

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/001

Subject: Who is responsible for FOI

Asked by: Anne Urquhart

Question:

Senator URQUHART: So we've got Ms Moy. Who else is responsible for freedom of information within the department? Can you provide me with the names of those people?

Mr Pezzullo: I will take that on notice.

Answer:

The Secretary of the Department of Home Affairs is the Principal Officer of the Agency for the purposes of the *Freedom of Information Act 1982* (the Act) and *Freedom of Information (Charges) Regulations 1982*.

The Department's Freedom of Information Section sits within Corporate and Enabling Group managed by Ms Cheryl-anne Moy, Chief Operating Officer.

All Department staff have responsibilities and accountabilities under the Act.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/002

Subject: Briefings on FOI performance

Asked by: Anne Urquhart

Question:

Senator URQUHART: Sorry to interrupt you, Mr Pezzullo, but I'm talking specifically about briefings from your senior officials in relation to the department's performance under freedom of information.

Mr Pezzullo: Yes, and that's what I'm answering. I heard you very precisely, and I'm answering very precisely. Senator Patrick had asked a line of questions, which you referenced in the preamble to your question. Either it would be in relation to the responses to the questions taken from Senator Patrick on notice, and/or those subsequently submitted by the committee in written form after that hearing, which I think was on 21 as opposed to 22 October—that was in your question, but I'll check that too—and/or—and I'm sorry I'm giving you a selection here; I need to work through the chronology—our initial analysis and assessment of the work plan required to support the Information Commissioner in her own-motion investigation, to which you also referred. It would be one of those three, but which of those and in which sequence I would have to check.

Senator URQUHART: Can you confirm that on notice?

Mr Pezzullo: I'd be delighted to.

Answer:

The Secretary of the Department of Home Affairs is provided an overview of the Department's performance under FOI as part of a weekly departmental co-ordination briefing.

Briefing on FOI is also provided in preparation for each Senate Estimates Hearing, and on an ad hoc basis as required.

The briefing that the Secretary was given before this hearing was on FOI performance in response to a media article, Whyte, S (2019) 'More than half of FOI decisions overturned on review', *The Canberra Times*, 25 October.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/003

Subject: Dates of FOI briefings

Asked by: Anne Urquhart

Question:

Senator URQUHART: Can you provide me with those dates when you had briefings, and what they were in relation to—

Mr Pezzullo: I'd be delighted.

Senator URQUHART: whether they were particularly related to this, questions on notice, Senate estimates or just getting information about the status of—

Mr Pezzullo: How far back would you like to go?

Senator URQUHART: I think for this year would be a good start.

Mr Pezzullo: Calendar year 2019. I will ask one of the 80 full-time equivalent officers that we have to set aside some further time to go through those reports.

Answer:

The Secretary of the Department of Home Affairs (the Department) is provided an overview of the Department's performance under FOI as part of a weekly departmental co-ordination briefing.

Briefing on FOI is also provided in preparation for each Senate Estimates Hearing, and on an ad hoc basis as required.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/005

Subject: Cooperation with Information Commissioner's investigation

Asked by: Anne Urquhart

Question:

Senator URQUHART: Will you be cooperating with the Information Commissioner's investigation?

Mr Pezzullo: Fully.

Senator URQUHART: What assistance has she sought from you and your department?

Mr Pezzullo: I'm not aware specifically. She has written to me and set out her initial plan of approach, which, of course, is useful for me in asking the Chief Operating Officer, Ms Moy, to get in touch at the appropriate officer level to see how we can best assist. I know that that work is in hand.

Senator URQUHART: Could you take on notice what assistance she has sought?

Mr Pezzullo: I'd be delighted. That's really a matter for her. In terms of how I'm responding, I'm happy to take that on notice because that is within my authority. To the extent that implied in that response will be what she's asked of me, I'll obviously check with her as a stakeholder and see if she's willing to release that, because she's an independent statutory officer and I shouldn't be speaking on her behalf.

Answer:

To assist in the Information Commissioner conducting the investigation, the Department will provide the Information Commissioner with:

- documents in relation to certain FOI requests;
- any documents so requested by the Commissioner; and
- policies, procedures, training and contract management material as they relate to processing FOI requests.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/006

Subject: FOI FTE

Asked by: Rex Patrick

Question:

Senator PATRICK: Thank you, that was very helpful. Can I go back to the question asked by Senator Urquhart about resources for FOI. Firstly, the FTE number actually came from a question I tabled in the Senate. It wasn't an estimates question; it came through the minister. The answer was 76 I think.

Mr Pezzullo: I've got a feeling it was 79, because I read it this morning. But anyway—

Senator PATRICK: I've got it here. It was 74.9. I'm just wondering how that answer made it to the Senate.

