

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Program 1.2**

**Question No. 18**

**Senator Ludlam asked the following question at the hearing on 25 May 2011**

**Senator LUDLAM:** ... Mr MacDonald, I have one final question for you on the subject we were discussing a few moments ago. You just confirmed for us, I think, that the Australian Government Solicitor cited that document [840-word statement by an Egyptian intelligence officer that names an Australian official who witnessed the torture of Mamdouh Habib in Guantanamo Bay] a short while before—you did not acknowledge a time period—the [Habib] settlement was reached. At what point did they become aware of the existence of the document?

**Mr G McDonald:** That is all I know about it, actually. I think they probably received it after we had organised the meeting to discuss the settlement, so it was provided to them very close to that meeting.

**Senator LUDLAM:** What I am interested to know is at what point they became aware that such a document even existed as opposed to when they saw it.

**Mr G McDonald:** I do not know the answer to that. I think it was at that time. I can check with the Government Solicitor as to whether they were aware of it before then, but I imagine it would only have been then.

**Senator LUDLAM:** I do not know that that is necessarily a safe assumption, so can you take that on notice for us, please.

**Mr G McDonald:** Yes. That is why [we] want to take [it on] notice.

**Senator LUDLAM:** Did they become aware of it at the point that it was presented—'here it is'—or had they been aware of it for weeks, perhaps even as early as December.

**Mr G McDonald:** Certainly my knowledge is that they were aware of it only then, but I will check.

**Senator LUDLAM:** Much appreciated.

**The answer to the honourable senator's question is as follows:**

Mr Habib showed two statements to Mr Andrew Berger from the Australian Government Solicitor (AGS) following a directions hearing in the Federal Court on 7 December 2010. This was the first time the AGS became aware of the existence of either document. One of the statements purported to have been written by an individual who had been detained with Mr Habib in Egypt. The other statement purported to be from an Egyptian officer who was involved in Mr Habib's detention.

On 8 December 2010 Mr Habib provided Ms Irene Sekler from the AGS with a copy of the statement purportedly written by an individual who had been detained with Mr Habib in Egypt and asked her to provide it to Mr Berger. She did this on 8 December 2010. Neither AGS nor AGD received a copy of the second statement. The statements were never produced nor tested in court and played no part in the Commonwealth's decision to settle the matter.