
ALAN SMITH

Cape Bridgewater Holiday Camp

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26 May 1999

Dr Zygmunt Switkowski

Chief Executive Officer

Telstra

Melbourne 3000

and

Mr David Hoare

Chairman of the Board

Telstra

Melbourne 3000

and

Mr Tony Staley

Chairman of the TIO Board

Telecommunications Industry Ombudsman Limited

Melbourne 3000

Dear Sirs,

CASUALTIES OF TELSTRA (COT)

Alan Smith / Telstra Arbitration

Telstra's 'Beer in the Phone' report

Please refer this issue to your next board or council meeting. As a matter of urgency, an enquiry should be initiated into the unlawful way in which Telstra conducted their defence of my arbitration, including the fact that Telstra's 'Beer in the Phone' report was based on false information. The following information details the problems surrounding this false report.

During August 1993 I complained to both Austel and Telstra that I was still experiencing problems sending and receiving faxes (refer attached FOI documents K01489 - R11431). I also mentioned to Telstra's fault centre that, on a number of occasions, the line would not disconnect when I replaced the receiver, causing the person on the other end to be able to hear me moving about my office for some time after the 'termination' of our call. On 26 April 1994, while involved in the arbitration procedure, I again alerted Austel to this problem, which was still occurring.

At the suggestion of Austel's Mr Cliff Mathieson, a series of tests were conducted, using the TF200 phone already connected to my fax machine, then I disconnected my fax machine and connected another TF200 telephone which was taken from my incoming line. After repeating the tests on this second phone, Mr Mathieson confirmed that the phone was still 'locking up' and not correctly disconnecting when I returned the receiver to the cradle. Mr Mathieson then suggested that I contact Telstra and have my service line checked because, he said, the fault would no doubt be found at the RCM exchange at Cape Bridgewater since it was certainly not occurring in either of my telephones.

At the time, Mr Peter Gamble of Telstra was conducting inquiries for Telstra's Defence Counsel and so I contacted him. I deliberately did not tell him that Mr Mathieson and I had tested two different phones on the one fax line as I was interested to hear his explanation of the fault. Past experience, backed up by the Coopers & Lybrand COT report, indicated that Telstra frequently blamed the customer's equipment for faults. FOI documents show that Mr Gamble and I carried out tests in the same way Mr Mathieson and I had tested the line, but only using one of the phones. As I expected, Mr Gamble indicated that he believed that the touchphone was causing the fault and so he arranged for the phone to be collected the next day (27/4/94) for analysis at Telstra's laboratories. Before the phone left my premises both the technician who was collecting the phone, Ross Anderson, and I inscribed our signatures on the outside of the phone, in the receiver cradle.

FOI documents K00940 and K00941 (attached) from Peter Gamble himself, indicate however that the fault was actually being caused by heat in the RCM exchange at Cape Bridgewater, which was exactly what Mr Mathieson of Austel had suggested. Other documents show that Ross Anderson, the technician who originally collected my phone for testing, has stated in a statement sworn under oath, that heat was one of a number of causes of problems at the RCM in Cape Bridgewater.

Seven months after my phone was taken for testing, Telstra submitted a twenty-nine page report on my touchphone, in support of their defence under legal arbitration. This report stated that the phone arrived at their laboratories on 10/5/94 in a 'very dirty' state and, on further close examination, it was found that beer had been spilt inside the casing of the phone. According to the report, this beer was wet and sticky when the phone arrived at the laboratories and this caused the hookswitch to lock up. In other words, once again Telstra blamed the customer's equipment for the fault.

I have since proved to the current TIO, Mr Pinnock, that beer could not stay wet and sticky inside a phone from August 1993 through to April 1994 (the time-span covered by these particular complaints). In fact I have proved that beer could not even stay wet and sticky from 27/4/94 to 10/5/94 which is the time between my clean phone leaving my premises and arriving, in a 'very dirty' state at the laboratories.

