that public sector organisations must not use or disclose personal information about an individual for a purpose other than the primary purpose for collecting it unless one or more of the exceptions set out at IPP 2.1(a) to 2.1(i) applies.

ii. It is not possible to assess each of the recovered records against IPP 2 to identify all possible breaches of this principle; however from a general perspective:

1. There is no clear evidence, at this time, that any third party has read the personal information of a TF client or a third party;

2. Without interviewing relevant witnesses (i.e. S.55, S.56 and WMC staff) it is not possible to know which, if any, personal information they read when they discovered the records, if any. It is possible that none of those persons would be able to identify information relating to individual persons in any event;

3. Consequently, it is arguable that the accidental disposal of personal information contained in TF records found at the DMC was not a use or a disclosure of the information;

4. In the circumstances would be very difficult for any individual person to prove that their personal information has been used or disclosed by TF.

iii. Although it is not possible to rule out potential complaints that TF has breached IPP 2; there is a lower risk of complaint on this basis than under IPP 4.

c) Information Act - section 136B - Royal Commission Disposal Freeze

i. On 12 August 2016 the NT Archive Service issued a ‘Notice of disposal freeze for records relating to the Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory’ (the Notice);

ii. The purpose of the Notice was to notify public sector organisations, which may have been in possession of records relevant to the Royal Commission, that a disposal freeze had been placed on records created on or after 1 August 2006 which may be required for the inquiries of the Royal Commission or related legal actions or investigations;

iii. The disposal freeze was issued in accordance with section 136B of the Information Act and the Notice advised that destruction of records covered by a disposal freeze was considered illegal disposal under section 145 of the Information Act;

iv. The Notice and the disposal freeze applied to then Department of Children and Families (DCF) and subsequently to TF and specifically to records affected by the then DCF Records Disposal Schedule Family and Children's Services 2012/2;

v. Schedule A to the Notice listed a wide range of records subject to the disposal freeze;

vi. The disposal freeze was established to be in force from 1 August 2016 to 30 June 2017;

vii. There is a clear risk that records subject to the Notice may have been destroyed; however, for the reasons set out above, it is not possible to know whether the records recovered from the WMC on 24-26 April comprise all records accidentally disposed of (such that no records were ultimately destroyed), or whether other unidentified records were also disposed of.

viii. The majority of records recovered from the WMC were copies and I assume that original versions of those records exist elsewhere in official TF files or systems. The disposal of copies would not have contravened the intent of the Notice; however, once again it is not possible to be certain that unidentified original records, have not been destroyed.

ix. As part of the notification process discussed below it will be necessary to consult with and notify:
1. The TF Royal Commission Response Team to ascertain whether any of the recovered records were required to be, and have or have not been disclosed to the Royal Commission; and

2. Possibly the NT Archives Service of the information loss incident and the possible (although in my opinion unlikely) contravention of the section 136B Notice.

d) Information Act – section 145 – Mishandling records

i. As noted above, the Notice of disposal freeze advises that destruction of records subject to a disposal freeze is considered to be illegal disposal under section 145 of the Information Act. That section establishes a number of offences relating to disposal, destruction, damage and transfer of records; however:

1. The offences set out at sections 145(1)(a) to 145(1)(f)(i) require an element of intention and there is no evidence that the information loss in question was anything other than an accident. As such it appears unlikely, on current information, that any person could be successfully prosecuted in relation to those offences;

2. The remaining offence, set out in paragraph 145(1)(f)(ii) of the Information Act provides that a person commits an offence if the person is reckless as to the record’s being damaged. For reasons discussed above it is not possible to be certain that no records were damaged in the information loss incident. However, on the information I have seen, and considering the numerous failings contributing to the information loss incident, it is highly unlikely that any single person could be found to have been reckless as to any record or records being damaged;

3. Pursuant to section 4B(1) of the Information Act it is possible for an offence under that Act to be laid against the Territory; however, as discussed above, there is no evidence at hand that any original records were recklessly damaged and it is highly unlikely that the offence would be prosecuted for damage caused only to copies, so long as original documents have been preserved within formal files or electronic record management systems.

ii. In my view the risk of prosecution under section 145 of the Information Act is low. This assessment would change if evidence established that original records were damaged or destroyed.