Mr Pezzullo: It'll depends which year we're talking about, because I might put—

Senator PATRICK: Looking at each year, 2017-18 has 74.54, 2018-19 has 74.32, and for this year it's 74.9. I'm wondering how that wrong answer made its way to the Senate, noting that the proper answer appears to be 80.

Mr Pezzullo: Well, I said 79 earlier.

Senator PATRICK: Sorry, 79.

Mr Pezzullo: I'll check.

Senator PATRICK: You can see that the problem I have is that now I've got two answers.

Mr Pezzullo: I'll check.

Answer:

The budgeted average staffing level (ASL) for the FOI Section in 2018-19 was 79.48, which rounds down to **79**. The actual ASL for 2018-19 was 74.32. The number of FOI requests received in 2018-19 was 18,412.

The actual ASL for the 2019-20 year to 31 August is **74.9**.

The table below provides budgeted and actual ASL figures for the FOI section from 1 July 2017 until 31 August 2019:

Financial Year	Budgeted ASL	Actual ASL
2017-18	78.11	74.54
2018-19	79.48	74.32
2019-20	77.00	74.90*

**YTD 31 August 2019*

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/007

Subject: Premise of question relating to referral

Asked by: Anne Urquhart

Question:

Senator URQUHART: The referral identified a single individual who had had direct contact with the person who had received the leaked information, who was Simon Benson—

Mr Pezzullo: No, I don't think that premise is right. I will need to reacquaint myself with the precise terms of the referral, but that neither rings a bell nor sounds plausible to me. I will check.

[...]

Senator URQUHART: Do you know who that individual worked for?

Mr Pezzullo: Which individual?

Senator URQUHART: The leaking—

Mr Pezzullo: I just said that—

Senator URQUHART: You are just saying that you don't believe that's correct?

Mr Pezzullo: I'm just saying that, subject to checking the referral, I don't believe the premise of your question, and whoever has researched it for you and framed it for you, is right. I'll check the referral.

Senator URQUHART: Okay.

Mr Pezzullo: That's a very particular reference to put into a referral, and it's something that, even with the passage of 10 months, I would recall. But I will check, just in case, as I'm getting older, my memory is getting hazier.

Answer:

Following the Australian Federal Police's (AFP) request for additional information, on 12 February 2019 the Department of Home Affairs (the Department) provided a completed '*Supporting material checklist*'. The checklist included the results of the Department's review of its electronic holdings to identify any staff member that had direct contact with Mr Simon Benson.

The review identified one email contact with Mr Benson since 1 December 2018. This staff member was not a person of interest and their contact with Mr Benson was consistent with their role. There was no evidence that the email contained any information or material associated with the matter referred to the AFP.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/008

Subject: Administration of PID Act

Asked by: David Fawcett

Question:

Senator FAWCETT: I want to come to the administration of the PID Act within your departments. We had advice from ASIO earlier that since the creation of the act in 2014 they have seven disclosures that have come forward. Across all the agencies in your department, how many disclosures have been made under the PID Act since it came into force?

Mr Pezzullo: I'd have to take that on notice...

Answer:

The following tables provide the number of PIDs received by the Department of Home Affairs between 2013 and 2019.

Financial Year	2013	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-present ¹
Department of Home Affairs (all iterations) ²	N/A ³	61	9	21	12	29	8	<5

¹ As at 15 November 2019.

² Figures for 2013 to July 2015 include the Australian Customs and Border Protection Service and Department of Immigration and Citizenship. Figures for July 2015 to December 2017 reflect those of the Department of Immigration and Border Protection. Figures from December 2017 to present represent the Department of Home Affairs and the Australian Border Force. These figures (until 2018-19) have been drawn from annual reporting to the Ombudsman.

³ PID in operation from 15 January 2014

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/009

Subject: PID oversight bodies

Asked by: David Fawcett

Question:

Senator FAWCETT: Where I'm going with this is to try and highlight the degree of disclosure and transparency that is there. My understanding is that if a PID is made then where an agency or a department has an oversight from the Ombudsman or IGIS that needs to be disclosed to that oversight body that a PID has been made and that reporting not only goes to, often, PJCIS, being the parliament, but to the relevant minister, often the Attorney-General, and to the Leader of the Opposition.

Mr Pezzullo: I'd need to check. There is a whole-of-government reporting scheme in relation to public interest disclosure. Whether that is done department by department or portfolio by portfolio and whether we do it individually to our ministers or to the Attorney-General as the minister responsible for integrity, I'll just need to check.

Answer:

Once a PID is received by the Department of Home Affairs (the Department), section 44(1A) of the *Public Interest Disclosure Act 2013* (Cth) requires the Department to inform the Commonwealth Ombudsman if the PID has been allocated to the Department for consideration. The Department must inform the Commonwealth Ombudsman of the details of the PID which include the suspected disclosable conduct.

