

CRIMINALIZING DISSENT: ONE PERSON'S STORY 4/11/10

By Angela Munro

It was unnerving to discover, earlier this year, that I was under police surveillance in the 1990s as convenor of the Royal Park Protection Group. The community lobby had formed soon after the removal of the elected Melbourne City Council in 1993, to safeguard permanently reserved parkland from the proposed development of 2006 Commonwealth Games facilities. The Docklands, we argued, provided the opportunity for a well-designed, medium density Games Village; but that public land was for sale whereas the public park came free.

I was incredulous that the Victoria Police refused my request to see my 15 page 'file', even with relevant names and surveillance techniques removed. Their grounds were that the documents were created by the Bureau of Criminal Intelligence or the Intelligence Covert Support Department of the Victoria Police; they were therefore exempt under the Freedom of Information Act (1982). The police could thus avoid the public scrutiny intended by that Act and that of the Ombudsman. Clauses of the Act and the Terrorism (Community Protection) (Amendment) Act 2006 were cited to justify this decision. It was claimed that to release the file could 'endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.' Further, the ability of the Victoria Police to obtain such information would be impaired. Since there had been no suggestion of improper or illegal behaviour at the time, what could conceivably have been alleged, in secret, and by whom to justify the apparent gravity of the allegations and continued secrecy over a decade later? And what use was the Victorian Charter of Human Rights if not actionable in such a case?

My suspicion was aroused last year by reports in *The Age* of email, telephone and video surveillance of citizens challenging the Kilkunda Desalination Plant, the North South Pipe Line and the Port Phillip Bay dredging, each contentious project imposed by the Victorian Government without prior public justification and subject to commercial-in-confidence arrangements. In requesting my file, I hoped to have light thrown on Victoria Police removal, on April 19, 1999, of hundreds of demonstrators who had entered a site fenced by Multiplex for construction of the State Netball Centre in Royal Park. An unnamed public servant (whom I recognised from the Department of Planning and Environment), arrived and read a statement to the effect that: 'your licence to be here has been withdrawn', refusing my request for a copy. Clearly we'd never needed a licence to be in this or any other public park, but officers of the Victoria Police then bodily removed us in full view of the media, without names being taken, offences cited or charges laid. How could this happen in a democratic state and what recourse was available?

Following our removal (as though we rather than Multiplex were trespassing), the Group engaged a QC, pro bono - no easy task. On May 20 we sought an Enforcement Order at the Victorian Civil and Administrative Tribunal to require the government's compliance with the Crown Land (Reserves) Act (1978) and with the park's status under the Melbourne Planning Scheme. Before the matter could be heard, the Royal Park Bill (June 8, 99) was guillotined through the Parliament in which the Coalition Government controlled both houses. The effect was to retrospectively excise the land from Royal Park, the Victorian Constitution (an Act of the Parliament unlike the Commonwealth Constitution) being amended accordingly. The Multiplex construction site, from which we had been removed, was *now* legal – the culmination of a case of egregious misuse of power and process by the state government.

Having been denied access to my file by the Victoria Police I determined to represent myself in an appeal to VCAT which, unlike the Police, was empowered to consider the public interest – the so-called public interest override. Whatever the judgement, my secret file would at least be read by the Tribunal. The Police engaged an experienced barrister and it became obvious, despite claims to user-friendliness, that the Tribunal hearing would require considerable legal expertise. My networks eventually found me a generous pro bono barrister, without whom I'd have been unable to pursue the matter. Informal legal advice was that the case was unwinnable; the document was exempt. Interesting, then, to be informed by my barrister on the day of the hearing, on August 27 this year, that the Police had discovered that, due to an oversight, it was not in fact exempt. Should the Tribunal grant me access however, so determined were they that I should not see the documents, the matter would be taken immediately to the Supreme Court, where I would be liable for costs. It's one thing to

forfeit several years' income in a campaign to protect public parkland, but another to risk losing one's house in seeking the facts and to clear one's name. Naturally, I indicated I wouldn't defend such an action. But what on earth was I alleged to have done?

The VCAT hearing proceeded and the judgement was handed down on September 21. My application was dismissed; the public interest did not *require or necessitate* that I be granted access. Justice Hampel, a County Court Judge sitting on circuit at VCAT, viewed the documents in dispute as did my barrister, with my agreement. The judge upheld the police submission that the parts of the documents for which exemption was sought, related not to my conduct nor to the Royal Park Protection Group, acknowledged to be a peaceful lobby. Since the contents were of methods of intelligence gathering and investigation, there was deemed to be no public interest in releasing information to me that didn't concern me. I could only agree.

Apart from that unexpected finding, the case was worth pursuing in other respects. As a peaceful campaigner, the object of unjustified surveillance, I had great confidence in the administration of justice in the case by VCAT, including the integrity of the Victoria Police in acknowledging their mistaken claim to the exempt status of the relevant documents. Crucial to me was that the Police acknowledged and the Judge accepted that I was 'a person of unblemished integrity, character and reputation.' In that case, why the surveillance? And why could the final explanation not have been given in response to my request for the file in the first place and the whole wasteful legal procedure avoided?

What I also observed was the manner, amenable to political influence, in which the Police might conduct surveillance and claim a file's exemption from FOI. While I gained no insight into our removal from the park in such suspect circumstances, I learnt that, as the law stands, Multiplex legally occupied that site unless successfully challenged in the Supreme Court. Implicit in this case – unusual only in being pursued in court, is the inadequate recognition of the importance of and obstacles to citizen activism. Hence the punitive resort by governments to secret surveillance, involving misuse of police powers and effectively criminalizing dissent. The recent replacement of inner city parkland with mega stadiums, under the mantra of 'no net loss of parkland', is highly visible evidence of the theft of the commons against which Victorians seem powerless.