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How the AFP bungled the Michael Cranston investigation

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Michael Cranston's 39-year career as a public servant effectively ended in an Australian Federal Police press conference on May 18, 2017.

Deputy Commissioner Leanne Close had dropped a bombshell, detailing how the AFP had just smashed a \$165 million tax fraud, but she saved the best till last: one of the country's top tax officers, Australian Tax Office deputy commissioner Cranston, had been charged.

"It appears that his son has asked him to access some information, potentially," Close told journalists on May 18, 2017.





Michael Cranston after his acquittal: "I told them to bloody subpoena Telstra directly." **Peter Rae**

Actually that wasn't right. The Plutus Payroll case was sensational, with Michael Cranston's son Adam alleged to have been part of the fraud. But the two charges that the AFP's Operation Elbrus laid against Michael, were not for accessing information, they were for misusing position for private advantage.

It would not be until Cranston's trial began last January, almost two years later, that details finally emerged of what he was supposed to have done.

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The story that can now be told is of a catastrophic misunderstanding, if not downright incompetence, by investigators who believed that Cranston had invented a telephone call to cover an intervention on behalf of his son Adam.

It came about because In the frantic days before AFP officers confronted Michael Cranston in a Surfers Paradise car park, they failed to make a simple check: what phone calls he had made or received from both his mobile and landline telephones.


That initial mistake was then compounded. A forensic examination of the documents that AFP officers used to build their case against Michael Cranston shows a trail of errors from the period before he was charged until days before his trial.

'The worst day of my life'

Yet none of this was evident while senior AFP officers had their moment in the media limelight on May 18, 2017.

The missing calls
INTERACTIVE

2017
2018
... to Cranston's landline
Statements from AFP & CDPP



Date	Details
Fri, Apr 28 7.04pm (7min 6 secs*)	Michael Cranston is about to board a flight when his son phones to say ATO has his frozen payroll fund for 2000 workers. Michael says he will talk with Adam later.
Mon, May 1 9.13am (19 secs)	Adam calls Michael, who says he is ill and is taking an Uber home from airport. He'll call back.
9.58am	Michael texts Adam to ring his landline.
10.05am (35 sec)	Adam calls Michael to say his landline is engaged, his father says it should be working.
10.31am (30 secs)	Michael calls Adam to check name of ATO auditor and when Adam became involved.
10.32am (7min 37 secs)	Michael calls Asst Commissioner Tony Poulakis and tells him tax lawyer has called him about frozen payroll. AFP has no record of lawyer's call and believes Cranston invented conversation.
Tue, May 9	<div style="border: 1px solid black; padding: 5px; font-family: monospace; font-size: 0.8em;"> <p>AFP orders \$20 search of Telstra call records of Michael</p> <p>=====</p> <p>TELSTRA CORPORATION. CONFIDENTIAL MESSAGE</p> <p>AGENCY NAME: AFPHQ - Australian Federal Police - HQ</p> <p>YOUR REF: DR17-06130</p> <p>OUR REF: 1412639</p> <p>SEARCHER: 925439900</p> <p>DATE FROM: 03/05/2017</p> <p>DATE TO: 03/05/2017</p> <p>PREPARED: 09 May 2017 12:59</p> <p>GST EXCL AMT: \$30.00</p> <p>COMMENT:</p> <p>ACT SECTION: 178(2) Criminal</p> <p>=====</p> <p>Search type AB (Outgoing/Incoming calls)</p> <p>Start date 03/05/2017 00:00:00</p> <p>Finish date 03/05/2017 23:59:59</p> <p>Telephone number 02 [REDACTED]</p> </div> <div style="border: 1px solid black; padding: 2px; margin-top: 5px; font-size: 0.8em;"> <p>Why search for May 3? Should it have been May 1?</p> </div>
Wed, May 17 6am	AFP officers interview Michael Cranston at Crown Plaza hotel in Surfers Paradise after approaching him and his wife in car park.
Thu, May 18	AFP Deputy Commissioner Leanne Close says Michael Cranston has been charged: "It appears that his son has asked him to access some information, potentially."
Thu, May 25	AFP creates spreadsheet with call charge records for Michael Cranston's mobile.
Tue, Aug 8	CDPP files statement of facts which cites "dishonesty of his conduct... Telling Poulakis he (M Cranston) had been contacted by a lawyer rather than his son. "Falsely claiming to his direct subordinate that he was concerned about reputational damage to the ATO".

