

AUSTRALIAN FEDERAL POLICE

ADDITIONAL PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Intelligence and Security

6 April 2020

Subject: PJCIS – Review of the mandatory data retention regime

Asked

Questions Submitted by: Mr Mark Dreyfus QC MP

Question:

- 1. When did the AFP become aware that the Ombudsman was considering whether to launch an investigation into the AFP's compliance with the mandatory data retention regime?**

Answer:

The Ombudsman has not commenced an investigation into the AFP's compliance with the mandatory data retention regime.

On 24 January 2020, the AFP formally advised the Commonwealth Ombudsman the AFP had become aware of certain compliance issues regarding record keeping and reporting in relation to a number of requests made under s180 of the Telecommunications (Interception and Access) Act 1979 (TIA Act).

The AFP was aware when raising issues relating to reporting and record keeping under the TIA Act with the Ombudsman, that he may choose at any time to initiate an investigation.

On 11 March 2020, the AFP Commissioner received correspondence notifying of the Commonwealth Ombudsman's 'Own Motion' investigation into the AFP's administration of telecommunication data access provisions under the TIA Act.

Question:

2. **At the time of the public hearing on 28 February 2020, was the AFP aware that the Ombudsman was considering whether to launch an investigation into the AFP's compliance with the mandatory data retention regime?**

Answer:

The Ombudsman has not commenced an investigation into the AFP's compliance with the mandatory data retention regime.

The AFP was aware when raising the telecommunications compliance issue with the Ombudsman, he may choose at any time to initiate an own motion investigation into the AFP's administration of telecommunication data access provisions under the TIA Act.

Question:

3. On 11 and 12 March 2020, numerous media outlets reported that the AFP had notified the Ombudsman of compliance breaches in relation to the mandatory data retention regime on 24 January 2020. The breaches reportedly dated back 13 years. Given the Committee's inquiry relates to the mandatory data retention regime, why did the AFP decide not to notify the Committee of those compliance breaches in a written submission(s) to this inquiry?

Answer:

The Ombudsman has not commenced an investigation into the AFP's compliance with the mandatory data retention regime.

During the relevant time for providing written submissions to the PJICIS hearing, the AFP had formally advised the Commonwealth Ombudsman the AFP had become aware of certain compliance issues regarding record keeping and reporting in relation to a number of requests made under the TIA Act.

The AFP was in discussions with the Ombudsman as to the appropriate way to proceed, including mechanisms to confirm and quantify the number of compliance issues and provide relevant material to the Ombudsman, to assist the Ombudsman to determine whether or not to commence an investigation.

Therefore, given the extent and scope of the issue had not yet been determined and that the Ombudsman had not yet made a decision to commence an investigation, the AFP was not in a position to provide any reliable information in a written submission.

Question:

4. Why did the AFP Commissioner and Deputy Commissioner decide not to inform the Committee that the AFP had notified the Ombudsman of compliance breaches on 24 January 2020 when gave evidence to the Committee on 28 February 2020?

Answer:

The Ombudsman's investigation was commenced as a result of the AFP reporting to the Ombudsman compliance breaches relating to record keeping and reporting under the TIA Act.

Having regard to:

- *the expected focus of the Committee based on the terms of reference of the inquiry determined by the PJCS under s187N of the TIA Act;*
- *the uncertainty as to the extent and nature of the record keeping and reporting compliance issues; and,*
- *discussions with the Ombudsman to determine the appropriate way to proceed, including the terms of reference and scope of an audit, were ongoing,*

the AFP did not proactively inform the Committee at this point.

Question:

5. On what date did the AFP identify the compliance breaches that were reported to the Ombudsman on 24 January 2020?

Answer:

The AFP identified a single instance of a prospective data request under section 180 of the TIA Act which did not comply with the reporting and record keeping requirements of the TIA Act on 6 January 2020.

Following this identification, the AFP conducted a further review which identified further compliance issues in relation to record keeping and reporting requirements under the TIA Act.

In accordance with best practice, the AFP contacted the Ombudsman's office and provided (verbal) preliminary notification of this issue on 23 January 2020, and followed this in writing on 24 January 2020, with supplementary written advice to the Ombudsman on 7 February 2020.

Subsequently, two meetings with the Ombudsman's office were conducted in relation to the issue on 11 February 2020 and 21 February 2020.