Due to the strict confidentiality protections imposed by the *Public Interest Disclosure Act 2013* (Cth), the Department is not able to disclose or otherwise report on PIDs to other bodies, such as Parliament, other than in a de-identified manner. There may be circumstances where simply mentioning the fact of a PID being made might breach these confidentiality restrictions.

The Department must complete a report annually to the Commonwealth Ombudsman about the number of PIDs received and how they have been handled under the *Public Interest Disclosure Act 2013* (Cth), which the Commonwealth Ombudsman then includes in its own Annual Report.

**HOME AFFAIRS PORTFOLIO
AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/010

Subject: PID reporting process

Asked by: David Fawcett

Question:

Senator FAWCETT: Those disclosures, for example, that come through IGIS indirectly that come to PJCIS to both sides of politics, so there is an open and transparent reporting process as opposed to something that could be contained within the department or within a particular executive.

Mr Pezzullo: The premise is essentially right. I'd just need to check the specifics in relation to the ASIO legislation as to whether the briefing obligations to both the Leader of the Opposition, the minister and, indeed, to the Prime Minister, specifically are about whistleblowing, or public interest disclosure, or whether it's about the general performance of ASIO's functions.

Answer:

Once a Public Interest Disclosure (PID) is allocated to ASIO for investigation, the Inspector-General of Intelligence and Security (IGIS) is given notice of the disclosure in accordance with the *PID Act 2013*. This notice includes the information which was disclosed, the suspected disclosable conduct and the name of the discloser (if the discloser has consented to their details being reported).

There is no legal requirement under the PID legislation for the Director-General of Security (as a Principal Officer) to report directly to the Parliament on public interest disclosures made within ASIO. The PID legislation requires the Ombudsman (assisted by the IGIS) to prepare an Annual Report, for presentation to parliament by the responsible minister, containing information about the number of disclosures received within agencies. ASIO contributes information for the preparation of this Annual Report.

The Director-General also prepares an Annual Report under the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) and the *Public Governance Performance and Accountability Act 2013*; however, there is no requirement for information relating to PIDs to be included in the ASIO Annual Report. ASIO has

included information on PIDs in its submissions to the PJCIS annual reviews of administration and expenditure.

The Director-General would brief the Minister responsible for ASIO if the outcome of a PID investigation revealed significant or systemic wrongdoing or maladministration within ASIO. In meeting the obligations under section 21 of the ASIO Act, the Director-General could also brief the Leader of the Opposition in relation to matters related to security which have been raised through a PID.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/011

Subject: Consultation over charge for David McBride

Asked by: Sarah Hanson-Young

Question:

CHAIR: Prior to the raids on the ABC were you or anyone in your department consulted over what the appropriate charge for David McBride should be?

[...]

Mr Pezzullo: I'd be very surprised if there was any discussion with my department. We administer the AFP Act. We support the minister in terms of the policy of the administration of the act under the administrative orders arrangements. There's a particular provision of the AFP Act that has a direct personal responsibility that I exercise in relation to advising the minister on the giving of ministerial directions to the AFP and, of course, such a direction was given on 8 August. We get involved at that policy level, if you will. But in relation to the framing of a brief of evidence, collection of evidence, the elements that might be involved in the charge, I'll take it on notice, but I'd be very surprised if there was any dialogue at all—

Answer:

The Department of Home Affairs was not consulted on the charging of David McBride either before or after the charges were laid.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/012

Subject: Briefing or discussions over charging David McBride

Asked by: Sarah Hanson-Young

Question:

CHAIR: Let me be clear so you understand what I'm looking for. I want to know if you or anyone in your department were involved in discussing what the appropriate charge would be for David McBride?

Mr Pezzullo: Yes, I understand. I will answer in relation to me now. The answer is no. I didn't even know who he was until I saw the press reports—no need to know, no reason to know and not particularly interested. But in relation to my department, I'll check.

CHAIR: Thank you. Continuing on from that, you're going to take on notice whether anyone in your department—has there been any—

Mr Pezzullo: In relation to Mr McBride?

CHAIR: In relation to Mr McBride. Has there been any briefing sought or discussions had between your department and any other Commonwealth agency in relation to whether the subsequent charging of David McBride, for effectively stealing Commonwealth property, leads to the opportunities for what the ABC journalists may be able to be convicted of?

Mr Pezzullo: I'll take that as conjoined with the other question I've taken on notice, but again—

CHAIR: I'm not saying before; I'm saying subsequently there has been quite a bit of discussion about it.

Answer:

The Department of Home Affairs (the Department) was not consulted on the charging of David McBride either before or after the charges were laid.

The Department has not subsequently discussed with any other Commonwealth agency the impact of the charges against David McBride.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/013

Subject: Contact with Minister regarding execution of search warrant

Asked by: Sarah Hanson-Young

Question:

CHAIR: So at no point during the raid did you have any contact with the minister or the minister have any contact with anyone in your office, or your department with his office?

