



States
of Jersey

HOME AFFAIRS MINISTER

Presentation of extracts of the Wiltshire Police Investigation into the role of the Chief Officer of Police, Graham Power, in the creation and maintenance of personal files on States Members.

Files on States Members

14 July 2010



HOME AFFAIRS MINISTER

Explanatory Note

This document includes extracts from the disciplinary investigation by Wiltshire Police into the role of the Chief Officer of Police, Graham Power, in the creation and maintenance of personal files on States Members. The investigation was conducted for the purpose of disciplinary proceedings. Witnesses interviewed as part of this investigation were not informed that their identities or information provided by them to the investigation Team would be published.

As a consequence, only parts of the original Report are being published.

The text of this Report has been redacted to ensure that, in publishing this Report, due regard is had to the relevant legal principles contained in the Human Rights (Jersey) Law 2000, the Data Protection (Jersey) Law 2005 and other legal duties.

Any police officer referred to in the text is described as Officer X and any other person is described as X. Where other text has been redacted from paragraphs which are otherwise included it is noted by the words "text redacted".

In the interests of transparency the page numbering of the original document has been retained.

Care should be taken with respect to the statistical information contained in this document. It was up to date at the time of its preparation but has not been updated subsequently.

The Minister has reflected on the competing interests of Articles 8 and 10 of the European Convention on Human Rights- right to respect for private life and family life and right to freedom of expression respectively.

The Minister considers that individuals should only be named where naming is important to understanding what happened or where that individual's position carries with it the expectation of public accountability. The Minister considers that an individual should not be named if their role is of a junior nature or peripheral to the events being described.

The Minister in deciding which parts of this Report to publish has sought to balance the requirement to be open and transparent with the need to be fair to individuals.

An independent disciplinary investigation by Wiltshire Police following the suspension of Chief Officer Graham POWER of the States of Jersey Police on 31 July 2009.

Obligation to confidentiality

1. Paragraph 1.2 of the discipline code (for Chief Officers of the States of Jersey Police) requires that all parties involved in the operation of this code will maintain confidentiality while proceedings are being progressed. The outcome of any particular case arising under the code will not, as a general rule, be publicised, but it is accepted that following the outcome of a particular case, the Home Affairs Minister and/or the States Employment Board and/or the Chief Officer, might decide that public disclosure is appropriate.
2. This Report contains personal data within the meaning of the Data Protection Act 1998, and Wiltshire Police would breach the first data protection principle if it were to disclose that information. Hence, the information is exempt (under s.40 (2) Freedom of Information Act 2000).
3. This Report contains information that has been, and continues to be, held by Wiltshire Police for the purposes of an investigation which it has a duty to conduct and which ought not to be disclosed (under s.30 Freedom of Information Act 2000).
4. An obligation of confidence upon Wiltshire Police arises from the duty outlined at 1. above, and disclosure of information would be likely to prejudice relations between the United Kingdom and Jersey. Information, therefore, ought not to be disclosed (under s.27 Freedom of Information Act 2000).

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Restricted – Contains Personal and Operational Information

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1. Executive summary

- 1.1 We regret the repetition of facts and passages of evidence in this Report. Such repetition is necessary, we feel, to help the reader to understand context and facets of the investigation when considered from different perspectives.
- 1.2 This Inquiry has tried to establish from the key issues examined whether the States of Jersey Police sought to undermine or unfairly influence the democratic process in the Island, or just poorly executed an exercise to collate available information about political representatives whose behaviour was of concern to the police. As will be seen, there is no evidence available to support the former contention but a number of strands suggest the latter, executed with naïveté, poor management and a disregard for the data protection law.
- 1.3 Having considered the evidence available to us, this Inquiry finds that CO POWER and members of his staff were involved in opening and maintaining covert information files relating to all States of Jersey politicians. We have found no evidence that CO POWER or any other person committed any criminal offence relating to the use of the files after they were created or that any police operations were developed from the material contained within the files. We conclude that CO POWER may have breached the Discipline Code for Chief Officers and that other serving officers within the States of Jersey Police may have breached their respective discipline codes. These potential breaches are described in the Conclusions and Legal Advice Section of this Report.
- 1.4 Having drawn those conclusions, we are at pains to point out, having viewed the files and their content, that they contain only information collated as a result of politicians, usually in their private capacity, coming to the notice of Jersey Police in circumstances of legitimate

concern. However, it is also clear that criminal record and other police intelligence checks were conducted on all States politicians even when there was no precursor information about an individual member. The 'cuts' for the States members in each of the two files are quite poorly maintained and generally indicate little care and attention having been given to their construction. That said, opening such files without the knowledge or consent of democratically elected politicians may be considered to amount to a serious breach of trust and may have substantially undermined the confidence of the public and elected representatives in the Chief Officer and members of his senior team who were party to the inception of such files.

- 1.5 CO POWER has identified a possible weakness in the process of appointing candidates to political posts in that there is no system for security checks to be carried out on such persons. This may, of course, be the States of Jersey's intended position. It appears that CO POWER suggested a vetting procedure for Senators and Deputies but this was not supported by the authorities. This Inquiry believes that CO POWER was concerned about the behaviour of some politicians seeking to intervene in matters that fell outside the legitimate purview of their political roles and responsibilities. Also, CO POWER was concerned about the nature and scale of some politicians' alleged involvement in incidents which brought them to the attention of the States of Jersey Police. Taken together, these concerns were somehow conflated to suggest a 'national security' risk to the Island. It appears that these risks and vulnerabilities were discussed by CO POWER and his Senior Management Team. Following one such discussion, **OFFICER X** felt under instruction from CO POWER to direct intelligence be collated on each politician and then stored within Special Branch. The purpose of the files was to create a repository of information on all politicians and for this knowledge to be at hand, if and when it was required, such as when considering national security issues or sensitive briefings to senior government figures. CO POWER's attempt to introduce an

accepted vetting process never came to fruition but he may, through Operation Blast, have been seeking to develop an informal vetting system.

- 1.6 The collection of material relating to all 53 States Members, codenamed Operation Blast, commenced on 24 February 2006 and continued until 16 March 2009. The passage of time appears to reflect administrative routine and management neglect more than ongoing perceived operational necessity.
- 1.7 Of the 53 politicians documented within the Operation Blast files, 32 had no intelligence data associated with them. These 32 politicians had individual sections within the file folders allocated to them so that data could be added if the individuals came to police attention. Each section contained basic details of that politician including a photograph, name, date of birth and the date when first elected along with each subsequent re-election. It also included 'check sheets' to show that Police National Computer (PNC) and intelligence inquiries had been conducted by the States of Jersey Police.
- 1.8 The remaining 21 politicians had data contained within their individual sections in respect of alleged incidents arising either prior to or following their appointment to a political office. Some had information collated from both periods. Of these 21 politicians, three had a previous criminal conviction for a relatively minor matter,
TEXT REDACTED . (See also the Investigation Section 4.5).
- 1.9 CO POWER's 'hands off' approach to management compounded the data protection failings by his staff. Whilst in his explanatory document of 16 March 2010, he declared his lack of expertise concerning intelligence and data protection, it appears to this Inquiry that he was also trying to absolve himself of his responsibilities for the sensitive operation which he instigated. He suggests, unreasonably

in our view, that it was not his responsibility to supervise or intervene in the way his staff managed his directions.

- 1.10 In this Inquiry's view, CO POWER showed poor judgement when he stated that it would have been patronising to give **OFFICER X** direction in relation to data protection guidelines. CO POWER should have known that Chief Officers must establish a lawful basis for processing personal information and, as he gave **OFFICER X** the instruction to create the files, he should have satisfied himself that his direction was lawful and the system established was similarly lawful. We have found no evidence that CO POWER took such steps.
- 1.11 This Inquiry is clear that CO POWER and his Senior Management Team did not give clear guidance to junior staff on what data protection procedures were to be adopted for Operation Blast; procedures to ensure that only relevant information was processed and then only the minimum necessary to properly fulfil a lawful objective. The fact that there was no legitimate purpose in obtaining information on States politicians underlines the absence of effective leadership and management in respect of Operation Blast.
- 1.12 CO POWER and **OFFICER X** make reference to 'national security' as the reason for the inception of the Operation Blast files. This is also the justification advanced by **X** and **OFFICER X** on the data protection forms sent to **X** in the Joint Intelligence Bureau (JIB) undertaking various of the police data checks on the politicians.
- 1.13 Wiltshire Police liaised with the Security Service in order to clarify the national security justification. The Security Service has several functions, one of which is responsibility for national security for the Island of Jersey. The South West Regional Office of the Security

Service is the liaison point with States of Jersey Police in respect of national security issues. National security is defined by the Security Services Act 1989 as being *'the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means'*. For operational security reasons, the author of the following quotes is referred to as G1SWEST/1. The author states, *'With regards to Jersey and the Operation Blast files which were collated under the pretext of National Security...it would depend on whether the envisaged threats or corruption were to Jersey alone or to the Nation. If solely to do with Jersey, then they would not constitute a threat to National Security, should not be labelled as such and MI5 would not become involved. The Chief Officer of Jersey police would be within his right to deal independently and subsequently, the Security Service would not expect to be informed of the action that was being undertaken to diffuse [sic] the situation'*. In effect, any issues which do not concern the Security Service should be treated as local issues and not as 'national security' matters within the meaning of the Act.