e) Care & Protection of Children Act – section 308(1)(b) – Confidential Information

i. The Internal Review Report refers to a possible breach of section 308(1)(b) of the Care and Protection of Children Act (the C&PCA). That section effectively provides that a person is guilty of an offence if the person:

1. acquires information in exercising a power or performing a function as an authorised officer; and

2. does something that results in disclosing the information to someone and is reckless as to whether doing that thing would result in the disclosure;

ii. None of the information seen to date suggests that any authorised officer could be found to have recklessly done something that caused information, that they had obtained in exercising a power or function under the C&PCA, to be disclosed through the Mwerre House information loss incident.

iii. In my opinion the prospects of any prosecution under section 308(1)(b) of the C&PCA are very low.

f) Care & Protection of Children Act – section 301 – Disclosure of Child’s Identity

i. Section 301(1) of the C&PCA provides as follows:

301 Disclosure of child’s identity

(1) A person must not publish any material that may identify someone who is a child:
(a) in the CEO’s care; or
(b) for whom:
   (i) an application for a temporary protection order, assessment order, protection order or permanent care order has been made; or
   (ii) such an order is in force; or
(c) involved (whether as a victim or not) in a sexual offence or alleged to have been so involved in a sexual offence.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

ii. There is no doubt that information falling within section 301(1)(a) of the C&PCA was disposed of at, and subsequently recovered from, the WMC in the information loss incident;

iii. As noted above, it is possible that other information falling within that section was disposed of at the WMC, but not recovered;

iv. The question is whether the loss or disposal of that information constitutes “publication” for the purposes of section 301 of the C&PCA;

v. The word “publish” is not defined in that Act; however, at its broadest it could be interpreted to mean any intentional communication of the information to another person;

vi. It is not clear on the evidence that any particular information falling within section 301(1) of the C&PCA was communicated to any third party and there is nothing in the circumstances to suggest that any such communication would have been intentional;

vii. In my view the prospects of any person being prosecuted for this offence are remote and the issues involved can be dealt with if and when a complaint is raised.

g) Children’s Commissioner Act - section 46 – Direction by Commissioner not to disclose information

i. Section 46 of the Children’s Commissioner Act (CCA) provides as follows:

46 Direction by Commissioner not to disclose information

(1) This section applies if a person is given a document by the Commissioner for this Act.

(2) The Commissioner may direct the person not to disclose any information in the document except as specified in the direction.

(3) A person commits an offence if:

(a) the Commissioner gives the person a direction under subsection (2); and

(b) the person engages in conduct that results in the person contravening the direction.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

ii. A potential contravention of that provision arises specifically in relation to a ‘Final Investigation Report’ issued by the Children’s Commissioner on 3 June 2013 in relation to S.56, S.301

iii. A copy of that report was disposed at the WMC with other Mwerre House records on 20-21 April and subsequently recovered between 24 and 26 April 2017. The Report (and a covering letter) is discussed at item 18 of Attachment A to the TF Internal Review Report and is identified as high risk.

iv. The cover page of the Children’s Commissioner Report includes the following statement:

Pursuant to section 281 of the Care and Protection of Children Act, this Investigation Report and any other ancillary material provided with this report can not be disclosed to
any other party except to relevant service provider staff where the disclosure is required for case management, implementation of recommendations, review and training purposes; to a party that has been expressly approved by the Children’s Commissioner; or where otherwise the disclosure is required or authorised by law.

v. Page 281 of the C&PCA was repealed after the publication of that Report, and replaced by section 46 of the CCA. Transitional provisions at section 54 of the CCA provide that the Commissioner’s section 281 direction set out in the Report continues to apply under section 46 of the CCA.

vi. Although it is arguable that there was no disclosure of the Report, there is a risk that the disposal of the report at WMC may have breached the Commissioner’s 2013 Directive.

vii. In the circumstances it is appropriate, and a high priority, for TF to notify both §56, §301 guardian or representative, and the Children’s Commissioner, of the circumstances of the disposal and recovery of a copy of the CCA Investigation Report.

h) Public Sector Employment & Management Act (PSEMA) & NTPS Code of Conduct

i. As identified in the TF Internal Review Report, it is possible that there has been a breach of paragraph 14.4 of the NTPS Code of Conduct which provides as follows:

**Freedom of information**

14.4 A Public Sector Officer must ensure that the privacy of an individual is maintained and only release information in accordance with the Information Act. Authorisation from a Chief Executive Officer is required before action is commenced.

ii. Any failure by an employee to carry out their duties in accordance with the Code of Conduct constitutes a contravention of section 5F(1)(a)(iii) of the PSEMA and consequently a breach of discipline under section 49(a) of the PSEMA;

iii. However, for reasons discussed above, the circumstances surrounding the Mwerre House office relocation and the consequent information loss incident involved numerous overlapping failures, and it would be difficult to identify that any particular employee was responsible for releasing personal information inconsistently with paragraph 14.4 of the Code of Conduct;

iv. The information loss incident also gives rise to potential breaches of discipline under section 49(e) of the PSEMA on the basis that TF employees were negligent or careless in the performance of their duties. However, for the same reasons as those discussed above, it would be difficult to identify that any individual employee committed that breach.

i) NT Criminal Code - Section 76 – Disclosure of official secrets

i. Section 76 of the NT Criminal Code (the Code) provides as follows:

(1) Any person who, being employed in the public service or engaged to do any work for or render any service to the government of the Territory or any department or statutory body thereof, unlawfully communicates confidential information coming to his knowledge because of such position is guilty of an offence and is liable to imprisonment for 3 years.

(2) If he does so for purposes of gain he is liable to imprisonment for 5 years.

ii. Any prosecution under section 76 of the Code would need to prove that an employee intentionally communicated confidential information. As noted above in relation to other potential offences, I have not seen anything to suggest that the information loss incident arose from any intentional conduct.

iii. In my opinion the risk of prosecution under section 76 of the Code is low.

Outcome 6 Provision of advice on strategies to communicate with any party affected by the information loss.
a) I have been provided with a copy of the Office of the Australian Information Commissioner's (OAIC) ‘Data breach notification guide: A guide to handling personal information security breaches – August 2014’ (the OAIC Guide). Having reviewed the OAIC Guide I consider that it provides a useful approach to notifying parties affected by the Mwerre House information loss incident.

b) The OAIC Guide links the need to notify affected parties of the risk that a data security breach has caused harm or potential harm to that party. Accordingly, in some circumstances, where the breach was accidental, limited in nature, and personal information has been recovered, the OAIC Guide suggests that notification may not be necessary and may cause undue anxiety to affected persons.

c) However, in circumstances where the breach involves sensitive information, that could cause embarrassment or humiliation to the affected individuals, the OAIC Guide advises that they should be notified. Page 23 of the OAIC Guide also includes the following relevant statement:

*There may be adverse consequences if an agency or organisation does not notify affected individuals. For example, if the public, including the affected individuals, subsequently find out about the breach through the media, there may be a loss of public trust in the agency or organisation (which, in turn, could have its own costs).*

d) In considering the Mwerre House information loss incident, it could be argued that the limited extent of the breach (i.e. as far as we know at this time records were only disclosed to S.55, S.56 and WMC staff) and the recovery of the records, has mitigated the risk of serious harm to the affected individuals, such that notification may not be required (or not required in all cases).

e) However, in my view, accepting that argument (which has not been made by TF) would be unrealistic in the circumstances and urgent notification of almost all affected parties is essential considering the highly sensitive nature of much of the recovered information, including:

i. Sensitive information identifying TF clients and their family members in connection with the C&PCA;

ii. Personal information of clients potentially relevant to the Royal Commission;

iii. Confidential court documents;

iv. Medical information; and

v. Employee records, in one case including an employee's bank details.

f) In addition, with reference to the extract from the OAIC Guide set out above, there is a very high risk, that the public will become aware of the information loss incident through other sources. A lack of transparency on the part of TF in those circumstances would cause reputational damage and loss of trust, potentially including between TF and the Royal Commission.

g) The question of when to notify affected individuals must be assessed on a case by case basis. The OAIC Guide advises that, in general, individuals should be notified as soon as reasonably possible; however, in some cases the urgency or seriousness of the breach dictates that notification should happen immediately, before having all of the facts.