Mr Pezzullo: Whether there was contact with the minister, he and I have communication about all sorts of things at all times, so I don't want to give an absolute answer that we weren't in communication about other things, about terrorism or citizenship loss or cyber, but not in relation to the search warrant being executed. I'll check my records to be absolutely definitive that there wasn't some other communication at the time, so that it's not subsequently thought to be the case: 'Hang on, there was a record of a phone call. What was that about?' It could be about any of the thousands of other things that he and I might have cause to discuss. And I'll similarly apply that check to the office as well.

Answer:

The Department of Home Affairs did not have contact with the Minister for Home Affairs or his office regarding the warrant concerning Ms Smethurst's premises during its execution.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/015

Subject: Conversations with heads of media

Asked by: Sarah Hanson-Young

Question:

CHAIR: That is understood. Mr Pezzullo, were you or anyone from your department involved with conversations of heads of media who were here this week to continue this conversation?

Mr Pezzullo: I'm aware of the discussions that have been going on with, I think, two ministers. I've seen both media reports and a readout of those discussions. But they were matters led by the Attorney-General and, I think I'm right in saying, the Minister for Communications. So I was not directly involved and I don't think any of my officers were there as observers but I'll check for you.

Answer:

The Department of Home Affairs was not involved in the meetings with media representatives led by the Attorney-General and the Minister for Communications and the Arts in the week of 11 November 2019.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/016

Subject: Provenance of document

Asked by: Anne Urquhart

Question:

Senator URQUHART: It says there that it's an official document between the AFP and Home Affairs on 6 August 2019.

Mr Pezzullo: It was reclassified to 'official'. We're back to FOI now. It was reclassified to 'official', which is a secrecy marking or technically a dissemination limitation marking—a DLM, Senator Patrick, for your benefit—by agreement between AFP and Home Affairs. What that stamp tells you is that on 6 August 2019, the AFP, I suspect—although, I would need to check if it is their document or ours—engaged in consultation with my department in relation to whether documents could be released in whole or part, or redacted in part.

Answer:

The Secretary addressed the above in his letter to the committee chair dated Monday 18 November 2019, in which the Secretary advised that the document Senator Urquhart provided at the hearing was an attachment to the referral to the AFP, which was provided to the AFP in the form of a document known as 'Referral to AFP'.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

15 November 2019

QoN Number: ECR/017

Subject: Whether referral identified a single individual

Asked by: Anne Urquhart

Question:

Senator URQUHART: That referral identified a single individual but you're saying that you don't think that's correct. Is that what you're saying?

Mr Pezzullo: I believe that to be not correct, and I'd have to refresh my memory in terms of the correspondence dated 7 February. What this appears to be—and I'll check—is some kind of analysis or some kind of, and I'll use the term loosely, triaging of that referral with some early analysis done around email logs—and there are other references here to checking electronic documents—identifying how many records were created in relation to the disclosed document. But otherwise I can't tell what the provenance of this document is or what its authority is without looking at the whole document, noting that this is an attachment.

Answer:

Following the Australian Federal Police's (AFP) request for additional information, on 12 February 2019 the Department of Home Affairs (the Department) provided a completed 'Supporting material checklist'. The checklist included the results of the Department's review of its electronic holdings to identify any staff member that had direct contact with Mr Simon Benson.

The review identified one email contact with Mr Benson since 1 December 2018. This staff member was not a person of interest and their contact with Mr Benson was consistent with their role. There was no evidence that the email contained any information or material associated with the matter referred to the AFP.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Question taken on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom.**

15 November 2019

QoN Number: ECR/018

Subject: Content of referral

Asked by: Anne Urquhart

Question:

Senator URQUHART: So you don't know if the referral identified a single individual?
Mr Pezzullo: I said that I don't believe it did, and I said that I was going to check. Let's go back to taws [sic], if that assists. There is a document in the newspaper or a document quoted, extracted and depicted in the newspaper. From memory, the article was published on the front page of The Australian on 7 February—this document does assist. Mr Lewis and I have both given evidence. In fact, unlike the Smethurst matter, which had a screenshot, in this case it seemed to be, as I recall, retyped extracts. 'It's a bit awkward. That, from memory, is a secret document. What's it doing on the front page of The Australian?' The referral is simply a statement saying that there is a document that appears to be this document over here—sorry, I won't hold that one up. There is a document that we know to be a submission of the department. Elements of it appear to be on the front page of the newspaper. It appears to be an unauthorised disclosure which meets relevant tests. Whether it would meet the tests I explained to Senator Hanson-Young earlier, I doubt actually and, therefore, I doubt such a referral would be made under the policy since 8 August. 'AFP, you're the lead investigator in terms of unauthorised disclosures of top-secret information. You should look at this'—that's it. If it had additional information, such as, 'We've looked at emails and our own records and that suggests that 20 people, five people or one person had access to this document,' it might have been contained in that referral. I said to you previously—in response when you first asked me—I will check the referral.