I have also provided Mr Pinnock with copies of Telstra's own FOI documents which show that this lock-up fault continued on my phone line for five weeks AFTER a new telephone was connected to my fax line: could the phone line have been under the influence of alcohol also?

On 23/5/94 I advised both the arbitrator's office and Telstra that my fax line was still locking up, even after a new TF200 touchphone had been installed. I cited seven separate faxes (all claim material) that appeared to transmit very slowly as they were processed through my fax machine. Later, my Telstra fax account showed that these calls were received by the arbitrator's office (03 614 8730) and were therefore duly charged as successful transmissions. In their defence of this particular issue however, under oath, Telstra state that these seven faxes were not received on 23/5/94 at the arbitrator's office, even though their own CCAS data (and my fax account) shows that they were received and charged for.

If these faxes were received by the arbitrator's office, then why have I not received them back from the arbitrator, along with all the other documents which were returned to me under the rules of arbitration? There is no reference to these particular documents in any of the documents or lists that I have received back from the arbitrator. All this adds to the confusion surrounding the faults on my TF200 fax line and Telstra's TF200 defence report.

Although I have been asking Telstra, for some time, to provide me with the working notes from their laboratories, showing how their technical staff arrived at the findings relating to my TF200 telephone, I have not yet received this information. I have however been provided with FOI document A63365 (copy attached). Photo 4 is a close up of the signatures engraved under the receiver of the phone. Because I only have photocopies of the photo to work with, a 'blow-up' of the photo is not very clear and the signatures are not easy to read but it can be seen that Mr Anderson's signature is above mine. What this 'blow-up' does show is the layer of dirt which spreads OVER Mr Anderson's signature. This raises a question: when Mr Anderson and I inscribed our signatures on the phone it was quite clean. Mr Anderson then sealed the phone inside a plastic bag. So, how did dirt get spread OVER his signature by the time the phone reached the laboratories?

Taken together, these separate pieces of information clearly prove that beer in the phone could not have been the cause of the problems I suffered because:

- (i) Telstra's CCAS data and FOI documents show that the fax phone problem continued at least until June 1994.**
- (ii) My fax accounts and letters from customers show that this fault continued unabated from 1993 until July/August 1998.**

- (iii) Tests since carried out on three different TF200 touchphones show that beer does not stay wet and sticky for 15 days (26 April to 10 May).
- (iv) Once the beer was drained out of these phones referred to at point (iii), none of them locked-up when in use.
- (v) When Mr Mathieson and I tested two different phones on the same line, the same fault occurred. Mr Mathieson stated that he therefore believed the fault had to be at the RCM.
- (vi) In FOI documents K00940 and K00941, Peter Gamble stated that the fault lay with the RCM.

The TF200 report used by Telstra in their defence was signed by Ray Bell, Manager of Technical Liaison for Telstra's laboratories. In this report Mr Bell stated that the wet and sticky beer was the cause of the 'lock-up' problem with my phone; he goes on to say:

"If the customer had reported the liquid spillage when it occurred the telephone would have been replaced under standard maintenance procedures with no resultant loss of business."

Obviously Mr Bell now needs to explain this statement in the light of FOI document A64535, which I received six months after my 'award' was handed down. In this document Mr Bell's own laboratory technicians state that their experiments indicate that beer residue *dried overnight*.

Since Mr Bell had my TF200 in his custody from 10/5/94 with that clear knowledge that it had been removed from my office on 27/4/94 then he must have known that the report he signed was built on lies and deception with the intention of defrauding me of a correct arbitration assessment.

It is quite apparent that someone within Telstra deliberately tampered with my phone in order to misrepresent the true facts in this legal arbitration. Obviously the 'very dirty' condition of the phone when it arrived at the laboratory for testing was contrived with the full intention of inferring that my 'questionable habits' had contributed to the phone faults.

