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Australian abuse inquiry faces diplomatic standoff with Vatican

by Stephen Crittenden

Sydney — UPDATED: Dec. 20, 2013 -- Australian sex abuse commission gets documents from nuncio: Following "appropriate diplomatic channels" Vatican's nuncio to Australia turns over documents to state sex abuse commission.

THE EARLIER STORY IS BELOW:

A diplomatic standoff appears to have developed in recent months between the Vatican and the New South Wales Special Commission of Inquiry into sex abuse, chaired by Deputy Senior Crown Prosecutor Margaret Cunneen.

Copies of correspondence released by the Special Commission this week show the papal nuncio to Australia, Archbishop Paul Gallagher, claimed diplomatic immunity in response to repeated requests for archival documentation that might assist Cunneen with her inquiry.

The inquiry was established in November 2012 to investigate sexual abuse by two priests of the Maitland-Newcastle diocese, Fr. Denis McAlinden and Fr. James Fletcher (both deceased), following allegations made by a senior New South Wales police whistleblower, Chief Inspector Peter Fox. The commission continues to inquire into and report on matters relating to the police investigation of the diocese.

The New South Wales Crown Solicitor's Office made the request on Cunneen's behalf Aug. 30 and again Oct. 22, asking for copies of any relevant documents held in the archives of the Apostolic Nunciature in Canberra or the Congregation for the Doctrine of the Faith in Rome.

The documents sought relate to "any allegations, complaints, suspicions or reports" regarding child sexual

abuse by McAlinden or Fletcher, including a specific incident in 1995, when Australian church officials requested then-papal nuncio Archbishop Franco Brambilla to intervene on their behalf with the papal nuncio of the Philippines.

At the time, it had been discovered that McAlinden was operating as a priest in a remote diocese in the Philippines despite the suspension of his priestly faculties by his bishop in Australia.

McAlinden, an Irishman, arrived in Australia in 1949. His diocese of Maitland-Newcastle became aware he was a risk to children as early as 1953, but he was moved from parish to parish for more than four decades.

He was also posted to Papua New Guinea for extended periods and for a short period to New Zealand.

McAlinden was charged in Western Australia in 1992 but acquitted and died in 2005 without being convicted.

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The Crown Solicitor's Office says relevant documents from dioceses in Papua New Guinea, New Zealand and the Philippines have been made available voluntarily.

Similar repeated requests have also been sent directly to Cardinal Gerhard Müller, prefect of the Congregation of the Doctrine of the Faith in Rome, but there has been no reply.

The commission released the correspondence with Gallagher on Monday as part of a bundle of exhibits.

The correspondence shows that on Sept. 2, the nuncio sent an interim response, stating that he was submitting Cunneen's request to his superiors in Rome and would write again soon when he had a reply.

On Nov. 13, Gallagher replied again, reminding Cunneen that his office is "the high diplomatic representative of the Holy See to the Commonwealth" and citing "the protections afforded by international agreements, including the Vienna Convention on Diplomatic Relations."

Article 24 of the 1961 Vienna Convention states that the archives and documents of a diplomatic mission "shall be inviolable at any time and wherever they may be."

The nuncio says Article 24 "thus states a high principle of international relations without which diplomatic missions would no longer be able freely to carry out their domestic and international responsibilities."

Gallagher goes on to say that his office will, however, be pleased to consider "specific requests" for information, "bearing in mind the expectation that it would not be appropriate to seek internal communications."

Gallagher was appointed to Canberra in December 2012, just weeks after former Australian Prime Minister Julia Gillard announced the national Royal Commission into Institutional Responses to Child Sexual Abuse.

A former nuncio, Archbishop Giuseppe Lazzarotto, previously was papal ambassador to Ireland and was criticized for his failure to cooperate with Irish state inquiries into sexual abuse.

Gallagher, Lazzarotto's replacement, was widely seen as a positive signal of Rome's intention to pursue a more positive approach.

Giving evidence to Victoria's state parliamentary inquiry into child sexual abuse May 27, Cardinal George Pell gave a personal guarantee that "every document the Vatican had" would be made available to the commission.

Pell said a senior Vatican official assured him of this. "We have said that we will cooperate fully with the Royal Commission, and we mean to," he said.

Pressed about whether the same level of cooperation would be offered to the Victorian inquiry, the cardinal said he could not guarantee that, but would go back to the same Vatican official and ask again.

The papal nuncio's citing of the Vienna Convention places Pell's assurances about Vatican cooperation with the Royal Commission in some doubt.

On Nov. 14, the New South Wales Crown Solicitor, Ian Knight, wrote to Gallagher for a third time.

In this letter, he insisted that his earlier requests for information had indeed been specific and asks Gallagher to clarify what he means by stating that it is not appropriate to supply information about "internal communications."

"As you may appreciate, if this is intended to refer to communications within the Holy See, or within the Church generally (that is, between the Diocese of Maitland-Newcastle or the Holy See) or as between the Apostolic Nunciature of Australia and the Holy See, it is respectfully suggested that such restriction may significantly impair the utility of the request for the documentation," Knight wrote.

He also reminded the nuncio about the guarantee of Vatican cooperation given by Pell and enclosed an extract from the transcript of his evidence to the Victorian inquiry.

"Of course, this Commission is separate and distinct from both the Royal Commission and the Victorian Parliamentary Inquiry," Knight wrote, "but I trust that the sentiment of cooperation would similarly extend to this Commission's processes."

The Special Commission is due to report its findings by Feb. 28.

[Stephen Crittenden is a freelance journalist based in Sydney.]

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