h) In this case, considering that the information loss was accidental rather than intentional or malicious, contained to the WMC (as far as can be ascertained), and considering that records were recovered quickly, I do not consider that immediate notification was required. In my view it was appropriate for TF to investigate the matter and attempt to ascertain relevant facts prior to notifying affected individuals. However, now that the investigation phase is largely complete, TF should proceed to notify affected parties as soon as possible, in order of risk.

i) Recommendation 6 of the Internal Review Report is that a communication strategy be developed and that communication with clients and/or third parties is prioritised according to the level of risk associated with the type of record retrieved and the associated risk of harm to the clients or others. I strongly support that recommendation.
With reference to the table in Attachment A to the Internal Review Report, I recommend that the following matters be prioritised for notification as soon as possible:

i. Providing the Territory Families Royal Commission Response Team with copies of Attachment A and all recovered records and requesting an urgent assessment of any implications of the information loss incident for the Royal Commission, including any potential breach of the section 136B Freezing Order, and any potential failure to comply with Notices to Produce records issued by the Royal Commission;

ii. The Minister for Children and Families should be briefed as soon as possible, prior to affected parties being notified;

iii. The TF media unit should coordinate with Ms Jo Brosnan in the Department of the Chief Minister to prepare for media interest in the incident related to the Royal Commission;

iv. The Chief Executive of TF, or a senior Delegate, should contact Ms Kirsty Windeyer, Official Secretary to the Royal Commission, to provide a preliminary briefing on the incident and subsequent actions;

v. Subject to the assessment conducted by the TF Royal Commission Response Team and the outcome of discussions with Ms Windeyer, it may be appropriate for TF to advise the NT Archives Service of a possible breach of the Freezing Order;

vi. Family members of S.56, S.48 and/or their representatives should be notified in relation to item 10 of Attachment A;

vii. Adult) should be notified in relation to items 13 and 16 of Attachment A;

viii. Representatives of S.56, S.49 (child) should be notified in relation to item 14 of Attachment A;

ix. Representatives of S.56, S.49 (child) should be notified in relation to Item 15 of Attachment A; and

x. The Children's Commissioner and representatives of S.56, S.301 (child) should be notified in relation to Item 18 of Attachment A.

Although the risk of serious harm to employees affected by the information loss incident is relatively low, it would be appropriate, in the interests of maintaining staff confidence, to notify each affected employee as a high priority, and show them copies of their own personal information recovered from the WMC, in order to reduce any anxiety affected employees may feel.

Information recovered in relation to employee or former employee (Attachment A Item 39) includes salary and bank account details. That employee should be contacted as a high priority, if possible and, if they are concerned by the potential disclosure of their personal information TF should assist the employee to explore options to protect or change their bank account details.

It is possible that a number of the clients affected by the information loss incident are current or previous clients of CAALAS. It would be appropriate to identify which affected clients are currently represented by CAALAS and arrange a high level meeting to brief CAALAS on the information loss incident, recovery, investigation and steps taken to mitigate future risks to CAALAS clients.

Notification of individuals and organisations affected by lower risk matters should proceed as soon as possible after very high and high risk matters are dealt with.

In some situations TF may be the legal guardian for a child affected by the information loss incident. In such cases I recommend that, to avoid any conflict of interest and to ensure a consistent approach, a senior officer in Alice Spring should be designated to discuss the incident with the affected child, where appropriate. Those discussions should include discussion of the child's right to make a complaint to the Information Commissioner.

The Solicitor for the NT is available to assist TF by settling letters notifying the affected persons of the information loss incident. Amongst other matters such notifications should at a minimum:
i. Summarise the circumstances of the information loss incident and recovery;

ii. Advise the affected persons of the nature and content of their recovered personal information;

iii. Consider whether the relevant records should be provided to affected persons automatically, or selectively, e.g. where they can be hand delivered. It might be prudent to advise parties to contact TF if they wish to arrange secure delivery of their records. Simply sending/mailing/emailing the records in every case would risk further dissemination of sensitive personal information;

iv. Advise the affected persons that, as far as can be ascertained through TF’s investigations, no personal information has been disclosed to third parties;

v. Advise the affected persons of a designated contact officer within TF if they wish to discuss concerns about the information loss incident;

vi. Advise the affected persons that the loss of their information is being treated as a possible breach of IPP 4 - Data Security, and that they are entitled to complain to the NT Information Commissioner about that possible breach, if they wish;

vii. Provide contact details for the Office of the Information Commissioner; and

viii. Apologise for the information loss incident and any anxiety or concern it has caused the affected persons.