Both the arbitrator and the then TIO have recorded that some of my phone faults were caused by my own telephone equipment and the then TIO stated publicly, on 12 May 1995, that the first COT case had been settled with some faults found in the customer's facsimile equipment. Although he didn't actually name me, it is clear that I am the customer he was referring to.

Other FOI documents which I received after my 'award' had been handed down show that Telstra's Ted Benjamin and the arbitrator corresponded secretly regarding this matter, without my knowledge. According to these documents, Ted Benjamin wrote to the arbitrator, stating that Telstra could supply two statutory declarations attesting to the authenticity of the TF200 report. In direct contravention of the arbitration rules, the arbitrator did not forward a copy of this letter on to me for my comment.

I now ask that pressure be brought to bear on Telstra's FOI unit to:

- A. Release all the relevant hand-written working notes relating to the technical research which led to the laboratory findings relating to my TF200 touchphone, and
- B. Provide me with the original set of photos taken of my TF200 phone so I can have these photos forensically tested.

As responsible citizens and corporate executives, I am sure you would want to see the culprit(s) responsible for these illegal activities brought to justice and made accountable for their unlawful actions which perverted the course of justice.

Please advise how you intend to handle these requests.

Sincerely,

Alan Smith

PS: Since my award was handed down I have provided the TIO's office with irrefutable evidence that the fax problems referred to in this letter, and other fax problems — both sending and receiving — plagued my business right through to August 1998. The TIO, however, has refused point blank to investigate these problems which were all occurring before, during AND AFTER my arbitration.

It is interesting to note that, four days before I contacted Mr Mathieson of Austel on 26/4/94, Mr John MacMahon, General Manager, Consumer Affairs, Austel, asked me to fax him three of my 1800 Telstra accounts which I could prove had been incorrectly charged by Telstra. Austel's fax journal and my fax account show that these three transmissions did take place, each one lasting between 1 minute 13 seconds and 2 minutes 33 seconds, yet only blank sheets of paper arrived at Austel's offices. These blank sheets did not even have any identification information to show where they had originated. Austel only knew these three blank pages had come from me because I had suggested that they check their fax journal printout. Receipt of blank sheets was one of the major problems my business suffered from both from the point of view of my clients and also because the arbitrator had the same experience during my arbitration.

In June 1998 my solicitor, William Hunt, suffered the same problem with the same result: if he had not known to check his fax journal printout he would not have known where the two anonymous pages he received had originated from.

Telstra conjured up a fraudulent defence document in the TF200 report, in an effort to deliberately hide the true extent of my phone and fax problems. If they had not done this then the arbitrator and his technical resource unit would have instructed Telstra to investigate these continuing faults under the rules of the FTSP/FTAP which stated clearly that no award could be handed down by the assessor/arbitrator until all the phone faults had been corrected. After all, what was the point of an award if the phone faults were still occurring when they were the whole reason for the arbitration in the first place?

Although these problems were not addressed as part of the FTAP, and they still haven't been addressed even up to today, Mr Pinnock continues to state that my arbitration is over. Could it be that the TIO does not want to look at these problems because then he will have to admit that the arbitration is not over? This is another issue which I would be grateful if you could clarify on my behalf.

copy to:

Senior Sergeant Sommerville, Victoria Police Major Fraud Group, Melbourne.