- 1.14 G1SWEST/1 states that *'As Chief Officer of the States of Jersey Police and the retired Deputy Chief Constable of Strathclyde Police, Graham POWER would have been develop vetted and will have known the clear protocols that were available to him for contacting the Security Service; protocols as per the ACPO Manual of Guidance. He would have known that if he had concerns about National Security, then he could go directly to the relevant Regional Head. He could also go through his Head of Special Branch to a number of conduits within MI5 or the regional Counter Terrorist Unit through which intelligence also flows. They would then assess whether the issue constituted a threat to National Security. If it did, then they would take ownership and act accordingly, but if it didn't, then responsibility would be given back to the force to deal with*

themselves'.

- 1.15 This Inquiry suggests, supported by the Security Service's view, that there is no evidence to support the contention that UK national security concerns were valid and provided a genuine reason for a search of databases on all Jersey politicians. Therefore, Operation Blast should not have been commissioned under that pretext.
- 1.16 The evidence from the Security Service author suggests a difference between UK national security and Jersey 'security'. This Inquiry has not been able to establish any compelling or consistent narrative about what the concept of an equivalent Jersey 'national security' is or would be. In the absence of reasonable evidence to suggest there exists a distinct Jersey national security requirement, we have proceeded on the basis that UK national security was not a compelling reason for the inception of Operation Blast, despite the views of CO POWER and other persons of interest (POI) to this investigation.
- 1.17 A telling factor in Operation Blast was the continued processing and retention of personal information on States politicians over a period of 2½ years without any reviews or progress meetings with staff at any level. This suggests the absence of relevant training for States of Jersey Police staff. The situation on the ground was that when changes in legislation occurred, it was for staff to educate themselves; a process that was not monitored or recorded. There appears to have existed a lack of knowledge and understanding of data protection which further undermined the reluctance to challenge disproportionate directions.
- 1.18 This Inquiry has gathered evidence from 20 witnesses and has carefully considered their motivations in providing their evidence, particularly where they might stand to gain from CO POWER's difficulties. Some of the witnesses are 'persons of interest' to this

Inquiry. Whilst CO POWER declined to be interviewed (on the basis that he was not able to secure appropriate legal representation), he has provided two accounts, one before and one after the disclosure to him of relevant material. The disclosure was accompanied by our intimation of relevant issues which CO POWER was invited to respond to. Whilst he categorically denies any wrong doing, we have found CO POWER's accounts to be lacking in specific detail relating to the key issues.

- 1.19 Regardless of whether they had an active or passive role in Operation Blast, it is the view of this Inquiry that CO POWER and the POIs were, and remained, in a position to have challenged the process. Concerns regarding the legitimacy of the files were privately expressed by both senior and junior staff, but no attempt was made to address them through the chain of command.
- 1.20 This Inquiry developed a simple matrix to help assess culpability by those who may be considered deliberate planners through to staff routinely and innocently transacting data as part of their jobs. In this matrix, 'Tier 1' individuals planned Operation Blast, 'Tier 2' individuals are other members of staff who carried out the plan and 'Tier 3' are other individuals who are more junior members of staff who lacked full comprehension or the seniority to challenge direction. On the evidence, of those still serving members of the Force, CO POWER is 'Tier 1', **OFFICER X** and **OFFICER X** are 'Tier 2', whilst **OFFICER X**, **OFFICER X** and **X** are 'Tier 3'.
- 1.21 The level of personal culpability for each serving individual differs considerably. Where some were deemed to have been less culpable than others ('Tier 3'), it was recommended that no further action be taken as it would not be in the public interest to pursue formal discipline and 'Tier 3' individuals have received formal 'words of

advice'. However, this Inquiry recommends that in respect of three senior serving members of the States of Jersey Police whom we conclude may have breached the Data Protection (Jersey) Law 2005, there is a case to answer under the respective States of Jersey discipline codes. These are CO POWER, **OFFICER X** and **OFFICER X**.

1.22 This Inquiry has presented the evidence gathered, and our conclusions, for review by **X** QC and **X** instructing solicitor, **TEXT REDACTED**. Their advice in respect of potential discipline charges against CO POWER, **OFFICER X** and **OFFICER X** is described later in this Report. We have consulted these experienced legal advisers because we have tried to assess CO POWER's and others' performance against United Kingdom standards whilst having regard to the Jersey context, where it differs from the UK. Therefore, any alleged failings have been assessed against the conduct standard which eminent Counsel advises would apply in the UK. It must, of course, be a matter entirely for the competent States of Jersey Authorities to come to their own views on the evidence, conclusions and findings suggested by this Inquiry and on Counsel's advice.

1.23 We have been careful not to 'indict' CO POWER – a serving officer – for failings which may be attributed to **OFFICER X** who is no longer a member of the Force. We consider it likely that had **OFFICER X** remained a serving officer, a disciplinary enquiry would also have been considered in relation to **X** conduct. The conclusions we draw in respect of CO POWER stand on their own merit and cite him as the primary 'organising mind' behind the idea to open the files on politicians.

1.24 Below, we highlight each of the conclusions drawn from the evidence and provide a synopsis of how each conclusion was reached.

1.25 A similar approach has been adopted in respect of recommendations made as a result of our Inquiry.

1.26 **Issue 1 - whether any files relating to any States of Jersey politicians were opened by the States of Jersey Police**

- **Conclusion 1 (1)**

1.27 **CO POWER caused files to be opened by the States of Jersey Police in respect of all 53 States of Jersey politicians.**

1.28 CO POWER was instrumental in the decision-making to have files created on all 53 States of Jersey politicians. It was he who instructed **OFFICER X** to begin the sequence of events which involved a number of States of Jersey Police staff processing, collating and retaining information on all politicians. CO POWER specifically denies ordering the inception but accepts he may have intimated the need for a filing process which others misinterpreted or took too far.

1.29 **OFFICER X** has admitted to sending the email to colleagues that started Operation Blast, in which **X** made it clear that *'The Chief wants you to run a check on all Senators, Deputies and Connétables on PNC, COPS and with JIB, if you get a "hit" just print off the data and start a file on each one'*.

OFFICER X was in no doubt that *'The files were instigated at the direct request of Chief Officer Graham Power'*.

1.30 This Inquiry concludes that as a consequence of a decision made by CO POWER, two files containing information on all 53 States of Jersey politicians were opened and maintained for a period of 2½ years and held within the secure confines of the States of Jersey Police Special Branch Department.

- **Conclusion 1 (2)**

1.31 **CO POWER and the following members of his Senior Management Team were aware of the files and their content. Those members are former OFFICER X , OFFICER X and OFFICER X**

1.32 We conclude that CO POWER and the named members of his Senior Management Team were aware of the existence of the files. Daily meetings were held by CO POWER and his Senior Management Team and it was during one of the meetings that CO POWER instructed that information on politicians to be collected and stored. Subsequent management meetings gave him the opportunity to ensure that staff involved in Operation Blast were meeting data protection guidelines, but the evidence suggests that he did not do so.

1.33 The ACPO Code of Practice for Data Protection is prescriptive regarding the role of the Chief Officer of Police and his ultimate responsibility as the Data Controller in the implementation of data protection guidelines within the States of Jersey Police. If CO POWER had any doubt regarding his obligations, he had the facility of obtaining advice from the Data Protection Commissioner for Jersey. CO POWER did not pursue that option.

- **Conclusion 1 (3)**

1.34 **CO POWER failed in the performance of his duty as Data Controller and Chief Officer of Police by allowing personal data on all 53 politicians to be obtained and retained, without a necessary, legitimate or lawful purpose, in contravention of the Data Protection (Jersey) Law 2005 and associated guidance.**

1.35 As Chief Officer of Police, CO POWER should have been aware that unless he had received a certificate of exemption from the Home

Affairs Minister, he needed a lawful basis for processing personal information. At no time was any such certificate sought by, or supplied to, CO POWER, according to the evidence.

1.36 CO POWER was obliged to ensure that the personal information was periodically reviewed and information that was no longer required was removed (weeded) from systems and files. He also needed to ensure 'operating rules' existed which included data retention periods. His failure to ensure the removal of inappropriate data resulted in inaccurate, irrelevant, and out of date information being held on States politicians. This is a breach of the data protection principles.

1.37 This Inquiry suggests that CO POWER showed poor performance and a lack of judgement in directing the files to be opened in the absence of lawful authority. He should have envisaged the necessity for clear guidelines to have been put in place and for these to have been communicated to his staff to ensure complete compliance with best practice guidelines and the Data Protection (Jersey) Law 2005.