Answer:

Following the Australian Federal Police's (AFP) request for additional information, on 12 February 2019 the Department of Home Affairs (the Department) provided a completed 'Supporting material checklist'. The checklist included the results of the Department's review of its electronic holdings to identify any staff member that had direct contact with Mr Simon Benson.

The review identified one email contact with Mr Benson since 1 December 2018. This staff member was not a person of interest and their contact with Mr Benson was consistent with their role. There was no evidence that the email contained any information or material associated with the matter referred to the AFP.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/019

Subject: Unauthorised disclosure of classified material

Asked by: Anne Urquhart

Question:

During the public hearing on 15 November 2019, Senator Urquhart asked Mr Pezzullo about the unauthorised disclosure of classified material in relation to the so-called “Medevac bill”. Senator Urquhart referred to “[t]he referral” from the Department of Home Affairs to the AFP, which identified a single individual who had direct contact Simon Benson using the Department’s email systems. That individual worked in Mr Dutton’s office.

Mr Pezzullo vehemently denied that the document Senator Urquhart referred to was “the referral”. This is despite the fact that Mr Pezzullo referred to it as “the referral” when he provided that document to the Intelligence and Security Committee in response to a question he took on notice (see QoN Number: SCLA/005 in Supplementary Submission 32.1 to the Committee’s inquiry into the freedom of press).

Mr Pezzullo subsequently wrote to the Committee in a letter dated 18 November 2019 to “clarify” his evidence on “page 40” of the Hansard and – in the same letter – confirmed that the document Senator Urquhart referred to was, indeed, “the referral”. However, Mr Pezzullo also rejected Senator Urquhart’s characterisation of the same document – repeatedly and vehemently – on pages 29 and 41 of the Hansard.

- a. Would Mr Pezzullo like to correct the whole of the record? If not, why not?
- b. Why didn’t Mr Pezzullo’s letter to the Committee refer to his incorrect evidence on pages 29 and 41 of the Hansard?

Answer:

On page 29 and 41, the Secretary made it clear in his evidence he would need to check his records, these questions were taken on notice.

Please refer to answers to questions on notice ECR/007, ECR/017, ECR/018 and ECR/021.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/020

Subject: Secretary Letter dated Monday 18 November 2019

Asked by: Anne Urquhart

Question:

Why didn't Mr Pezzullo sign the letter that he sent to the Committee on 18 November 2019?

Answer:

The Secretary did sign the letter sent to the Committee Chair dated 18 November 2019.

The Committee Secretariat advised the Department of Home Affairs that they removed the signature from the correspondence prior to tabling.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/021

Subject: The referral

Asked by: Anne Urquhart

Question:

On 15 November 2019, Mr Pezzullo told the Committee – in reference to the document Senator Urquhart characterised as “the referral” – that “[t]his does not meet the description that you’ve provided in the premise of your question of being the referral” and that “[t]he referral, which I do recall signing, was sent on 7 February. This is not that document”.

Does Mr Pezzullo accept that the information he provided to the Committee on 18 November 2019 by letter directly contradicts the evidence that he gave to the Committee in person on 15 November 2019?

- a) If not, why not?
- b) If so, why did Mr Pezzullo characterise his letter to the Committee on 18 November as merely “clarifying” his evidence, rather than correcting it?

Answer:

At the hearing of 15 November 2019, Senator Urquhart provided the Secretary the attachment to the AFP’s ‘*Supporting material checklist*’. Having only provided part of a document, the genesis of the document was not clear. On numerous occasions the Secretary stated that he would need to check his records. The Secretary’s letter of 18 November 2019 made it clear that the document provided by Senator Urquhart was an AFP document and was an attachment to the ‘Referral to the AFP’.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/022

Subject: The referral timeline

Asked by: Anne Urquhart

Question:

In relation to the document that was provided to the Intelligence and Security Committee in response to QoN SCLA/005 and which Mr Pezzullo now agrees is “the referral”:

- a) Who prepared that document?
- b) When was it provided to the AFP?
- c) Under the heading “Email Logs” in Attachment A, the referral identified a single individual who had direct contact with Simon Benson over the relevant period using the Department’s email system. Is that correct?
- d) Did that individual work for the Minister for Home Affairs? If not, why does the referral say that the person was “the Minister for Home Affairs’ staff member”?
- e) Does that individual still work for the Minister for Home Affairs?
- f) Did that individual have – or potentially have – access to any ministerial briefings that included the material leaked to Mr Benson?
- g) Did the Department suspect that individual of leaking the information to Mr Benson? If not, why not?
- h) Did Mr Pezzullo or any other departmental official have any conversation with Mr Dutton or anyone in Mr Dutton’s office about the individual between 6 February 2019 and 28 March 2019? If so:
 - When did each of those conversations take place?
 - Who took part in those conversations?
 - What, precisely, were those conversations about?
- i) Did anyone at the Department make any inquiries about whether that individual had leaked the information to Mr Benson? If so:
 - When were those inquiries made;
 - What were those inquiries; and
 - Who were those inquiries made to?
- j) Did anyone at the Department contact the individual directly to discuss the unauthorised disclosure of information to Mr Benson? If so, who contacted the individual and when?