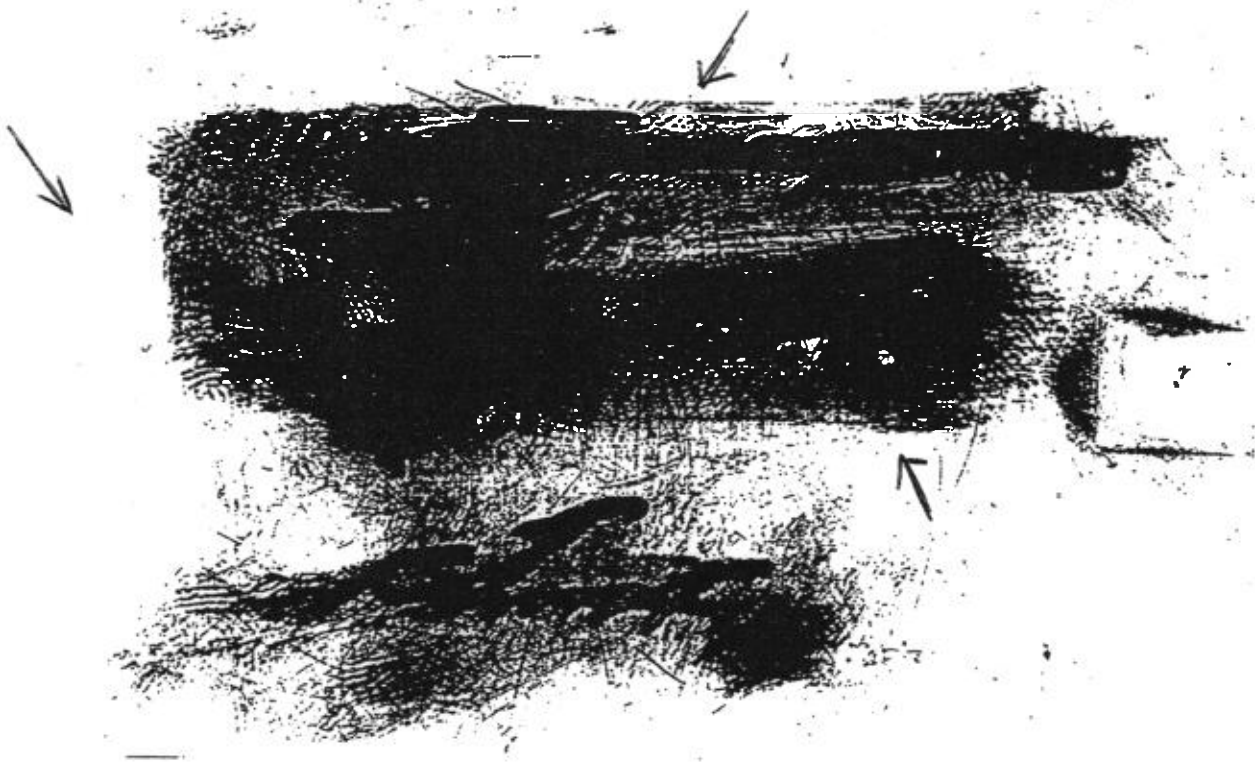


Photo 4. Close-up of engraved information on case

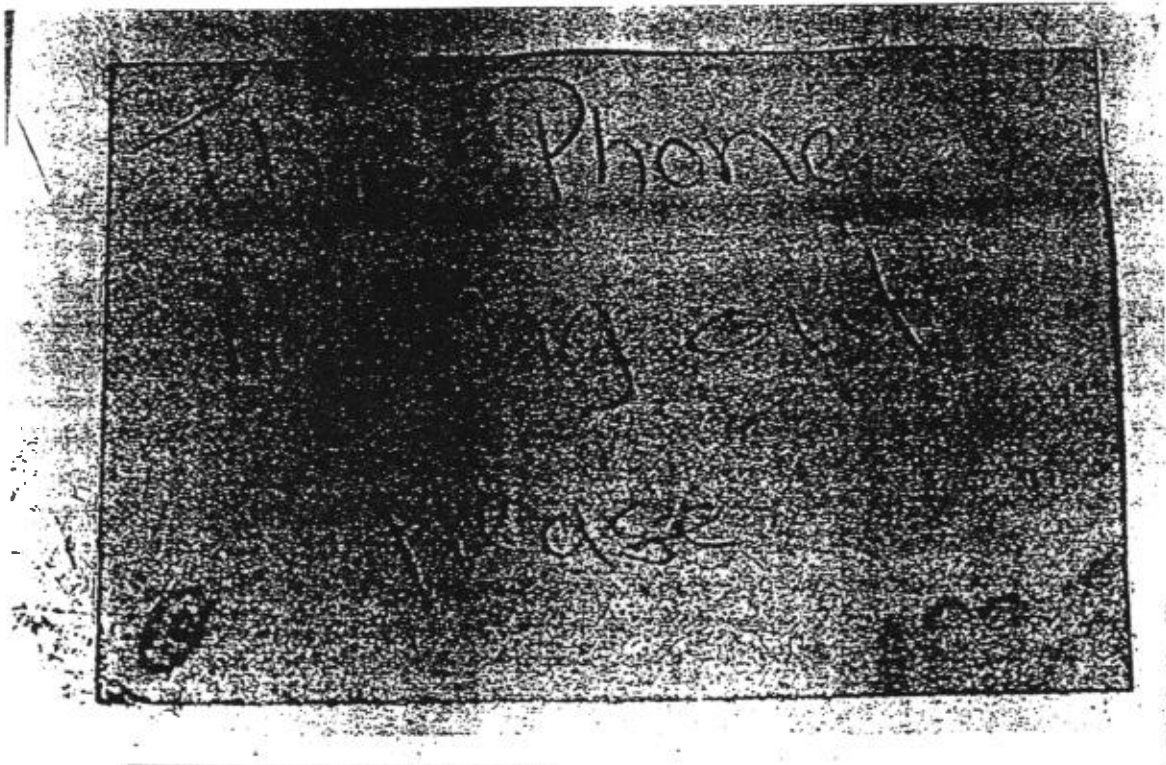


Photo 5. Close-up of label stuck to case above keypad

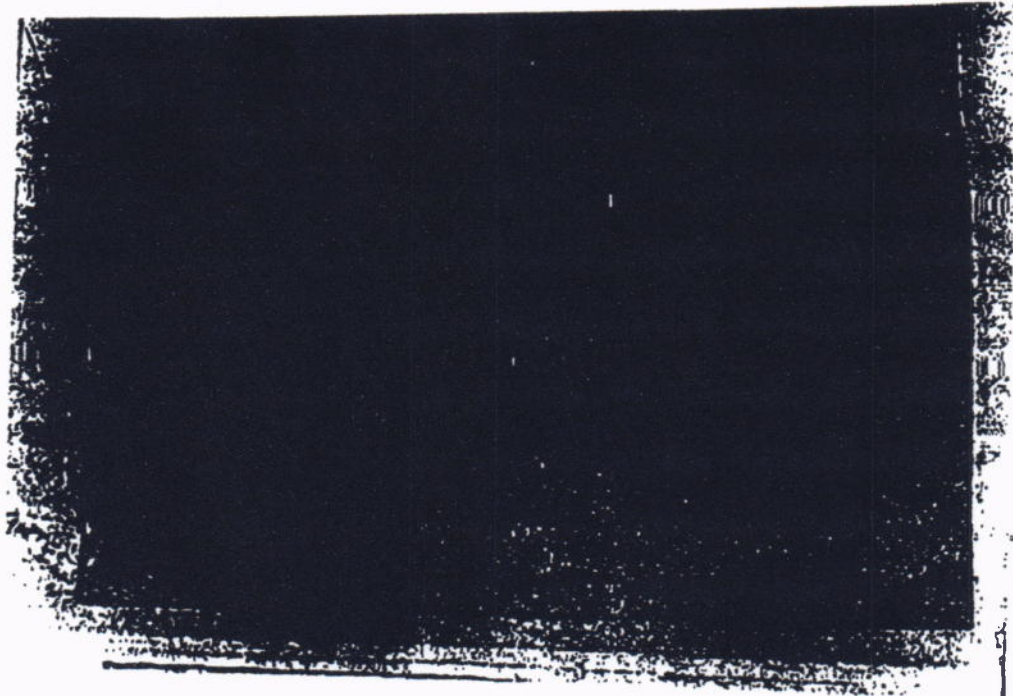


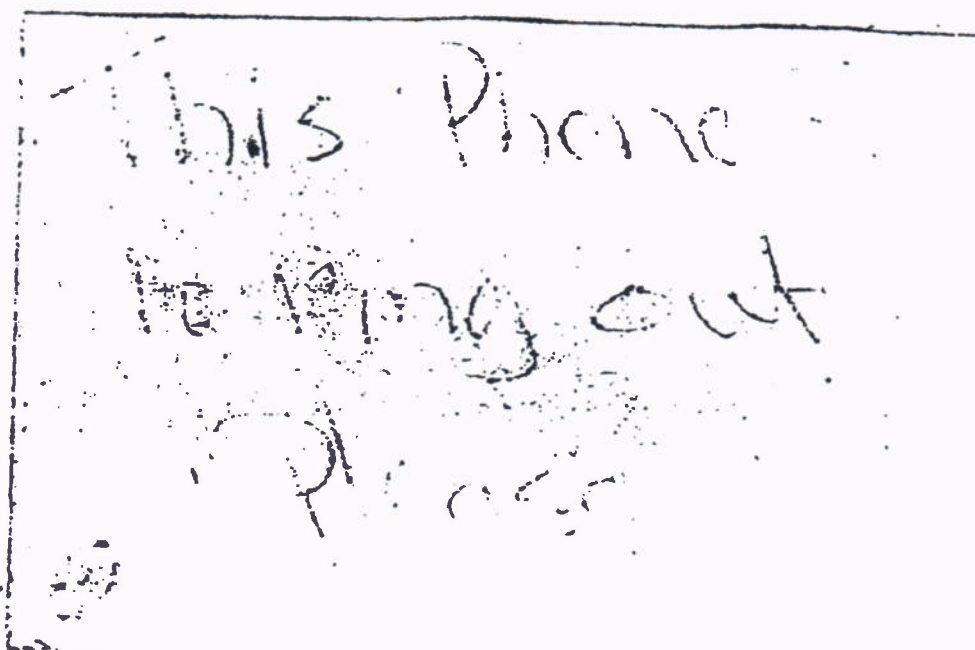
Photo 5. Close-up of label stuck to case above keypad

At point 1.3 in Telstra's (TF200 arbitration defence report), they state: *'The suspect TF200 telephone when received was found to be very dirty around the keypad with what appeared to be a sticky substance, possibly coffee.'*

The two photos on this page are of the same TF200 - they are both labelled *'Photo 5. Close-up of label stuck