* Two calls

"Michael was in shock when we spoke to him yesterday – as you would imagine, knowing what's happened to his son," said detective superintendent Kirsty Schofield, the leader of Operation Elbrus.

Beside her, Close added in a rider that many would disregard: "We don't believe at this point that he had any knowledge of the actual conspiracy and the defrauding."

The AFP press kit came with video of Adam Cranston, bare to the waist with his hands secured behind his back by cable ties, as AFP officers searched his home the previous day.

But it was the claims against Cranston senior, who for almost a decade had led the ATO's compliance teams cracking down on tax fraud including Project Wickenby and the Panama Papers task force, that supercharged the media coverage.



AFP Deputy Commissioner Leanne Close: "It appears that his son has asked him to access some information, potentially," she told May 2017 press conference. **Karleen Minney**

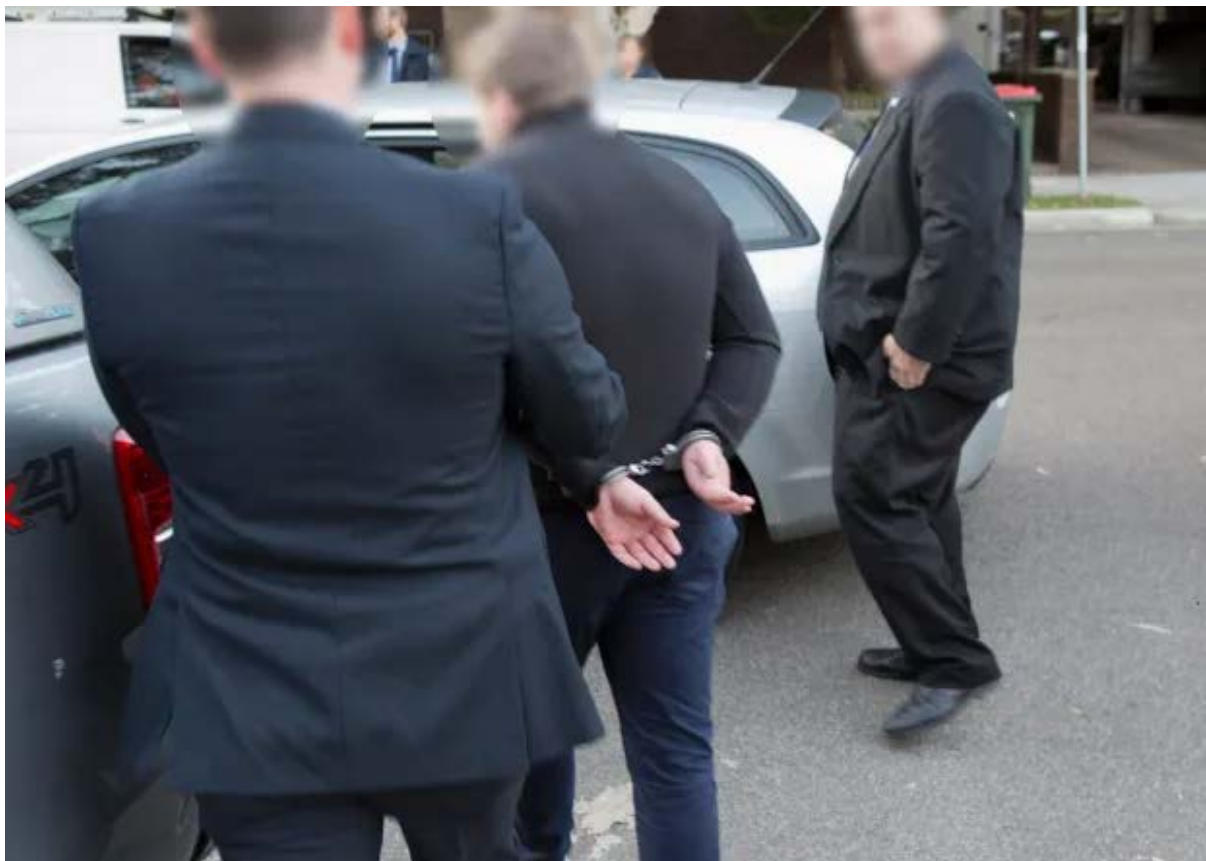
The effect on the Tax Office was devastating, with Tax Commissioner Chris Jordan forced to defend the ATO on multiple fronts, as politicians and the Tax Inspector's

office raised questions about the integrity of ATO files while the corporate culture of the ATO went into deep freeze.