- k) Did the Department obtain copies of all of the emails that the individual sent to Mr Benson over the relevant period?
 - If not, why not?
 - If so, what was in those emails and when were those emails sent?
- l) Did the Department obtain the phone records of the individual to check whether he or she had been in contact with Mr Benson over the relevant period?
 - If not, why not?
 - If so, on what dates did that person contact Mr Benson via mobile phone (either via text message or by making a phone call)?
- m) Did the Department obtain any evidence whatsoever that the individual provided any information to Mr Benson in relation to the Medevac bill at any time from 1 December 2018 to 7 February 2019? If so:
 - What information?
 - Was any of that information referred to in Mr Benson's story on 7 February 2019?

Answer:

- a) The document was created by a number of staff in the Integrity & Professional Standards Branch within the Department of Home Affairs.
- b) 7 February 2019.
- c) Based on email metadata from the 6 months prior to the relevant media article, there appeared to only be one individual having direct email correspondence with Mr Benson, all of which occurred between 1 and 11 December 2018.
- d) That individual is recorded in Departmental systems as working in the "MINISTER" organisational unit.
- e) The individual is still recorded as working in that area.
- f) The individual has access to ministerial briefings generally as part of their usual duties.
- g) The department identified a group of more than 150 persons with potential electronic access to this information, and this individual was part of that group.
- h) No.
- i) The Department made preliminary system inquiries into the matter, as outlined in "Attachment A" of QoN SCLA/005.
- j) No.
- k) As per QON SQ19-001271, the Department did not obtain copies of emails to Mr Benson. This individual had not appeared to directly email Mr Benson after 11 December 2019, all communication was of the UNCLASSIFIED dissemination limiting marker, and none appeared directly related to the media article.
- l) The Department has not obtained phone records in relation to this referral to the AFP. Unlike email metadata, Departmental phone records are not immediately accessible.
- m) The Department has not obtained any evidence that the individual provided information to Mr Benson relating to the Medevac bill at any time.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/023

Subject: Ministerial submission

Asked by: Anne Urquhart

Question:

According to information provided by the AFP to the Intelligence and Security Committee, on 14 March 2019 the Department provided the AFP “with Ministerial Submissions to help with the [AFP’s] evaluation. Those were believed to be the documents from which the leaked information was sourced”. Who “believed” that the leaked information came from Ministerial Submissions?

Answer:

The Department can find no records relating to a belief being formed as to documents provided on 14 March 2019 being the source of leaked information.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/024

Subject: How many people had access to the Ministerial submission

Asked by: Anne Urquhart

Question:

How many people had access to Ministerial Submissions containing the leaked information?

Answer:

Based on searches of the Department of Home Affairs's gateway systems, this submission appears to have been made available to at least 40 email addresses, including addresses at nine other Government domains. When including source and draft documents, this information appears to have been made available to in excess of 150 individuals.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/025

Subject: List of individual and group email addresses

Asked by: Anne Urquhart

Question:

According to the AFP, on 15 February 2019 the Department provided the AFP with “a list of individual and group email addresses that had had direct contact with Mr Simon Benson”. How many people were on that list?

- a) If more than one, why did “the referral” (i.e. the document referred to in question 4 above) only refer to one individual who has contact with Mr Benson

Answer:

Searches of metadata in the Department’s gateway systems indicated that Mr Benson had received at least 60 emails from nine different departmental addresses between 5 December 2018 and 11 February 2019. The majority of these were in the form of “bulk” releases sent to more than 200 addresses.

- a) Only one individual had email contact with Mr Benson, which appeared unrelated to any Medivac information and were in the normal course of the individual’s role.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/026

Subject: Copies of all of the emails

Asked by: Anne Urquhart

Question:

Did the Department obtain copies of all of the emails that the people on that list sent to Mr Benson over the relevant period?

- a) If not, why not?
- b) If so, did the Department identify any emails that contained any of the material referred to in Mr Benson's story?

Answer:

No.

- a) No contact with Mr Benson was classified above Unclassified and all appeared to be in the course of individual's assigned roles. No emails appeared to be related to the media article. The full emails were therefore not required at the time of referral to AFP.
- b) See above.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/027

**Subject: The proposal for additional transparency measures in relation to
Public Interest Advocates**

Asked by: Anne Urquhart

Question:

In its submission to this inquiry, the Department states that “the proposal for additional transparency measures in relation to Public Interest Advocates should be carefully considered, including in light of any benefits or risks associated with a former judicial officer being publicly identified as a Public Interest Advocate and disclosure of their actions in the course of their duty”. But the Department revealed the identity of the Public Interest Advocates in a public submission to the Intelligence and Security Committee, didn't it? So why the concern about publicly identifying people who the Department had no hesitation in publicly identifying?