1.38 **Issue 2 - the purpose for which any such files were opened and maintained**

- **Conclusion 2 (1)**

1.39 **Files were created on all States of Jersey politicians as a result of concerns felt by CO POWER and members of his Senior Management Team regarding the perceived behaviour of some politicians and the potential negative impact of that behaviour upon Jersey's 'national security'.**

1.40 The Operation Blast files were opened for a number of inter-related reasons after CO POWER failed to persuade the States to create a formal vetting process for people in senior and influential positions in the Island.

- 1.41 CO POWER raised his concerns about vetting in his second account to this Inquiry. He felt that *'a politician who had not been subjected to any vetting process was in my view the "wrong call" and it was one which has had potentially damaging and foreseeable consequences'*. He believed that there should be a process in place for every Deputy and Senator. CO POWER believed that national security was being compromised and this affected the *'good governance'* of the island. He does not elaborate on how *'good governance'* was damaged and how his *'informal'* vetting process would resolve this governance issue.
- 1.42 CO POWER and his Senior Management Team also had concerns over the perceived continual interference by politicians acting beyond their professional responsibilities, into policing matters.
- 1.43 In addition to those issues, some politicians came to the attention of the police through behaviour, some of which involved minor criminality. Some members were considered to be vulnerable to blackmail or intimidation arising from their behaviour. Clearly, on the evidence, CO POWER and senior officers were worried about these matters.
- 1.44 It is for these reasons that this Inquiry concludes that CO POWER and members of his Senior Management Team created files to enable the States of Jersey Police to have an informal vetting system available in respect of all politicians and which would have allowed the police an opportunity to somehow manage incidents more effectively. However, it is evident that in adopting this process, no consideration was given to any data protection principles to ensure that the purpose of such an operation was for a lawful policing purpose.
- **Conclusion 2 (2)**
- 1.45 **CO POWER failed in the performance of his duty to ensure that**

the processing of material relating to Operation Blast was for a legitimate policing purpose.

1.46 This Inquiry is aware that CO POWER was persistent in his advocacy of a vetting system for people in high profile, sensitive posts. It has been acknowledged by former Minister Wendy KINNARD that CO POWER was the 'main mover' behind such an initiative for the Island but that it did not materialise.

1.47 CO POWER was concerned about politicians coming adversely to police attention as a result of their poor personal behaviour. As a consequence of there being no official vetting system in place, the potential for a politician with a 'questionable' history to be in a high profile and sensitive position appeared to be a national security concern to CO POWER. It was for that reason that CO POWER directed **OFFICER X** to create a process for the collation of data on all States of Jersey politicians.

OFFICER X understanding of the reasons for data being collated and held on all States politicians differs. **X** understood the reason that the files were created was because 'a number of these politicians were frequently trying to get involved in Police business' and ultimately trying to influence matters which were outside their legitimate responsibilities. This difference of view is telling as regards the paucity of genuine reasons beyond the anecdotal and largely personal dislike of aspects of Jersey's democratic process. **OFFICER X** alleges that CO POWER did instruct **X** to open files on politicians and that it was **OFFICER X** who was given responsibility for the logistics of how they would be maintained and who would have access to them.

1.48 This Inquiry concludes that CO POWER was responsible for directing that the files be opened and maintained. However, the evidence suggests that he was not aware of the specific content of all of the Operation Blast files, as there is no evidence that he ever

inspected them or sought a briefing about their content over time.

1.49 **Issue 3 – who was involved in the decision making process about opening any such files?**

- Conclusion 3 (1)

1.50 CO POWER was the primary originator of the idea for the files and OFFICER X (now retired) the primary implementer of the decision to open the Operation Blast files.

1.51 Prior to the instruction from OFFICER X to X, concerns were discussed between CO POWER and OFFICER X regarding the behaviour and activities of some political figures within the States Assembly. CO POWER made no secret of his frustrations over the absence of a formal vetting system. OFFICER X expressed X concerns about politicians trying to influence police investigations.

1.52 CO POWER commented in his second account to this Inquiry that *'various reports relating to States Members crossed my desk from time to time, and I had discussions with senior colleagues about the best way of dealing with them and who should take the lead'*. He continued *'This occurred for a number of reasons. One was to ensure that States Members who came into contact with the police and on this issue I am grateful to Lenny Harper for reminding me in his statement of how frequently this occurred, were being dealt with no better or worse than anyone else ...I needed to be in a position to deal with the "fallout" of any such contact. Any police involvement with a Jersey politician was usually followed by direct enquiries from both allies and opponents, who would variously allege either persecution or cover-up depending on their political persuasion.'*

1.53 OFFICER X comments that X was frustrated with the political culture and how some politicians saw their position as an

opportunity to interfere with matters which were outside their remit.

X expressed **X** concerns that *'Many of these politicians were formerly members of the Honorary Police and the expression "the Jersey Way" was common, many of them felt they could behave how they wished and try to usurp justice and attempt to sway how their friends and families were dealt with'*.

1.54 CO POWER and **OFFICER X** were experienced Police Officers and should have been aware of their obligations under the Data Protection (Jersey) Law 2005. CO POWER, as Data Controller, should have been mindful of his responsibility for any decisions regarding the processing and storing of data within the States of Jersey Police. The decisions made by both senior officers were not challenged by any member of staff. Some evidence suggests that there was a misconception that both CO POWER and **OFFICER X** had sought legal advice and, given their knowledge and experience, what was being asked of staff by them was reasonable.

1.55 Both CO POWER and **OFFICER X** appear to accept that they were frustrated with the behaviour of some States politicians. The senior officers admit they discussed their concerns and directed that the files should be created, albeit their justifications appear to differ.

1.56 **Issue 4 - who was involved in maintaining any such files?**

- **Conclusion 4 (1)**

1.57 **OFFICER X**, **OFFICER X** and **OFFICER X** culpably maintained the Operation Blast files within the Special Branch Department.

1.58 Having been instructed to create the files, **X** added material sent from other members of staff, but never

challenged or questioned what X was asked to do. This Inquiry has also established that OFFICER X and OFFICER X were informed of what was being asked of X yet did not intervene to ensure that the requirement was for a lawful policing purpose.

1.59 X stated that X was aware that under data protection guidelines, data processing had to be necessary, legitimate and lawful. This Inquiry is satisfied that X had sufficient knowledge and expertise to perform the task that was requested of X. X seemingly had no concerns about what X was doing, stating, *'If I had any concerns, then I would have raised them through the appropriate chain of command...I would have had no hesitation in going through Ops Management until my concerns had been heard'*. Yet, when interviewed, X could not justify the collection of data within the files over such a long period. Neither did X personally consider the legitimacy of the situation over the 2½ years during which the files were maintained, nor request that the operational files be reviewed.

1.60 This Inquiry has established that X was the contact within Special Branch to whom all information for the files was directed and that X routinely added to them for the duration of the operation. However, X had been inappropriately supervised and was not provided the guidance and direction that X required.

1.61 OFFICER X and OFFICER X had supervisory responsibility to ensure that the files were maintained in accordance with the Data Protection (Jersey) Law 2005 and to ensure that those under their supervision did so. OFFICER X stated, *'I'd like to point out there didn't appear to be any management or ownership of Operation Blast...Of course, as it was stored in my office, it placed some obligation and responsibility on me, but the lack of ownership was*

most peculiar'. **OFFICER X** said, 'As I was **X**'S supervisor I would probably have had some degree of responsibility for what **X** was doing'. There were inadequate reviews of the files, and breaches of data protection principles occurred in respect of certain personal data being retained for longer than necessary. This situation could have been avoided had **OFFICER X** and **OFFICER X** fulfilled their supervisory responsibilities.

1.62 CO POWER should have known that the States of Jersey Police had procedures under the Data Protection (Jersey) Law 2005 to ensure that his obligations as Data Controller were fulfilled. His failure to ensure that such procedures were implemented in the case of Operation Blast (i.e. that data were only processed for a legitimate and necessary purpose and removed when their purpose had been served), resulted in excessive and unlawful material being held within the States of Jersey Police Special Branch Department.

1.63 This Inquiry is aware that although all staff have a responsibility to comply with data protection legislation, ultimate responsibility lies with the Data Controller. CO POWER should have given clear directions in order to satisfy himself that the requirements of the Data Protection (Jersey) Law 2005 were being complied with. Had he done so, it is the opinion of this Inquiry that the identified data protection breaches may have been challenged more robustly and would have provided CO POWER and **OFFICER X** with grounds for reflection on the lawfulness of their direction.

1.64 **Issue 5 - whether any member of the States of Jersey Police knowingly contributed to the content of any such file?**

- **Conclusion 5 (1)**

1.65 **OFFICER X** - (now retired), **OFFICER X**

and **OFFICER X** knowingly contributed information on States of Jersey politicians to Operation Blast files.