Michael Cranston describes May 17, 2017 as "the worst day of my life".

He had been suffering from recurrent flu that month, and was feeling under the weather when he and his wife Gloria made their way at 6am to the basement car park of their Surfers Paradise hotel, Crowne Plaza, on their way to a 7am breakfast appointment where Michael would address a group of accountants.

Instead the pair were confronted by AFP officers who bundled them back upstairs to a hotel room where Michael was interrogated.



Adam Cranston in handcuffs during AFP's Plutus Payroll raids May 17, 2017. **Australian Federal Police.**

AFP's 'Gotcha!' moment

Sixteen days earlier on May 1, AFP officers had been listening in on Michael Cranston's mobile when he called Assistant Commissioner Tony Poulakis.

"Mate I got an issue," Cranston told Poulakis. "This lawyer bloke's rung me about it, something connected to me son, but – he's got this company that's bought a company, whatever, but it's a sort of leftover issue."

Tax lawyer Dev Menon, acted for Plutus Payroll Australia, a payroll company whose bank accounts had been frozen by the ATO five days before.

In the process the ATO had frozen the wages of 2000 contractors who were complaining to the media, Menon had warned, which would hurt the ATO.

"I've said – they asked me my advice," Michael Cranston said. "The lawyer rang me, I've said, 'Well if I was you, I'd probably talk to somebody in tax, today would probably be better'."

Michael didn't want to be involved, he said, but with the Queensland office closed for a public holiday could Poulakis get someone to call Menon?

This was the AFP's "Gotcha!" moment. After months of tapping Michael Cranston's mobile, Elbrus investigators were convinced they finally had him – because their phone intercepts had no record that Cranston had ever spoken to Menon.

When AFP officers asked Michael about his call to Poulakis during the May 17 interrogation he repeated the claim that Menon had called him.

This was critical to the case that the AFP built against Cranston.

'This demonstrates the dishonesty of his conduct'

It was the first time that a public servant had ever been charged under Section 142.2 of the Commonwealth Criminal Code, which focuses on dishonesty in public office.

The first charge was that Michael Cranston dishonestly used information he had obtained in the course of his job, after Adam spoke to him in February 2017 about a seemingly harsh \$139,000 tax assessment for one of his associates.

The [jury would later acquit him](#), accepting that Michael told his son advice about investigation techniques of the sort the ATO regularly handed out to tax professionals.

The second charge appeared more serious: that Michael Cranston had dishonestly exercised influence to benefit his son. Here, investigators need look no further than what they saw as Cranston's lie about the phone call from Menon.

"Michael Cranston told Poulakis he had received a call from a lawyer, even though he had received the call from his son Adam Cranston, in order to legitimise his request of Poulakis," the statement of facts said.

"This demonstrates the dishonesty of his conduct."

Cranston's lawyer, John Laxon of Laxon Lex Law, says the "strong inference" from successive statements of fact tendered by the AFP "was that the telephone call between Dev Menon and Michael Cranston on May 1, 2017 *never happened*".

Adam hadn't raised media concerns with his father – and if Michael hadn't spoken with Menon then he must have invented that as well.

This too showed dishonesty, according to the AFP case, by "falsely claiming to his direct subordinate that he was concerned about reputational damage to the ATO".

Where things get confusing

But how did the AFP know Menon didn't call the deputy commissioner? And here is where it got confusing.

On May 1, Michael was home sick with the flu when Adam called him on his mobile about Plutus. He mentioned problems calling Michael's landline.

The AFP had a warrant to tap Michael's mobile, but not the landline. And there was no call from Menon to Michael's mobile.

Just over a week later on May 9, the AFP applied for records of all incoming and outgoing calls on Michael's landline. The search cost \$30 plus GST and was restricted to just one day – May 3.

But little had happened on May 3. The search was in the period when the AFP was seeking advice from the Commonwealth Director of Public Prosecutions about filing charges. So why did it target May 3 for phone records?