to case above keypad'* (Alan had put the label there to alert staff that this was the phone to ring out of the holiday camp).

However, there is clearly a vast difference between these two photos. The very dark photo, above, is a Telstra photo of the same photo as shown below alleging this was what the TF200 keypad was like when it was received at Telstra's laboratories. The pale photo below was provided to Alan under FOI, and identified as being the condition in which the TF200 EXICOM phone was presented in.

The overwhelming disparity between the two is highly suggestive of tamping, and the possible application of a sticky substance after the phone had been collected from Alan's business premises.



T

Pendlebury, Bruce

K00940

DF

From: Gamble, Peter
To: Pendlebury, Bruce
Cc: [REDACTED]
Subject: FW: CAPE1.DOC
Date: Tuesday, 26 April 1994 3:12PM

Bruce, for information.

Following a call from Alan Smith, I have just had a discussion with Les Churcher re a complaint that Alan Smith lodged earlier today (Leopard No 364 608). I described to Les more accurately what the problem is and he will discuss my comments with Alan Miles.

Peter.

From: Gamble, Peter
To: [REDACTED]
Cc: [REDACTED], Black, Stephen; Rumble, Paul; [REDACTED]
Subject: RE: CAPE1.DOC
Date: Tuesday, 26 April 1994 2:33PM

John, thanks for the response.