1.66 Having sent the original email to **X** to create the Operation Blast files, **OFFICER X** contributed one item of information to Operation Blast on 11 October 2006 which concerned a politician who had been a victim of fraud. The email stated '**X**', *The Chief would like, 'one of your files' opening on [name deleted] as he considers this could be seen as an approach*.

1.67 **OFFICER X** contributed to the files on three occasions. The first item was sent to **OFFICER X** on 28 February 2006 and which had a covering email saying '**X**, for the file **X** has created'. This item related to threats made to a politician. A second file, relating to a road traffic collision, was sent on 2 April 2007 directly to **X** in which **X** said, '**X**, I gather you keep a file on [name deleted]?' On 5 June 2007 a third item was sent to **X** and in a covering email **X** said, '**X**, for your files on politicians please'. This item was regarding the ownership details for a vehicle. **OFFICER X** acknowledged in interview that **X** had sent all three items to **X** but justified **X** actions because CO POWER and **OFFICER X** instructed it to be done.

1.68 **OFFICER X** contributed three items of information to Operation Blast. On 7 July 2006 **X** forwarded two items to **X**. The first related to an alleged smear campaign against a politician and said, '**X**, this one for the file'. The second email related to a dispute involving a politician and an employee from the Maritime Security Group about which **OFFICER X** said, '**X**, this one for the files please plus the attachments'. The third item was sent on 2

February 2007 to **X** and related to a letter. In the accompanying email **OFFICER X** says, '**X**, please hard copy file this one to the relevant file, thanks, **X**'.

1.69 **OFFICER X** disclosed in interview that **X** contributed items to the files. **X** said, 'I did add pieces of information to the Operation BLAST files, which were due to certain States Members being 'complainants' in certain matters'. However, this Inquiry has traced no documentary evidence in the files to support **X**'s admission.

1.70 As a consequence of the email sent by **OFFICER X** **X** was left with the responsibility of updating the files with information sent to **X** from those with knowledge of Operation Blast. **X** also obtained data from the PNC and added other available intelligence.

1.71 **Issue 6 - who was aware of the existence of any such files?**

- Conclusion 6 (1)

1.72 **CO POWER, OFFICER X (now retired), Officer x (x4), OFFICER X (now retired) and X** were culpably aware of the existence of files relating to States of Jersey politicians.

1.73 **Officer x (x5)** were all copied into **OFFICER X**'s email to **X** on 24 February 2006 asking **X** to create the Operation Blast files. All had

knowledge of the purpose of the files and knew that information gathering on politicians was to be part of an ongoing process.

1.74 This Inquiry has retrieved documentary evidence in the form of email traffic which shows that **OFFICER X**, **OFFICER X**, **OFFICER X** and **X** were actively involved in the submission of data to the Operation Blast files. We therefore conclude that each was culpably aware of the existence and purpose of files held on States of Jersey politicians.

1.75 Although neither **OFFICER X** nor **OFFICER X** contributed to the Operation Blast files, both had knowledge of their existence. Both had supervisory responsibilities in Special Branch and were copied into **OFFICER X**'s email to **X**. **OFFICER X** said, 'I am aware that **X** carried out PNC checks on the politicians, as instructed to by **OFFICER X** in the e mail of 24 February 2006. **X** kept the files and maintained them on **X** own'. In **X** statement, **X** admits to having full knowledge of the Operation Blast files. **OFFICER X** said, 'I understood the email to be a direction from **OFFICER X** on behalf of the Chief Officer, Mr POWER, seeking the implementation of Operation Blast, specifically tasking **X** to carry out the necessary checks and requesting the files to be held and maintained by SB'.

1.76 **OFFICER X** became aware of Operation Blast in May 2006 when **X** moved into the Special Branch Office. When interviewed **X** admitted that 'I knew the files existed' and accepted that **X** did not intervene or question the purpose of their existence.

- **Conclusion 6 (2)**
- 1.77 On the balance of probabilities, this Inquiry believes that Chief Executive Bill OGLEY and Chief Minister Frank WALKER were made aware of incidents in which politicians came to notice of the police. However, there is insufficient corroborated evidence to suggest that either person was aware of the existence of Operation Blast or any such files.
- 1.78 In addition to the persons highlighted under Issue 5 as having contributed to the files, this section seeks to identify who else may have had knowledge of the files even though they did not contribute to them.
- 1.79 Former Home Affairs Minister Wendy KINNARD can recall a meeting in May 2008 at which she suggests that Chief Executive Bill OGLEY encouraged CO POWER to share information about politicians with Chief Minister Frank WALKER and himself. However, this Inquiry believes that her recollection relates to a period some two years after the inception of Operation Blast. In any event, even if she is right, the circumstances she recalls suggest that CO POWER was not using the Blast files for private briefings of senior government figures.
- 1.80 In his witness statement, ex-DCO HARPER confirms that he has 'a vague recollection of being present when Graham POWER was speaking on the telephone to Bill OGLEY regarding the possibility that a number of States members might have had convictions which the Chief Minister did not know about'. Ex-DCO HARPER was unable to elaborate further on that particular conversation and we do not rely on these comments.
- 1.81 CO POWER suggests in his first account that the keeping of the files was at the 'expressed wishes' of Frank WALKER and Bill OGLEY. However, in his second account he makes little mention of either person in this context and does not add any corroboration or

additional lines of enquiry to support his earlier comments about their alleged instigation of Operation Blast.

1.82 This Inquiry therefore concludes on the balance of probabilities that neither Chief Executive Bill OGLEY nor Chief Minister Frank WALKER was involved in the instigation or maintenance of the Operation Blast files.

1.83 **Issue 7 – prove or disprove whether CO POWER committed any criminal offence or breach of discipline relating to one-sided recording of any such telephone call without the knowledge of the person being recorded**

- **Conclusion 7 (1)**

1.84 It cannot be established that CO POWER committed any criminal or disciplinary offence as a result of tape recording telephone conversations.

1.85 X, Press Officer for the States of Jersey Police, has provided a statement in which X outlines X role in, and knowledge of, alerting the public of Jersey about the routine recording of telephone calls to the police. In November 2007, X was responsible for overseeing the implementation of the Force website in conjunction with a Devon and Cornwall Police project team. X said, *'In the interest of being open and honest it was decided that the notification would be put alongside the contact details on the homepage of the site'*. X was unable to corroborate CO POWER's assertion that notification was also put in the Jersey Evening Post. However, in relation to CO POWER's comment that it was in the Jersey telephone directory X was able to say, *'in the 2009 directory, on page 334, there is an entry for the States of Jersey Police with a note that calls may be recorded*

or monitored'.

- 1.86 On the basis of X's statement, this investigation has been able to confirm that notification was given to the public that telephone conversations were recorded by the States of Jersey Police. Information about monitoring was included in the Jersey public telephone directory certainly by 2009, and on the States of Jersey Police website, since 2007. This Inquiry has been unable to establish exactly when the routine recording of telephone calls to the States of Jersey Police was made known to members of the public and when the recordings made by CO POWER took place in relation to that notification. It is not known whether the recording of the conversation with the Minister which gave rise to this facet of the investigation took place prior to or after the public notification. It is not possible therefore to conclude whether a criminal offence has been committed.
- 1.87 The former Senator concerned declined to make a statement in respect of Operation Haven I. We understand that he may currently be subject to criminal investigation and has left the jurisdiction of the Island. In the circumstances we have chosen not to seek to interview him. We believe, nevertheless, that sufficient information is available to enable us to come to a conclusion about this issue.
- 1.88 We also note that CO POWER did not seek to transcribe the contents of the cassette tape discovered in his office following his suspension from duty. This Inquiry considers this to be a further relevant factor in deciding the intent behind the recordings. This Inquiry does not believe that any malice or personal gain was intended or obtained as a result of the recording.
- 1.89 This Inquiry is not satisfied that sufficient evidence exists to conclude that CO POWER committed any criminal or disciplinary offences relating to one-sided tape recording of telephone calls.

Recommendations arising

- **Recommendation 1 (States of Jersey Police)**

1.90 **The States of Jersey Police introduces data protection training for all staff to enhance their knowledge and professionalise their processes in light of the facts and the admitted 'institutional' breach of the Data Protection Law.**

1.91 The States of Jersey Police has not provided any formal data protection training to its members and this Inquiry has identified a number of failings associated with the lack of knowledge and understanding by staff of the management of data. Many of the staff interviewed in this Inquiry were unaware of the data protection principles and those who had some knowledge came about it through self-education. It is therefore recommended that the States of Jersey Police implement data protection training to reduce the possibility of future breaches.

- **Recommendation 2 (States of Jersey Police)**

1.92 **An independent review is conducted of all Special Branch material to ensure that no similar breaches have occurred.**

1.93 This Inquiry is aware of the important role Special Branch plays in complex investigations, as well as in the security of the States of Jersey. For it to fulfil its function with the confidence of the public, it must be seen to be working within the Data Protection (Jersey) Law 2005. Owing to the sensitive nature of material held within the Special Branch department, there is a need to ensure that data are being processed and held in accordance with the data protection principles. Following the public disclosure of the existence of Operation Blast, the States of Jersey Police needs to ensure that no data are being held for an unnecessary or unlawful purpose.

