

FAX FROM: ALAN SMITH

Cape Bridgewater  
Holiday Camp

Portland 3305

FAX NO: 055 267 230

PHONE NO: 008 816 522

FAX TO: MR JOHN PINNOCK  
TELECOMMUNICATIONS  
INDUSTRY OMBUDSMAN  
MELBOURNE

DATE: 25.6.96

NUMBER OF PAGES (including this page)

*If you have received this document in error, please phone us on 008 816 522.*

Dear Mr Pinnock,

I am writing today regarding two separate issues:

**FIRST ISSUE**

Your statement to Mr Laurie James, President of the Institute of Arbitrators, regarding a telephone call to Dr Hughes, Arbitrator of the Fast Track Arbitration Procedure (FTAP).

To date I have had no response from you, personally, as to why you chose to tell Mr James that I phoned Dr Hughes's residence at 2.00 am on 29th November 1995 and that, in making this alleged call, I behaved unethically.

*John we are still waiting on a response from Gordon on this*

I have evidence which proves that your statement is incorrect but you have not had the courage to explain where you gained this incorrect information. I still await clarification of this situation.

**SECOND ISSUE**

FOI documents I received by courier on 23rd June 1996.

This delivery included letters from Dr Hughes to Telstra and from Telstra to Dr Hughes during the time leading up to the FTAP, and during the Arbitration Procedure.

It is clear from this material that Dr Hughes withheld information from me during the FTAP. This is against the FTAP rules which state that all correspondence sent to Dr Hughes, either by me or by Telstra, must be also forwarded on to the other party. Dr Hughes did not honour his role as Arbitrator as this material clearly shows.

**1. FOI documents L69036 and L69046**

These are two letters from Telstra, dated 16 December 1994. One is addressed to Mr Bruce Mathews of Austel and the other to Dr Hughes.

These letters refer to correspondence dated 8th December 1994 that Dr Hughes had previously received from Austel. In this earlier correspondence Austel stated that I had raised complaints with them regarding short duration and incorrectly charged calls to my phone service.

The letter to Mr Mathews refers to an attachment which clearly states that Telstra would defend these short duration and incorrectly charged calls, and the Recorded Voice Announcement faults, in their defence of the FTAP.

Telstra did not cover these faults in their Defence of 12 December 1994.

FOI document L69036 is the attachment which was re-sent to Dr Hughes by Telstra on 16 December 1994. This means that Dr Hughes was FULLY AWARE that Telstra had not defended these faults to my service during the FTAP.

*11/11*

The last paragraph of FOI-document L69046 (letter from Telstra to Dr Hughes) states:

*"The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval."*

The author of this document was Ted Benjamin.

This paragraph raises two issues:

A. Dr Hughes did not write to me with regard to this issue during the FTAP.

and

B. Dr Hughes did not forward a copy of this letter to me during the FTAP.

I raised these major faults during the FTAP and again after the FTAP and there has still been NO RESPONSE from Dr Hughes. Dr Hughes violated my rights under the rules of the FTAP (clause 6) by not providing me with a copy of this very important letter.

Evidence at hand also shows that Dr Hughes instructed DMR and Lanes to omit a proposed Addendum Report on some of these issues which had been raised through Austel.

I appeal to you, as Administrator of the FTAP, to ask Dr Hughes why he conducted the FTAP in this manner.

2. FOI document L69398, from Dr Hughes to Ted Benjamin of Telstra, dated 1st May 1995.

This document refers to an attached document numbered L69399 to L69449, the Technical Evaluation Report. There is NO signed letter from either Paul Howell of DMR or David Read of Lanes, even though your office had stated that Paul Howell would sign this report. I have not seen such a signature to this Report.

I appeal to your office to have this signature provided by Paul Howell. Evidence indicates that Telstra has not seen a signature to this Report either.

3. FOI document A63178, from Ted Benjamin of Telstra, dated 27th April 1995.

This document clearly shows that Dr Hughes was given historic information relating to the old RAX exchange at Cape Bridgewater. A copy of this letter was not forwarded to me by Dr Hughes - another violation of my rights under the rules of the FTAP (clause 6).

4. FOI documents A63339 to A63368, from Ted Benjamin of Telstra to Dr Hughes, dated 12th April 1995, regarding the TF200 Touch Phone Report.