Answer:

The identity of the Public Interest Advocates was provided to the Senate Standing Committee on Legal and Constitutional Affairs by the Attorney-General's Portfolio in response to a question taken on notice during the 2015-2016 Additional Budget Estimates (AE16/099). The Senate Committee published this information after receiving it on 12 October 2017.

The Department of Home Affairs (the Department) also provided the names of the Public Interest Advocates who are still serving in response to a Parliamentary Inquiry Question taken on Notice on 28 August 2019 (PJCIS/002). In that response, the Department noted that the names of the currently serving Public Interest Advocates had already been identified publicly (in both media reporting, and through the above response to the Senate Standing Committee on Legal and Constitutional Affairs).

The Department continues to hold the view that additional transparency measures in relation to Public Interest Advocates should be carefully considered. Reporting obligations which identify both the identity and actions of a Public Interest Advocate may undermine the independence of the position and expose these persons to, for example, lobbying or other attempts to influence their consideration of individual cases.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/028

Subject: FOI Resourcing - full time resources

Asked by: Anne Urquhart

Question:

Mr Pezzullo told the Committee that the Department had 79 “full-time resources” involved in dealing with freedom of information requests. What does that mean? In particular:

- a) How many individual human beings are employed to work full time in the Department’s “Freedom of Information Section”?
- b) How many individual human beings are employed to work part time in the Department’s “Freedom of Information Section”?
- c) In detail, how did Mr Pezzullo / the Department calculate the 79 “full-time resources” figure?

Answer:

- a) As at 31 August 2019, staff headcount of full time employed staff of the FOI Section is 63.
- b) As at 31 August 2019, staff headcount of part time employed staff of the FOI Section is 18.
- c) The Secretary was referring to the 2018-19 financial year budgeted Average Staffing Level (ASL) of the Department of Home Affairs (the Department) Freedom of Information teams which was 79.48.

ASL is the number of full-time equivalent (FTE) employees receiving salary or wages by the Department, averaged over a period of time. ASL can be measured at various time points over a financial year.

FTE is the number of full-time equivalent employees directly employed by the Department at a point in time. Part-time employees are converted to full-time equivalent.

For example if there are two part time employees working 50% of the time of a full time employee; they will be counted as 2 for the headcount calculation and as 1 for the FTE calculation.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/029

Subject: Senior Executive Staff in the freedom of information section

Asked by: Anne Urquhart

Question:

How many Senior Executive Service Officers (Band 3 or 4) work in the Department's freedom of information section? Please provide details.

Answer:

Nil.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/030

Subject: 79 full time staff

Asked by: Anne Urquhart

Question:

Mr Pezzullo told the Committee that the Department had 79 “full-time-equivalent staff” working on “cybersecurity, child protection, counterterrorism and countering foreign interference”. In detail, how did Mr Pezzullo calculate that figure?

Answer:

The Secretary of the Department of Home Affairs wrote to the Chair of the Senate Standing Committee on Environment and Communications on 4 December 2019 to clarify evidence regarding the above staffing. The letter provided the following detail:

I refer to my testimony before the Environment and Communications References Committee's inquiry into Press Freedom on Friday 15 November 2019. I am writing to clarify evidence.

On Page 25 of the Hansard, Senator Urquhart asked about the resourcing allocated to the Freedom of Information function within the Department. In my evidence on page 26 of the Hansard I stated that the number of staff working on cybersecurity, child protection, counter-terrorism and countering foreign interference was ‘...79, exactly the same’ as the number of staff undertaking Freedom of Information activities.

I have since checked departmental records in consultation with my colleagues, and can confirm that, as at 31 October 2019, there were 75 Full-Time Equivalent (FTE) staff working on these activities: 44 on counter-terrorism, 20 on cyber security policy; six on countering foreign interference and five on child protection. This total is slightly lower than the resources working on Freedom of Information.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/033

Subject: Countering Foreign Interference Work

Asked by: Anne Urquhart

Question:

What work does the Department do in “countering foreign interference”? How many individual human beings do that work?

Answer:

Within the Department of Home Affairs, the National Counter Interference Coordinator’s (NCFIC) Office provides a whole-of-government focal point for coordination across government, the private sector and the wider community to identify how best to respond to foreign interference.

The Office of the NCFIC:

- engages with the Australian Intelligence Community in developing assessments of the threat, vulnerabilities and consequences of foreign interference;
- administers the Counter Foreign Interference Strategy, which links to and builds upon Australia’s existing counter foreign interference efforts across government, to create an integrated and coordinated domestic and international program that responds to foreign interference activities;
- coordinates outreach efforts and advice to sectors and systems at risk from foreign interference; and
- enhances engagement with culturally and linguistically diverse communities to strengthen their ability to challenge manipulation and coercion from foreign actors.