- **Recommendation 3 (States of Jersey Police)**

1.94 **A review of material held by the States of Jersey Police is**

undertaken to ensure that data are current, relevant and required for a policing purpose.

1.95 The ACPO Codes of Practice for Data Protection provide clear guidelines about material held within police forces. It states that material must be held only for the execution of its legitimate functions and that it complies with data protection requirements. In his second account, CO POWER makes reference to corporate governance of data protection and related issues. He states that this Inquiry has *'already established that robust and independently verified effective corporate governance'* is in place and that it was introduced under his leadership. This Inquiry does not concur with these comments, as the failings within Operation Blast highlight obvious deficiencies which must be addressed.

1.96 We consider that a review of current policies and procedures will help prevent future data protection failings by the States of Jersey Police. It is expected that a culture of awareness of, and compliance with, data protection principles is embedded within the organisation and that best practice working is adopted.

- **Recommendation 4 (States of Jersey Police)**

1.97 **The States of Jersey Police considers adopting the Management of Police Information policy in respect of intelligence and information.**

1.98 This Inquiry has established that although Management of Police Information (MoPI) is being implemented by all police forces in England, Wales and Northern Ireland, the States of Jersey has not engaged with the National Policing Improvement Agency (NPIA) or adopted the MoPI policy in respect of review, retention and disposal of paper-based and electronic information. Adopting this policy should assist staff to understand the relevance of correctly collecting, recording, evaluating and disposing of information in a consistent

manner. We recommend the adoption of MoPI to the States of Jersey Police.

- **Recommendation 5 (States of Jersey Police)**

1.99 **The States of Jersey Police reviews its policies and procedures for the Police National Computer to ensure that policy and procedure are fit for purpose.**

1.100 Although a States of Jersey Police PNC policy exists, it is apparent that the crucial element of 'lawfully' obtaining personal information is not fully understood amongst a number of States of Jersey Police staff whom this Inquiry has engaged with. We recommend that the States of Jersey Police review its existing PNC policy and ensure that it is consistent with current NPIA/PNC guidelines and that staff who have access to PNC understand and follow the policy.

- **Recommendation 6 (States of Jersey Police)**

1.101 **The States of Jersey Police reviews its policies and procedures for data protection to ensure that policy and procedure are fit for purpose.**

1.102 Throughout this Inquiry it has been clear that although a data protection policy exists, few members of staff within the States of Jersey Police whom we have spoken with are aware of its contents or how they can access it. The current policy is a lengthy document which, without being supported by relevant training, is neither user friendly nor easily understood. It has already been raised in this Report that many staff had not received training, or had self-educated themselves about data protection. There is an inconsistent understanding of the purpose of the policy and we recommend that the current policy is reviewed and communicated to all staff, supported by an appropriate training programme.

- **Recommendation 7 (States of Jersey)**

1.103 **The States of Jersey considers the merit of adopting a formal vetting system for applicants for the position of Deputy or Senator within the States Assembly.**

1.104 The States of Jersey currently undertakes vetting for persons applying for the role of Connétable, Centenier and Vingtenier, yet not for those seeking the position of Deputy or Senator. There may be merit in the States reviewing this position.

2. Background and Context

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3. The Investigation strategy – Persons of Interest

3.1.1 The investigation strategy for Operation Haven II focused on 16 POIs. The POIs consisted of nine serving Police Officers, two police staff, three retired Police Officers and two further people - former Chief Minister Frank WALKER and Chief Executive Bill OGLEY - who were named by CO POWER in his first account as instigators of Operation Blast. (Mr. WALKER has since retired from Ministerial duty but we understand that his retirement is not linked in any way to these allegations).

3.1.2 Of the 16 persons identified, five serving Police Officers and two members of police staff were considered relevant as a result of being sent an initial email 'instruction' on the 24 February 2006 by

OFFICER X. Three serving officers were of interest because of their management position and/or their role within Special Branch and the Joint Intelligence Bureau at the time of the files' inception or prior to the termination of Operation Blast. Two of the three now retired Police Officers had been copied into correspondence in relation to Operation Blast, and **OFFICER X** was the third. As for the States personnel, Frank WALKER and Bill OGLEY, their alleged role was brought to the attention of the investigating officers as a result of CO POWER naming them in his written response to the Home Affairs Minister, Ian LE MARQUAND, following the reporting of Operation Blast to the States Assembly on 16 June 2009.

3.1.3 POIs were graded for their potential culpability within a three tier approach based on their role and seniority, in the following way:

Tier 1 - individuals suspected to have instigated, arranged and planned the compilation of the files.

- Tier 2 – individuals suspected to have knowingly carried out and implemented the instructions.
- Tier 3 - individuals suspected to have knowingly carried out and implemented the instructions, but without full comprehension of what was being asked of them, or had such low culpability that it is not in the public interest to pursue formal disciplinary action.

3.2 Interview process

Police Officers

3.2.1 Eight of the nine serving Police Officers who were POI were served with Article 7 notices and interviewed in accordance with Police (Complaints and Discipline Procedure) (Jersey) Order 2000 contrary to paragraph 5, Use of force and abuse of authority, of the Discipline Code, Schedule 1 of Police (Complaints and Discipline) (Jersey) Law 1999. This process allowed the investigating officers to interview them on tape and be accompanied by a 'friend', if they so wished. With the exception of one officer who was suspended for an unconnected matter and subsequently interviewed at his legal advisor's office, all interviews were conducted at the professional standards department (PSD) at police headquarters. The ninth officer is CO POWER, who was dealt with under the discipline code appropriate to his rank.

Police staff

3.2.2 Members of police staff were processed according to the Civil Service Disciplinary Policy and Procedures and were served with a notice of disciplinary investigation under appendix B, Paragraph 2, General Rules and Performance of Duties in respect of failing to raise any concerns with their immediate line manager. The process does not allow for tape recorded interviews and therefore the procedure involved taking notes and formulating the final report from those records. Both police staff members were afforded the opportunity to

be accompanied by a union/civil service association representative.

Retired Police Officers

3.2.3 As it had been agreed with the Data Protection Commissioner that the act of opening the files was not to be investigated as a criminal offence, the best option available to the investigation team was to invite retired Police Officers to provide a witness statement to assist in the investigation. Those who provided statements were former DCO Leonard HARPER and **OFFICER X**:

Former **OFFICER X** declined to provide a witness statement, but **X** wrote a letter to the investigating officers containing relevant information and which is discussed later in this Report.

Politicians

3.2.4 The process for securing the account of the retired politician, Frank WALKER, was the same as that for the retired Police Officers.

Civil servants

3.2.5 In respect of Chief Executive Bill OGLEY, as a result of independent legal advice to this Inquiry, it had been our intention to interview him in accordance with the disciplinary process for senior civil servants. However, it was decided by the Attorney General that he would be treated as a witness and a statement obtained from him unless admissions were made by him in interview which were of a disciplinary or criminal nature. The intervention of the Attorney General has caused concern to this Inquiry, and more will be said about this later in this Report.

CO POWER

3.2.6 Under the Jersey Disciplinary Code for the Chief Officer of Police, CO POWER has options either to be questioned by way of a tape-recorded interview or to provide a witness statement. CO POWER chose to provide a signed document after he was presented with a

disclosure bundle containing the relevant statements, correspondence, documents, other material and policies gathered during this investigation. Accompanying the disclosure bundle was a series of questions, drawn up by the investigating officers, which CO POWER was asked to answer when preparing his statement. For the purposes of this Report, the two documents provided by CO POWER are referred to as 'accounts'.

3.3 Interview subjects

3.3.1 In preparation for the intended interviews of the serving Police Officers, an interview plan was prepared which allowed the interviewing officer to explore the roles of those suspected of having knowledge of, or involvement in, Operation Blast. The plan can be found within the evidential bundle. The following topics were raised with all POIs to establish their understanding of context:

- Position during Operation Blast
- Police National Computer
- Data Protection Law
- Knowledge of Operation Blast
- Reasons for inception of Operation Blast
- Role in Operation Blast
- Knowledge of external influences, for example, perceived political interference
- The outcome of Operation Blast.

3.4 Proving or disproving culpability

Reporting process

3.4.1 Adopting a similar format to that used by the States of Jersey Police

PSD, a report was compiled in respect of each POI who was a serving member of the Force and who had been the subject of an interview. Each report reprised their account, the conclusions of the interviewing officer and recommendations by the Deputy Senior Investigating Officer (D/SIO) or SIO. The process helped identify whether a breach of conduct and/or performance failure had occurred and, where appropriate, provided a recommendation for a proportionate sanction. If it was apparent that no further action should be taken, the decision was taken by the D/SIO and the officer or member of police staff notified in writing. Following this resolution phase, a witness statement was taken from the POI formalizing the account given in interview. If it was apparent that the person interviewed should be the subject of a formal sanction, the report was sent to the SIO to consider and propose sanction. The report was then presented to ACO WARCUP for his decision ultimately about the outcome in respect of his staff.