I should have chased it up earlier, but I was on leave.

I am concerned to note that heat may be part of the problem. I had occasion earlier this year to get involved in another "ongoing" case involving an RCM with a heat problem at Murrumbateman (just outside Canberra). Although the problems experienced by the customer were different, as was the nature of the technical problem, the root cause seems to have been the same - viz heat.

I do note, however, that one of the symptoms from the Murrumbateman case was "Not Receiving Ring", something Alan Smith at Cape Bridgewater has been complaining about for some time.

Peter.

From: [REDACTED]
To: Gamble, Peter
Subject: FW: CAPE1.DOC
Date: Tuesday, 26 April 1994 1:09PM
Priority: High

Peter

Please see reply from Bob Braid. I dont know why you did not get a copy but I will follow up

Do you need anything else.

Regards

[REDACTED]
From: [REDACTED]
To: Gamble, Peter
Cc: [REDACTED]
Subject: FW: CAPE1.DOC
Date: Tuesday, April 26, 1994 12:40PM
Priority: High

Peter,

Reference your Mail message enquiring about the status of the DNF at Cape Bridgewater, I sent the

ched message on the 28th March. The attached message indicates that the problem did lie in the RCM and has been fixed. This was confirmed in a subsequent conversation with [REDACTED]

K00941

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: CAPE1.DOC
Date: Monday, March 28, 1994 5:11PM
Priority: High

Grant,
Do you want any more on this RCM problem? [REDACTED] seems to have solved the problems and whilst the poor setting up of the supervisory system is a worry, I doubt if many new systems will be installed on copper bearers.

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: CAPE1.DOC
Date: Monday, March 28, 1994 3:04PM
Priority: High

Please find attached the results of testing of problems with Cape Bridgewater RCM system . This is additional information to that provided by Mark Hooper on 23-3-94.

I hope this assists.

<<File Attachment: CAPE1.DOC>>

2 March 1994

Telecom
AUSTRALIA

COMMERCIAL & CONSUMER
CUSTOMER RESPONSE UNIT

8/242 EXHIBITION STREET
MELBOURNE VIC 3000

Australia

Telephone (03) 634-5736

Facsimile (03) 634-8441

**Detective Superintendent
Jeff Penrose
AUSTRALIAN FEDERAL POLICE
SPECIAL REFERENCE INVESTIGATION
PO BOX 401
CANBERRA CITY A.C.T. 2601**

Dear Detective Superintendent

RE: A.F.P. ENQUIRY

I refer to an article which appeared in the Australian Financial Review on Friday 25 February 1994 headed "Telecom minute reveals another bugging, small businessman tells police". (Copy attached)

The article stated, inter alia, that Mr Alan Smith had referred an alleged bugging incident to an A.F.P. officer the day before during five hours of questioning.

The article refers to a Telecom minute obtained under F.O.I. which indicates a series of tests were conducted on Mr Smith's telephone network in late November to determine whether the reported faults were legitimate. The article goes on to say that Mr Smith said he had never given Telecom permission to conduct such monitoring.

I have enquired into the circumstances surrounding the incident referred to and consider the outcome of that enquiry sufficiently disturbing so as to put certain information to you.

Firstly, a search of the information provided to Alan Smith under F.O.I. revealed a document headed FAX INVESTIGATION. A copy is attached hereto for your perusal. The background to that document is as follows.

Mr Smith made several reports of faulty fax transmissions during late October and the first 3 weeks of November 1993.

Ross Anderson of Warrnambool Customer Operations Group attended Mr Smith's property and conducted tests on Mr Smith's machine in conjunction with Waverley Business Service Centre and National Fax Support Centre. Some minor mis-operations were detected, but no difficulties were experienced sending faxes between machines in the test centres and Mr Smith's machine.

A53981