The Office of the NCFIC also collaborates with likeminded countries and regional partners to forge greater levels of domestic and global resilience to foreign interference.

The NCFIC leads a team of 12 people, including secondees, to coordinate the implementation of the Whole of Government strategy on countering foreign interference. As at 31 October 2019, the Departmental Full-Time Equivalent (FTE)

component of the NCFIC was 6 FTE. We further note that other areas within the Department make an important contribution to countering foreign interference, including the Critical Infrastructure Security Centre and divisions focusing on cyber security policy and citizenship and social cohesion policy.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/034

Subject: Would seek additional resources from the government

Asked by: Anne Urquhart

Question:

Mr Pezzullo said that he “would seek additional resources from the government” “in relation to abhorrent activities on the dark web; countering foreign interference; cyberprotection of our critical infrastructure; and so on and so forth”.

- a) Why hasn't Mr Pezzullo already done this?
- b) When will Mr Pezzullo be doing this?

Answer:

I refer you to The Secretary's evidence at the Environment and Communications Reference Committee hearing of Friday, 15 November 2019 page 26 of the Hansard, where Mr Pezzullo said:

“If I were to shift any resources anywhere, they would go into the protection of children, including in relation to abhorrent activities on the dark web; countering foreign interference; cyberprotection of our critical infrastructure; and so on and so forth. In those areas, I would seek additional resources from the Government, and I think the business case would stack up substantively and substantially. Where I to ask for resources in relation to the processing of FOIs, given budget operating rules, I expect the Government would say, not unreasonably, ‘You need to re-prioritise and afford those resources to that function as you see fit, but you will not be getting additional resources.’ Now, I haven't asked them, as I said to Senator Patrick, and I don't intend to, because if I ask for additional resources it will be for those other areas.”

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/035

Subject: Is the Department of Home Affairs consistently failing to meet its statutory obligations

Asked by: Anne Urquhart

Question:

Is the Department of Home Affairs consistently failing to meet its statutory obligations in the areas of cybersecurity, child protection, counterterrorism and countering foreign interference? If so, in what areas?

Answer:

No.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

**Parliamentary Inquiry
Written Question on Notice**

**Environment and Communications References Committee
Inquiry into Press Freedom**

25 November 2019

QoN Number: ECR/036

Subject: Annual reporting regarding the number and identity of Public Interest Advocates

Asked by: Anne Urquhart

Question:

Many submitters to the Intelligence and Security Committee's inquiry suggested the introduction of annual reporting requirements regarding the number and identity of Public Interest Advocates and the number of cases where a Public Interest Advocate either successfully or unsuccessfully opposed a journalist information warrant. Many submitters believe the scheme lacks transparency and it is not clear whether it is working effectively. Is that a fair characterisation of some of the concerns expressed by submitters?

If not, why not?

Answer:

The number of journalist information warrants issued to law enforcement agencies is reported publicly in the *Telecommunications (Interception and Access) Act 1979* Annual Report. The operation of the journalist information regime is also scrutinised through the existing statutory reporting requirements and independent inspections conducted by oversight bodies.

Section 186B outlines the Commonwealth Ombudsman's role in conducting inspections of relevant enforcement agencies use of, and access to, telecommunications data under the *Telecommunications (Interception and Access) Act 1979*. In their most recent annual report, the Commonwealth Ombudsman stated that they "did not identify any compliance issues in relation to adherence to the journalist information warrant provisions."¹

Before issuing a journalist information warrant the issuing authority or the Attorney-General (in the case of requests from the Australian Security Intelligence

¹ Refer to p. 12 from *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979 - For the period 1 July 2017 to 30 June 2018*.

Organisation) must be satisfied that the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the journalist's source. The role of a Public Interest Advocate (who must be a retired senior judge or a security cleared Queen's Counsel) is to give an independent and impartial public interest assessment before a journalist information warrant can be issued.

The Department of Home Affairs acknowledges that it is important for this inquiry to scrutinise the appropriateness of the Public Interest Advocates, who play an important role in this regime. However, the Department reiterates the concerns raised in the joint supplementary submission to the Parliamentary Joint Committee on Intelligence and Security's inquiry in that 'the proposal for additional transparency measures in relation to Public Interest Advocates should be carefully considered, including in light of any benefits or risks associated with a former judicial officer being publically identified as a Public Interest Advocate and disclosure of their actions in the course of their duty – either in general, or in relation to a particular journalist information warrant.'²

² Department of Home Affairs and the Attorney General's Department, *Supplementary submission to the inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press*, Parliamentary Joint Committee on Intelligence and Security p. 8