SUMMARY AND CONCLUSION

a) Evidence obtained through the Internal Review and this external review establishes that the relocation of TF assets and staff from Level 1 Mwerre House to Minerals House on 20-21 April was disorganised with many parties involved and a lack of overall control or responsibility for assets. The relocation from Mwerre House involved a number of overlapping gaps including:

i. There was a failure to itemise and record all assets/furniture held at Level 1 Mwerre House prior to relocation on 20 April 2017;

ii. There was a failure to mark/designate all assets/furniture for relocation or disposal;

iii. There was no single point of control for the Mwerre House relocation on 20 April;

iv. TF Corporate Services staff were managing relocation, refurbishment and fit-out in two buildings simultaneously on 20 April 2017 and unable to supervise all activities in Mwerre House;

v. Employees of various external parties (including s.57 (1)(b) and the building owner) were on site at level 1 Mwerre House simultaneously;

vi. There is no evidence that contractors were properly instructed or supervised with respect to disposal of assets/furniture;

vii. s.57 (1)(b) acknowledges disposing of assets/furniture from Level 1 Mwerre House at the WMC, possibly outside its scope of works;

viii. s.57 (1)(b) advises that its employees disposed of assets/furniture from Level 1 Mwerre House at the request/direction of unidentified staff;

ix. s.57 (1)(b) did not keep records of the assets/furniture its staff disposed at the WMC;

x. WMC does not have records of items delivered or destroyed or items sold from the Rediscovery shop, otherwise than by price of sale;

xi. WMC CCTV footage is unlikely to show all assets/furniture delivered on 20 and 21 April and will not show any records delivered to or destroyed at WMC;

xii. The discovery of TF records at the WMC establishes that copies of client, employee and other records were kept in informal ‘loose’ files in filing cabinets and/or pedestal cabinets on level 1 Mwerre House; and
xiii. The discovery also establishes that assets/furniture were not thoroughly checked to ensure all records were removed prior to relocation or disposal.

b) The result of the various gaps is that it is impossible to retrospectively identify all records held at Level 1 Mwerre House prior to the relocation on 20-21 April and consequently it is not possible to confirm that the records recovered from WMC on 24-26 April 2017 comprise all of the records disposed of by s.57 (1)(b).

c) It is unlikely, but not impossible, that TF records have been disclosed to third parties through the sale of recycled furniture by the WMC.

d) It is more likely that TF records have been destroyed at the WMC. However for the reasons set out above it is not possible to establish what records may have been destroyed or disclosed.

e) It is unlikely that lost or destroyed records would have been original or formal records (the vast majority of records recovered from the WMC were loose copies rather than formal TRIM files). However it is not possible to be certain of this in the circumstances.

f) There are some steps that could be taken to further investigate the information loss, including:
   i. a full review of WMC CCTV footage from 20 to 23 April 2017,
   ii. interviews with WMC staff; and
   iii. an audit of all hard copy TRIM files held by TF staff previously located at Level 1 Mwerre House.

g) There is no guarantee that those steps will provide certainty, but they would constitute a more exhaustive investigation.

h) If it is determined that a full review of WMC CCTV footage is required, this should be arranged as a matter of urgency. WMC advises that its CCTV footage is written over periodically and can not be stored.

i) The absence of deliberate, malicious, conduct (based on current information) reduces the prospect that TF or any individual will be prosecuted for any offence under the various legislation discussed under Outcome 5 above. In my opinion TF should not focus on the risk of prosecution until a complaint of an offence is brought by a third party.

j) The current focus needs to be on notifying affected persons as discussed at Outcome 6 and ensuring that no similar incident occurs in the future. From discussions with responsible TF staff I believe that appropriate safeguards will be in place in upcoming relocations in accordance with Recommendation 1 of the Internal Review Report.

Simon Wiese
Solicitor for the NT

24 May 2017