One possible explanation is that investigators got the date wrong. They meant to get the May 1 records, but they asked for May 3 by mistake.

In addition to the phone taps, the AFP had obtained a full set of call records for Michael's mobile, which were saved as an Excel spreadsheet on May 27.

Landline checks

By then the AFP had already charged Michael. It was the most basic issue – it had checked his mobile call records, but unaccountably made no move to check his landline.

Of course, if anyone checked the file, they would see someone had indeed checked the landline records. The AFP had a Telstra report for May 3.

It would be easy to mistake the May 3 record for May 1.

The alternative explanation is that the AFP made no attempt to search the landline records, that they laid a charge that carried a five-year jail term without making the most basic \$30 check.

[Michael Cranston by this time was fighting desperately](#) to save his job, his financial future and his reputation. And to stay out of prison.

He resigned from the ATO in June 2017. He remained certain that he had spoken with Menon on May 1. But where was the record of the call?

Then, on June 25 last year, 13 months after the charges were laid, John Laxon asked the CDPP for any incoming and outgoing call records for Michael's landline. Four days later the CDPP advised that the AFP held no call records for the number.

On November 1, Laxon asked for "all call charge records (outgoing and reverse)" for Michael Cranston, Clamez Lawyers and Dev Menon from April 26 to May 5, 2017.

On November 5 the CDPP emailed that the AFP advised they did have records for Michael Cranston's mobile and landline but not for those dates.

Laxon formally requested that the AFP obtain the call records.

'We are at a loss to understand this discrepancy'

But now there was another mix-up. When the AFP ordered the landline records on November 8, it only ordered outgoing calls.

This was despite Laxon's repeated requests for both outgoing and incoming records. This mistake by the AFP meant the records could not show whether Dev Menon had called the landline as Michael claimed.

On November 20 the CDPP emailed Michael's mobile records, and the landline record for May 3, 2017 that the AFP had obtained the year before, and the following day the landline records obtained on November 8.

Allowing for the Christmas break, it was now only five weeks before Michael's trial was due to begin on January 21.

None of the documents supplied showed a call from Dev Menon. But Michael Cranston was adamant he had spoken to Menon.

"I told them to bloody subpoena Telstra directly," he told *The Australian Financial Review* during his trial.

After Laxon began the private subpoena process, on November 22 the AFP made its own new request to Telstra for the call records that Laxon was demanding,

including incoming calls.

Six days later the CDPP supplied the new call records to Laxon. These records for the landline showed Menon at Clamenz Lawyers called Michael Cranston unsuccessfully five times on May 1 before finally catching him at 10.06am and speaking with him for 23 minutes.

The call ended at 10.29am. Michael called Poulakis at 10.32am.

"The good news is that the [Call Charge Record] does have the calls from Dev Menon from the Clamenz Lawyers phone to you, contrary to the information previously given to us by the CDPP," Laxon Lex paralegal Taylor Goodrum emailed Michael. "We are at a loss to understand this discrepancy."

Adjusted claim

The allegation that Cranston had invented the call from Menon, which was a critical part of the dishonesty claim, had been debunked. The CDPP now adjusted its claim.

The amended crown case statement still read that Cranston "lied to or intentionally misled Poulakis" on May 1, 2017 when he said Menon had called him.

"This was a lie because (even if he had spoken with Menon) the reason why he rang Tony was because he had agreed to make the enquiries in conversations with Adam Cranston on 28 April 2017."

Laxon says the charge should have been dropped: "These were weasel words, there had been no lie."

"Inexcusably, in their ardent desire to ping Michael, the AFP either failed to check the telephone records to see whether he was telling the truth about the lawyer's call, or they did check, saw the call record and persisted anyway, saying that Michael lied about the call. You'd have to ask the AFP which it is."

Last month the jury acquitted Cranston of both charges.

An AFP spokesman told the *Financial Review* the AFP respected the decision of the court and it was not appropriate to comment as other matters related to Operation Elbrus remained before the courts.

"The decision to prosecute Mr Cranston was made ... following an extensive investigation conducted by the AFP and a submission of a brief of evidence to the CDPP," a CDPP spokeswoman said.

"The CDPP determined there was a reasonable prospect of conviction and it was in the public interest to prosecute. Thereafter, the CDPP at all times complied with its disclosure obligations in prosecuting the matter."



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