3.4.2 Two senior officers, **OFFICER X** and **OFFICER X**, were not initially dealt with as described above, as this Inquiry felt it inadvisable to come to a decision about culpability at senior level until CO POWER's accounts had been acquired and properly considered for other potential lines of enquiry. After receipt of CO POWER's accounts, their position has been managed in the same way as that of other staff described.

CO POWER

3.4.3 To establish whether any culpability by CO POWER existed, it was essential that an account from all staff who were directly or indirectly involved in Operation Blast was secured. Although this Inquiry has identified that some POIs were accountable for data protection breaches, the serious issue of improperly obtaining data from the PNC could only be determined after this Inquiry had considered CO POWER's initial and subsequent account. His responses have also helped to identify failings which could be considered 'institutional'

breaches of data protection by the States of Jersey Police.

3.5 Key stakeholders

ACO WARCUP

- 3.5.1 The management of discipline concerning all serving Police Officers and police staff, with the exception of CO POWER, is overseen by ACO WARCUP. He is responsible for the discipline and professional standards of the States of Jersey Police.

Jersey Police Complaints Authority (PCA)

- 3.5.2 The PCA is an independent body established under the Police (Complaints and Discipline) (Jersey) Law 1999. Its members are volunteers appointed by the States. In this case, the role of the PCA is to oversee, monitor and supervise the investigations in respect of the States of Jersey Police Officers suspected of involvement in Operation Blast. It is responsible for ensuring that the investigation is carried out in an impartial and thorough manner. Through regular meetings with Operation Haven II investigators, the PCA has been updated and has overseen the investigation of those serving Police Officers in line with the terms of reference for Operation Haven II.

Deputy Chief Executive

- 3.5.3 One of the responsibilities of the Chief Executive is to manage discipline issues concerning the Chief Officer of Police, when instigated. As a result of allegations made against the current Chief Executive by CO POWER, the Chief Executive's 'discipline' role has been undertaken for the purposes of Operation Haven II by John RICHARDSON, the Deputy Chief Executive. He has been in regular communication with Operation Haven II investigators regarding the progress of the investigation and will receive the final Report of the Inquiry.

Jersey's Data Protection Commissioner

- 3.5.4 Ms Emma MARTINS is Jersey's Data Protection Commissioner. Her

office does not possess the resources to carry out an independent investigation of this scale and therefore agreed to Wiltshire Police investigators supporting her oversight of the alleged breaches associated with Operation Blast. There has been regular engagement between the Data Protection Commissioner and Operation Haven II investigators to ensure that the investigation meets the requirements of the Jersey data protection legislation and supports and helps promulgate a 'lessons learned' approach for the future.

- 3.5.5 We have established that alleged breaches of the Data Protection Law and principles and misuse of PNC may be dealt with without reference to the United Kingdom, i.e. jeopardy in two jurisdictions does not arise for subjects of this Inquiry.

4. Investigation

Pages 64 – 108

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5. The first account of CO Graham POWER

- 5.1.1 The first account was written by CO POWER on the 16 June 2009, in response to a request for further information from the Home Affairs Minister, Senator LE MARQUAND, on the 11 June 2009. It was provided primarily to assist the Minister in better understanding the issues raised concerning the Operation Blast files. At that time, CO POWER had not been given access to any documentation that might have refreshed his memory of relevant events, but following the statement given by Senator LE MARQUAND to the States Assembly on the 16 June 2009 in which he publicly disclosed the existence of the files and their contents, it would appear that CO POWER felt it necessary to provide an early account.
- 5.1.2 Within the document, CO POWER addresses the issue of files being created and maintained on members of the State. He states that the collation of files first began in relation to only two States Members who were experiencing *'a degree of personal intimidation'* as a result of the positions they held. CO POWER was of the belief that by retaining this information about those individuals, a more *'effective response could be provided to any future incidents'* involving them. CO POWER also felt that the States of Jersey Police could benefit greatly from more in-depth knowledge of all elected representatives so that the States of Jersey Police would be able to identify and prevent any possible risks posed to them in the future. CO POWER envisaged benefits in his officers having a degree of foresight in relation to any incident that could affect *'the islands "national interest"'*.
- 5.1.3 According to CO POWER, a *'popular issue'* at the time of the files' creation, was the matter of protecting *'the integrity and reputation of the island's government'* against the possibility of embarrassment by

way of someone with *'unacceptable "baggage"'* being elected to a senior political office. As a result, he claims that the notion of collating and retaining information on politicians was *'for legitimate reasons...fully acknowledged and supported'* and in line with the *'expressed wishes'* of the former Chief Minister, Frank WALKER and Chief Executive Bill OGLE. They wanted him to *'assist in protecting the integrity of government'* and to attend regular briefings in order to update them, in confidence, of any issues that could affect the island. CO POWER felt that the meetings could only take place if there was something to be disclosed and he could only know that by keeping records.

- 5.1.4 In the same document, CO POWER also discusses the issue of the recording of telephone conversations following the discovery of audio tapes in his office safe. He states that *'some years ago'* he discovered that members of his staff had the ability to record telephone calls and when he questioned them about the necessity, he was informed that it was to protect themselves against allegations of impropriety with States Members.
- 5.1.5 CO POWER recalls the same issue being discussed at a meeting of the Jersey's multi-agency Corporate Management Board and how guidelines were drawn up to help address it. He states that the guidelines supported the recording of phone calls, provided that proper notice was given i.e. that members of the public and of the States of Jersey Police were aware that phone calls would be recorded. CO POWER suggests that he caused notices to be placed in the Jersey Evening Post, the public telephone directory, the internet and on internal staff information correspondence. When all of the notices had been placed, the management team were satisfied that the force was compliant with the guidelines.
- 5.1.6 As for the specific conversations that had been recorded on the tapes found in his safe, CO POWER was not certain of the detail.

He recalls deciding to try out the recording device for himself, but claims that he soon lost interest because he kept forgetting to switch it on. In addressing the conversation with the Senator, he states that it was due to his concern that he *'could be accused of saying something inappropriate'*. As for why he retained the tape in his safe, CO POWER claims that following the conversation with the Senator he was *'still nervous that the exchange might be misinterpreted and so...kept the tape in a safe place.'*

- 5.1.7 That is all the relevant information that CO POWER provided in his first account in relation to the Operation Blast files and the recording of telephone conversations.

The second account of CO Graham POWER

- 5.1.8 CO POWER's second account was received by the Operation Haven II investigation team on the 16 March 2010. Despite being provided in advance with a number of questions which the Inquiry team requested that he address, CO POWER's response is found often to be lacking in detail. This restricted opportunities for the investigating officers to develop any additional lines of enquiry to support or disprove his comments or identify other evidence about the inception and management of the Operation Blast files.
- 5.1.9 CO POWER discusses what he believes to be *'the most relevant'* strategic themes in relation to the creation of the files, namely *'vetting and counter-terrorism.'* He discusses how they are ultimately interlinked with respect to *"National Security"* and the protection of the Island's governance, and how, without a formal vetting process in place, he found it increasingly difficult to provide adequate briefings in relation to intelligence received from other countries.

- 5.1.10 Candidates for election are required to sign a declaration on their nomination forms which either highlights any spent convictions they have or states that they have no convictions. However, there is no process which verifies the declaration. This proved problematic for CO POWER because as *'head of the only organisation [in Jersey] with access to secret plans and intelligence...owned by another county, namely the UK'*, he was responsible for determining what information he could share and more importantly, with whom he could share it.
- 5.1.11 In order to try and address this issue, CO POWER attempted to introduce a *"Security Committee"* made up of *'key political figures'* that would be Jersey's link to the Cabinet Office Briefing Room (COBR) in the UK and which would be periodically briefed on *'security related intelligence'*. One pre-requisite for implementing the body would be for all members to be security vetted. CO POWER states that his suggestion was never taken forward.
- 5.1.12 CO POWER claims that, in relation to the Operation Blast files *'there is little doubt that the leading figure in this issue was OFFICER X'* He refers to **X** as *'a "Chief Officer" in X own right'* and attributes responsibility for the creation and maintenance of the files to **X**. In response to a request for him to explain the reasons behind instructing **OFFICER X** to send the initial email of 24 February 2006, CO POWER states that he *'admit[s] to no such instruction'* albeit it *'is likely to be true in the strict sense.'* He recalls informal briefings at which both he and **OFFICER X** would have been present and at which they discussed *'reports relating to States Members'*. During one such discussion, CO POWER remembers asking **OFFICER X** if there was any existing arrangement for the filing of such reports and **OFFICER X** agreeing to look into it. CO POWER remembers being informed some time later that *'[OFFICER X] had arranged for a filing system to be set up in Special*

Branch. CO POWER does not recall discussing with
OFFICER X the creation of files on all politicians.