The office of the TIO is aware of my request to Dr Hughes, covered by a Forensic Document Researcher, Paul Westward. Mr Westward is qualified to confirm the facts contained in the laboratory tests which were performed on the TF200 Touch Phone and on which the final Report was based. Dr Hughes refused my request.

In this letter (A63339 to A63368), Mr Benjamin states that each of the two authors of the TF200 Report would sign a Statutory Declaration covering the Report. Telstra also stated that they would return the TF200 Phone itself, for Dr Hughes to view.

11A

This letter, dated 12th April 1995, is another document which I did not see: once again Dr Hughes violated my rights under the rules of the FTAP (clause 6).

Because this particular letter from Mr Benjamin mentioned two Statutory Declarations it may well have swayed Dr Hughes in favour of Telstra. I was severely disadvantaged, again, because Dr Hughes did not allow me the opportunity to lodge a counter claim against this Technical Report, under the FTAP.

I have since proved that Telstra are nothing less than criminals who poured beer into my phone and then submitted this as defence material, stating that I had spilled the beer into the phone. Dr Hughes was wrong in not allowing me access to this information. //

5. FOI documents L69056 to L69086, from Ted Benjamin of Telstra to Dr Hughes, dated 9th May 1995: two responses from Telstra, one regarding the Technical Evaluation Report by DMR and Lanes and the other regarding the Financial Evaluation Report by Ferrier Hodgson Corporate Advisory.

I did not see this letter, or the attachments, during the FTAP: once again Dr Hughes violated my rights under the rules of the FTAP (clause 6).

6. FOI documents L69485 to L69537, a letter (and attachment) from Dr Hughes to Ted Benjamin, dated 9th May, 1995, regarding my response to the DMR/Lanes and FIICA Reports.

In relation to these two reports, it is clear that Dr Hughes provided Telstra with copies of documents from me, but he did not supply me with copies of documents from Telstra.

7. Further letters forwarded to Dr Hughes by Telstra but not forwarded on to me, by either Telstra or Dr Hughes, during the FTAP. These include FOI documents:

L68983 & 84	16/9/94	L63369	23/12/95	LG3339	12/4/94
L68989 & 90	23/9/94	L63820	6/1/95	L69036 & 37	16/12/94
L68995	3/10/94	L63898	22/12/94	L69046	16/12/94
L63861	12/4/95	L69028	6/12/94		

Once again I appeal to the office of the TIO, as Administrator of the FTAP, to state what your office intends to do regarding these serious breaches of the rules of the FTAP (clause 6). I also make it known that FOI documents received on 23rd June, 1996, also show that Dr Hughes did not supply Telstra with all my information.

The evidence listed above includes only those FOI documents that I HAVE received from Telstra, under this FOI request. I have also notified Mr John Wynack of the Commonwealth Ombudsman's Office that Telstra still has not provided all the FOI documents which I requested. How many documents have I not yet seen?

I await your response.

Sincerely

Alan Smith

copies to:

Senator Richard Alston, Minister for Communications and the Arts, Canberra  
Mr Daryl Williams, Minister for Justice and Attorney General, Canberra  
Mr John Wynack, Commonwealth Ombudsman's Office, Canberra  
Mr Peter Bartlett, Minister Ellison Morris Fletcher  
Mr Laurie James, President, Institute of Arbitrators, Perth

**FAX FROM: ALAN SMITH**

*sh*  
Cape Bridgewater  
Holiday Camp

Portland 3305

**FAX NO: 055 267 230**

**PHONE NO: 008 816 522**

**FAX TO: MR JOHN PINNOCK**  
TELECOMMUNICATIONS  
INDUSTRY OMBUDSMAN  
MELBOURNE

**DATE: 26.6.96**

**NUMBER OF PAGES (including this page) /**

*If you have received this document in error, please phone us on 008 816 522.*

Dear Mr Pinnock,

*Please note: Letter date 25/6/96, page 3 - FOI document referred to as A63681, date 12/4/95 should read A63658 dated 27/2/95.*

*sh*  
I find it very sad to be in possession of so many FOI documents which support my allegations that many, many copies of internal correspondence I forwarded to Dr Hughes during the FTAP was never seen by the Resource Unit or Telstra.