The discrepancies between CO POWER's accounts

- 5.1.13 The two accounts given by CO POWER are consistent insofar as they both discuss concerns surrounding the vetting of persons in senior positions within the States Assembly. He discusses, in particular, the personal lives and backgrounds of politicians and identifies how they might be considered vulnerable or a risk, through either their own actions or those of others. CO POWER's overriding concern seems to have been the possible impact their position in the Island's government could have on the security of Jersey.
- 5.1.14 In his account provided on the 16 June 2009, CO POWER emphasised that the keeping of files on States Members was with the *'expressed wishes of the then Chief Minister (Mr Walker) and the Chief Executive [Bill Ogley]'*. He reiterates his claim of their support when he comments that both were *'firm in their view...that they both should receive periodic confidential briefings at which they could be told in confidence of any issues which had a potential impact on the governance of the island'*. Within that account, CO POWER makes no reference to any other influence on the opening and keeping of the Operation Blast files.
- 5.1.15 Following receipt of CO POWER's second account on the 16 March 2010, two points are notable. Firstly, CO POWER makes no further suggestion in the second account that Chief Executive Bill OGLE Y encouraged or supported the opening and maintaining of the Operation Blast files and secondly, former Chief Minister Frank WALKER, who was of primary interest within CO POWER's first

document, is only referred to once more in the final paragraph of the document. CO POWER states that Frank WALKER tried to *'press me to provide inappropriate details relating to other political figures'*, but confirms that he did not provide them.

5.1.16 Across both accounts, explanations as to why the decision was made to create the files range across national security reasons and concern for the behaviour of politicians. At no point does CO POWER explain what it was he specifically saw as the risk to national security and how the files would manage it. At no time does he mention contacting the Security Service in order to share and resolve his concerns about 'national security'.

5.1.17 Both Chief Minister Frank WALKER and Chief Executive Bill OGLEBY are, from the outset, alleged to have supported and encouraged CO POWER to open the files. This was the catalyst for this investigation to examine the role of both persons as POI's, yet they are barely mentioned in CO POWER's second document. In that account, CO POWER attempts to distance himself from Operation Blast by suggesting it is the former **OFFICER X** who took the lead and that he (CO POWER) had said to *'make sure that any Special Branch files are kept in accordance with the law and any relevant guidelines,'* **OFFICER X** acknowledges **X** involvement in Operation Blast but does say that **X** actions were carried out on the instructions and with the full knowledge of CO POWER.

6. Legal advice in respect of charges

6.1 CO POWER

6.1.1 The following charge has been suggested in respect of CO POWER:

As Chief Officer of Police for the States of Jersey Police (SOJP) and as Data Controller for the SOJP for the purposes of the Data Protection (Jersey) Law 2005 (the 2005 law) you failed, from about February 2006 onwards until your suspension in December 2008, lawfully, diligently or reasonably to discharge your duties in relation to the collection and storage by SOJP of sensitive personal data. As a consequence thereof you:

- (i) failed to perform your duties to a satisfactory standard;
- (ii) behaved in a manner likely to bring discredit to the SOJP;
- (iii) breached the 2005 law.

The Particulars:

- (i) In or about February of 2006 you caused or permitted the blanket collection and collation by SOJP of sensitive personal data on around 50 Senators, Deputies and Connétables without lawful authority or purpose and/or in breach of the 2005 law and associated guidance.
- (ii) Thereafter you permitted such data to be retained, again without lawful authority or purpose and/or in breach of the 2005 law, up until your suspension.
- (iii) You failed to set a clear strategy for your senior officers to ensure appropriate data protection compliance, pursuant to your responsibilities as Data Controller for SOJP.

- (iv) Your said conduct breached data protection principles set out in the 2005 law and failed to show any, or any proper, regard for necessity, proportionality or legality.

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**INFORMATION
RELATING TO
OTHER OFFICERS**

6. Legal advice in respect of charges

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Information relating to other officers

7. Assessing culpability

7.1 Tier 1 – individuals suspected of having instigated, arranged or planned the compilation of the files

CO POWER

- 7.1.1 The evidence gathered by this Inquiry suggests that CO POWER instigated Operation Blast and directed **OFFICER X** to implement his wishes after the pair had discussed their concerns about some politicians. CO POWER has provided no evidence of substance to justify his actions in determining the need for such information to be gathered on all States of Jersey politicians. As Chief Officer of Police and Data Controller he neglected his responsibilities to ensure that his actions and those of his staff were in support of a genuine policing purpose.
- 7.1.2 From 24 February of 2006, CO POWER permitted sensitive personal data on 53 Senators, Deputies and Connétables to be gathered without lawful authority or purpose which was in breach of the Data Protection (Jersey) Law 2005. CO POWER failed to set a clear strategy for his senior officers to ensure appropriate data protection compliance, pursuant to his responsibilities as Data Controller and Chief Officer of Police.
- 7.1.3 We conclude that CO POWER was the primary originator of the idea to collate data on politicians and, following legal advice, that the evidence establishes a serious breach of discipline on the part of Mr POWER in respect of his lack of management and supervision of Operation Blast.
- 7.1.4 There is provision for the Home Affairs Minister to consider dismissal of CO POWER on the basis that there has been a loss of confidence in him. That is a decision for the Minister and States of Jersey.

7. Assessing culpability

Pages 121 – 129

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Information relating to other officers

TEXT REDACTED

7.7 States of Jersey politicians and officials

Former Chief Minister Frank WALKER

- 7.7.1 CO POWER suggests in his first account that opening the files was at the '*expressed wishes*' of Frank WALKER and Chief Executive Bill OGLEY. Former Minister Wendy KINNARD suggests that Frank WALKER was seeking sensitive information about politicians from CO POWER but that this was refused. However, the period she refers to when this is alleged to have occurred is over two years after the files were already created. A statement was taken from Frank WALKER, who stated that the existence of such files was in breach of data protection law and therefore unlawful. He denied any involvement in Operation Blast. No evidence to corroborate CO POWER's assertions in respect of Chief Minister WALKER has been discussed by this Inquiry.

Chief Executive Bill OGLEY

- 7.7.2 It was suggested by CO POWER that Bill OGLEY was instrumental in encouraging the creation of Operation Blast. Former Minister Wendy KINNARD stated that in May 2008, Bill OGLEY supported the idea for files to exist on politicians. However, the period she refers to when this is alleged to have occurred is over two years after the files were created.
- 7.7.3 Ex-DCO HARPER had limited recollection of a telephone conversation that took place between CO POWER and Bill OGLEY regarding the history of certain politicians. He said, '*I have a vague recollection of being present when Graham POWER was speaking on the telephone to Bill OGLEY regarding the possibility that a number of States members might have had convictions which the Chief Minister did not know about*'. Ex-DCO HARPER was unable to elaborate

further on that particular conversation.

7.7.4

Bill OGLEY was interviewed as a witness (after the advice of the Attorney General) and denied any direct or indirect involvement in the creation and keeping of the Operation Blast files. He stressed his concerns about such files being created and refuted any suggestions by CO POWER that he was involved. We have assessed, on the balance of probabilities, that Bill OGLEY was not involved in the creation of Operation Blast.

8. List of conclusions

- **Conclusion 1 (1)**

8.1.1 CO POWER caused files to be opened by the States of Jersey Police in respect of all 53 States of Jersey politicians.
- **Conclusion 1 (2)**

8.1.2 CO POWER and the following members of his Senior Management Team were aware of the files and their content. Those members were former **OFFICER X** **OFFICER X** and **OFFICER X**
- **Conclusion 1 (3)**

8.1.3 CO POWER failed in the performance of his duty as Data Controller and Chief Officer of Police by allowing personal data on all 53 politicians to be obtained and retained, without a necessary, legitimate or lawful purpose, in contravention of the Data Protection (Jersey) Law 2005 and associated guidance.
- **Conclusion 2 (1)**

8.1.4 Files were created on all States of Jersey politicians as a result of concerns felt by CO POWER and members of his Senior Management Team regarding the perceived behaviour of some politicians and the potential negative impact of that behaviour upon Jersey's 'national security'.
- **Conclusion 2 (2)**

8.1.5 CO POWER failed in the performance of his duty to ensure that the processing of material relating to Operation Blast was for a legitimate policing purpose.
- **Conclusion 3 (1)**

8.1.6 CO POWER was the primary originator of the idea for the files and **OFFICER X** (now retired) the primary implementer of

9. List of recommendations

- **Recommendation 1 (The States of Jersey Police)**

9.1.1 The States of Jersey Police introduces data protection training for all staff to enhance their knowledge and professionalise their processes in light of the facts and the admitted 'institutional' breach of the Data Protection Law.
- **Recommendation 2 (The States of Jersey Police)**

9.1.2 An independent review is conducted of all Special Branch material to ensure that no similar breaches have occurred.
- **Recommendation 3 (The States of Jersey Police)**

9.1.3 A review of material held by the States of Jersey Police is undertaken to ensure that data are current, relevant and required for a policing purpose.
- **Recommendation 4 (The States of Jersey Police)**

9.1.4 The States of Jersey Police considers adopting the Management of Police Information policy in respect of intelligence and information.
- **Recommendation 5 (The States of Jersey Police)**

9.1.5 The States of Jersey Police reviews its policies and procedures for the Police National Computer to ensure that policy and procedure are fit for purpose.
- **Recommendation 6 (The States of Jersey Police)**

9.1.6 The States of Jersey Police reviews its policies and procedures for data protection to ensure that policy and procedure are fit for purpose.

- **Recommendation 7 (States of Jersey)**

9.1.7 The States of Jersey considers the merit of adopting a formal vetting system for applicants for the position of Deputy or Senator within the States Assembly.

28 February 2006 1548hrs - CO POWER forwards an email to Ops Management in relation to the investigation into threats made towards [B]. CO POWER requests that it is an 'enclosure to go with previous.'

1609hrs – **OFFICER X** forwards the email from CO POWER to **OFFICER X** stating that it is 'For the file **X** has created.' Email copied into

Officer x (x4) and **X**

2, 3, 6 & 8 March 2006 **X** carries out PNC checks on all of the 53 Senators, Deputies and Connétables.

X sends authorised Data Protection requests to **X** in relation to all of the 53 Senators, Deputies and Connétables.

14 March 2006 Email from **OFFICER X** to **X** reference Operation Blast and the recording of matters which fall within its remit.

13 June 2006 CO POWER forwards an email in relation to [C] and the £1 note he had received with defamatory writing on to **OFFICER X** stating 'for info.'

7 July 2006 1117hrs – **OFFICER X** then forwards on the email from CO POWER, regarding [C], to

X stating, *'this one for the file.'*

1121hrs – OFFICER X forwards information onto X reference [D's] refusal to have his car searched at Elizabeth Terminal. X writes, *'This one for the files please plus the attachments.'*

11 October 2006

Email forwarded by OFFICER X to X, from CO POWER with a subject heading of [E] Case'. OFFICER X states, *'The Chief would like "one of your files" opening on [F] as he considers this could be seen as an "approach". Please put in copies of all the attached.'*

13 October 2006

X carries out PNC check on [F].

16 October 2006

X sends authorised Data Protection request, in relation to [F], to X

7 December 2006

Email from X to X labelled 'CONFIDENTIAL'. Email refers to intelligence relating to [G]. X begins the email stating *'I understand you have a 'file' for this type of information?'*

2 February 2007

0854hrs - CO POWER forwards an email received from [H] on to 'Ops Management' and copies it in to DCO HARPER. He requests that there is a *'paper copy into relevant file please.'*

- 0941hrs – **OFFICER X** forwards on the email received from CO POWER to **X** and requests that **X** 'Please hard copy file this one to the relevant file... ..'
- 29 March 2007 CO POWER receives a report of an RTC involving [H]. He forwards the report onto **OFFICER X** for **X** information.
- 2 April 2007 **OFFICER X** forwards on the [H] report from CO POWER to **X** stating 'I gather you keep a file on [H]?'
- 5 June 2007 **OFFICER X** forwards on an email to stating, 'for your files on politicians please.' The email is in relation to [D].
- 22 November 2007 **X** sends authorised Data Protection request, in relation to [I] a prospective Deputy, to **X**.
- 11 December 2007 **X** carries out PNC check on [I].
- 13 March 2008 Email sent from **X** to _S.B. HQ entitled 'Intel re States Politician.' Email contains intelligence on [J] which 'will not be disseminated on ii.' (ii is a reference to the States of Jersey Police Intranet Intelligence System).
- 12 November 2008 CO POWER suspended from duty following notice of the Formal Disciplinary Process he would be subject to in relation to Operation Rectangle. DCO WARCUP appointed to the role of Acting Chief

Officer of Police.

5 January 2009

OFFICER X takes up the role of Head of Special Branch.

March 2009

X makes **OFFICER X** aware of the Operation Blast files.

16 March 2009

During their first security briefing, **OFFICER X** updates ACO WARCUP on the existence of Operation Blast.

A memorandum is sent from ACO WARCUP to **OFFICER X** instructing **X** that the operation '*should be terminated with immediate effect.*'

2 June 2009

OFFICER X produces a report on Operation Blast. The report highlights the contents of the files, their security classification, and the fact that they were apparently requested by CO POWER for the reason of national security.

ACO WARCUP writes to Senator LE MARQUAND, Minister for Home Affairs in order to refer the matter of Operation Blast for his attention.

11 June 2009

Senator LE MARQUAND notifies the Chief Executive of the States, Mr William OGLEY, that a '*further potential complaint*' against CO POWER has been made known to him. A copy of the letter is sent to CO POWER for his information.

14 June 2009

Mr POWER replies to Senator LE MARQUAND with

a letter stating, '*...to the best of my knowledge nothing improper is involved in any of the matters to which you refer...*'

15 June 2009

ACO WARCUP informs **X**, the Information and Security Compliance Manager, of Operation Blast and requests **X**'s views on the issue. Having been allowed to view them, **X** comes to the conclusion that the keeping of the files was not justified and is in breach of Jersey Data Protection Law and that ACO WARCUP should update the Data Commissioner, Emma MARTINS.

16 June 2009

The Minister for Home Affairs addresses the States Assembly with a statement in relation to Operation Blast. The statement discloses the existence of the files on all States Members and stated that they had not been retained as per the agreed protocols.

17 June 2009

Senator LE MARQUAND receives a letter and attachment from CO POWER.

18 June 2009

ACO WARCUP writes to Emma MARTINS, the Data Protection Commissioner, informing her that he has formally referred the matter of the files to the Minister for Home Affairs and is waiting for a response.

22 June 2009

Mr John RICHARDSON, the Deputy Chief Executive, writes to Senator LE MARQUAND requesting that a decision be made on whether the allegations against CO POWER are to be investigated.

Appendix 1

Restricted – Contains Personal and Operational Information

- 26 June 2009 Senator LE MARQUAND asks Mr John RICHARDSON to proceed with a preliminary investigation in accordance with paragraph 2.1.2 of the Disciplinary Code for the Chief Officer of Police.
- 14 July 2009 Letter from John RICHARDSON to Chief Constable MOORE enclosing terms of reference for the investigation by Wiltshire Police into Operation Blast.
- 31 July 2009 Senator LE MARQUAND reviews the suspension of CO POWER and concludes that it should be continued pending the conclusion of the investigation of Operation Blast.
- 3 August 2009 ACO WARCUP refers Operation Blast and the subsequent investigation to Mr Leslie MAY, the Chairman of the Jersey Police Complaints Authority.
- 1 Sept 2009 The Inquiry into Operation Blast by Wiltshire Police commences and is known as Operation Haven II.

Appendix 2

Organisational chart of States of Jersey Police

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Appendix 3

Data Protection (Jersey) Law 2005

The Data Protection Principles

First principle

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) in every case – at least one of the conditions set out in paragraphs 1-6 of schedule 2 is met; and
- (b) in the case of sensitive personal data – at least one of the conditions in paragraphs 1-10 of Schedule 3 is also met.

Second principle

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Third principle

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

Fourth principle

Personal data shall be accurate and, where necessary, kept up to date.

Fifth principle

Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

Sixth principle

Personal data shall be processed in accordance with the rights of data subjects under this Law.

Seventh principle

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Eighth principle

Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Appendix 4

Witness List

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Appendix 5 – Glossary of terms

Acronym	In Full
ACO	Acting Chief Officer
ACPO	Association of Chief Police Officers
CID	Criminal Investigation Department
CJU	Criminal Justice Unit
CO	Chief Officer
COBR	Cabinet Office Briefing Room
CRO	Criminal Records Office
DCO	Deputy Chief Officer
DV	Developed Vetting
DPA	Data Protection Act
DPL	Data Protection (Jersey) Law 2005
DS	Detective Sergeant
DSIO	Deputy Senior Investigating Officer
DSU	Dedicated Surveillance Unit
FCR	Force Control Room
HMIC	Her Majesty's Inspectorate of Constabulary
HQ	Headquarters
II	Intranet Intelligence System
JIB	Joint Intelligence Bureau
LIO	Local Intelligence Officer
MACP	Military Aid to Civil Power
MoPI	Management of Police Information
NPIA	National Policing Improvement Agency
NSBIS	National Special Branch Intelligence System
PCA	Police Complaints Authority
PITO	Police Information Technology Organisation
PM	Prime Minister
PNC	Police National Computer
POI	Person of Interest
PSD	Professional Standards Department
QC	Queen's Counsel
QPM	Queen's Police Medal
SB	Special Branch
SC	Security Checked
SIO	Senior Investigating Officer
SoJP	States of Jersey Police
UK	United Kingdom

Appendix 6

List of emails relating to Operation Blast

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Appendix 7

Summary of culpability assessment

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