It is equally sad that copies of Telstra letters, which were also part of the FTAP, were not forwarded to me.

This FTAP was a demonstration of what happens in Australia today when a small business like mine, with limited finances and other resources, attempts to secure justice from large corporations with unlimited financial backing and resources, like Forrier Hodgson Corporate Advisory, Lanes Telecommunications, Hunt & Hunt, and Telstra.

No-one that I know: friends, the co-author of my forthcoming publication and others, can understand how I keep going in this battle, with the knowledge I have of the unethical behaviour I have been forced to contend with.

In the name of Australian justice there must be some way to 'overhaul' the FTAP saga.

Sincerely,



Alan Smith

*There are quite serious allegations. We need to respond to specific letters Smith says weren't forwarded or received and provide answers on each. before*

11B

30 July, 1996

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RMB 4409  
CAPE BRIDGEWATER 3306

by facsimile 055 267 230

Dear Alan

I refer to your recent facsimiles.

26?

In your facsimiles of 25 June and 21 July 1996, you refer to a number of letters which you allege were required to be provided to you under the FTAP and were not. I note in your letter of 21 July that you refer to correspondence between Telstra and AUSTEL, and the Arbitrator and AUSTEL. Clause 6 of the FTAP does not require this correspondence to be copied to you. In regard to the other letters to which you refer, I have contacted Dr Hughes and he has informed me that .....

As to the other matters you raise in these two letters I advise that they are either matters which relate to a substantive issue in your arbitration, or request assistance with FOI issues, or have been answered previously. I refer to my letter 27 May 1996 where I advised you that I would no longer respond to your requests on these issues.

In your facsimile of 26 June 1996, you allege that the two pages provided by my office on 17 April 1996 were not, in fact, pages 38 and 39 of the Resource Unit's Technical Evaluation Report. I advise that the Resource Unit has informed me that the pages my office provided to you was the correct material. The Resource Unit has stated that "pages 38 and 39 of the Technical Evaluation Report is FOI document numbered K00942 (two pages)...Further, these two pages are specifically referred to as 'pages following' in paragraph 2.21 on page 31 of the Technical Evaluation Report". I trust that this resolves the matter.

You refer to "four bound volumes of documents" which you submitted to the Arbitrator after December 1994. The Resource Unit informs me the Arbitrator did forward this material to it and that the final (and not draft) Technical Evaluation Report dated 30 April 1995 includes this material in its 'Sources of Information' List on page 40. I enclose a copy of that page. The Resource Unit informs me that the following entries relate to the four volumes of documents:

- Smith - Samples of FOI Telecom documents (SM49)

25/6

- ① to Hughes 16/12/94 ✓
- ① to Hughes 27/4/95 ✓
- ① to Hughes 12/4/95 ✓
- 2 from ① to Hughes 9/5/95 ✓
- ① to Hughes 16, 25/9/94 ✓
- 3/11/94 ✓
- 24/12/94 ✓
- 6/1/95 ✓
- 23/12/95 ✓

6/12/94

26/6

- Hughes not give ① copy of Smith reply

21/7 - ① to Hughes 16/12/94

11C

- Smith - Appendix C Additional Evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc Further Information (SM46)

The Resource Unit also informs me that it returned these documents to you in their letter of 6 October 1995 (Annexure A, page 3 of 3).

I refer to your letter of 28 June 1996 where you refer to "separate correspondence" to which Dr Hughes referred in his letter to Mr Benjamin dated 13 April 1995, which you believe you did not receive. Copies of the two letters of 13 April 1995 which you enclosed with your letter are also on the TIO file. There are no other letters written by Dr Hughes to Telstra or yourself in relation to your arbitration which bear that date on the TIO file.

I have spoken to Dr Hughes on this matter and he confirms that this is the case. The "separate correspondence" to which he refers in his letter to you of the same date, a copy of which was sent to you at the time, and which you included with your letter to this office.

In your recent letters you make a number of requests with respect to FOI materials not provided or incompletely provided to you. I repeat my earlier comments that the TIO has no jurisdiction over FOI matters and can not assist you in this regard. You should raise this issue with Telstra directly or with the Commonwealth Ombudsman if you are unsatisfied with Telstra's response.

Yours sincerely

John Pinnock  
**Ombudsman**

116