

## Senate Committee Environment and Communications References Committee.

### Questions on Notice – Australian Federal Police

#### Messages reported in Guardian Australia

1. In relation to the report on the website of Guardian Australia on 14 November 2019 in relation to the WhatsApp messages released by the AFP under freedom of information laws: There was a message from Debbie Platz to Neil Gaughan on the day of the AFP raid on Annika Smethurst's apartment. It said "[h]ad Alex on [phone]. He is acting CoS. Wanted more info. I said no so see how that goes".

- a. Who is Alex?

Alex is an adviser to the Minister of Home Affairs.

- b. Is that a reference to Alexander Dalgliesh, a senior adviser to Mr Dutton?

Yes.

**What information was Alex seeking?**

The exact conversation is not recorded. The general nature of the conversation that was had was simply if the AFP was in a position to provide further information regarding the operational activity.

2. The AFP was asked by the Intelligence and Security Committee to provide information about the date and content of "every communication between the AFP or any AFP officer and the Minister for Home Affairs (or his office) in relation to the Annika Smethurst matter". In its response, the AFP did not mention the exchange between Mr Dutton's Chief of Staff and Debbie Platz.

- a. Why didn't the AFP disclose that information to the Intelligence and Security Committee, despite being asked to provide details of all communication between the AFP and the Minister's office in relation to the Smethurst matter?

The AFP disclosed to the Intelligence and Security Committee that, on 4 June 2019, Assistant Commissioner Debbie Platz advised the Minister for Home Affairs office that a search warrant had commenced and to expect media activity.

**b. Will the AFP be correcting the record? If not, why not?**

No, the above answer is accurate.

**c. Was there any other contact between the Minister or the Minister's office in relation to the Smethurst matter that the AFP did not disclose to the Intelligence and Security Committee? Please provide details.**

No further contact was made with the Minister's Office.

**3. Why did Ms Platz say "no" to Alex's request for further information?**

As the operational activity was unfolding and it wasn't appropriate to provide further detail at that time. The AFP reserves the right not to comment on specific operational activity, including to the Minister's office.

**4. Was Mr Dutton's office trying to interfere in the investigation?**

No.

**5. Was Ms Platz worried or concerned that Mr Dutton's office may be trying to interfere?**

No. It is entirely appropriate for the Minister's office to seek information from the AFP, to ensure the Minister is as fully informed of matters as possible.

However, the Minister and the Minister's office are aware the AFP is an independent statutory agency, and they respect the AFP position in terms of how much information is provided in relation to operational (or other) activity or matters at any given time.

**6. How exactly did Alex ask for more information? What exactly was he asking for?**

The exact conversation is not recorded. The general nature of the conversation that was had was simply if the AFP was in a position to provide further information regarding the operational activity.

**7. What else did Alex say in his telephone call to Ms Platz?**

The exact conversation is not recorded. The general nature of the conversation that was had was simply if the AFP was in a position to provide further information regarding the operational activity.

8. **In her text message to Mr Gaughan, Ms Platz said “I said no so see how that goes”. What did Ms Platz mean by “see how that goes”?**
- a. **Was Ms Platz worried that the Minister or the Minister’s office would react badly to being told “no”?**

No. It is entirely appropriate for the Minister's office to seek information from the AFP, to ensure the Minister is as fully informed of matters as possible. However, the Minister and the Minister's office are aware the AFP is an independent statutory agency, and they respect the AFP position in terms of how much information is provided in relation to operational (or other) activity or matters at any given time.

- b. **Did Alex – or anyone else from the Minister’s office – try to contact any other AFP officer on or around 4 June 2019 in relation to the Smethurst matter after being told “no” by Ms Platz? If so, please provide details.**

No.

9. **If there was no concern about Mr Dutton’s office asking for more information, why did Ms Platz say “no”?**

Please see question 5.

10. **What precisely did Ms Platz say to Alex? Presumably it wasn’t just a “no”.**

The exact conversation is not recorded. The general nature of the conversation that was had included that due to the operational activity was ongoing that the AFP was unable to provide further information.

11. **Had the Minister or the Minister’s office been told “no” by the AFP before in response to a request for information? If so, when and in relation to what?**

As outlined earlier it is entirely appropriate for the Minister's office to seek information from the AFP, to ensure the Minister is as fully informed of matters as possible. However, the Minister and the Minister's office are aware the AFP is

an independent statutory agency, and they respect the AFP position in terms of how much information is provided in relation to operational (or other) activity or matters at any given time.

12. **Has the Minister or the Minister's office ever complained – or expressed displeasure – to the AFP about an AFP officer being unhelpful by refusing to provide requested information? If so, please provide details.**

To the best of our knowledge in relation to this Minister's Office, No.

13. **It looks like a few WhatsApp messages were redacted by the AFP. Some messages were redacted in reliance on section 47F of the FOI Act on the basis that their disclosure would "involve the unreasonable disclosure of personal information about any person" and disclosure would not be in the public interest. Did the AFP redact any emojis?**
- a. **Why would the disclosure of an emoji involve the unreasonable disclosure of personal information about a person? What personal information would it disclose?**
  - b. **Why is it contrary to the public interest that an emoji be disclosed?**
  - c. **The Right to Know Coalition of media organisations has expressed concern about the liberal use of redactions by agencies in response to freedom of information requests. Is this an example of the AFP being overzealous in applying redactions?**

As set out in the response to the questions taken on notice on 15 November 2019, the disclosure of personal information (as defined in the *Privacy Act 1988*) is governed by section 47F of the *Freedom of Information Act 1982* (FOI Act). Text based communications can be considered personal information.

Text messages, as a class, do not attract special or different treatment due to their form. Although the exchange was not private in the personal sense, it was considered private in the sense that the parties were communicating with no other audience than each other. Given the expectation of privacy (i.e. confidentiality) in the text message exchange, the platform being used, and the functional context of the communications, the decision maker was satisfied disclosure of the communications could be considered an unreasonable disclosure of personal information within the meaning of the FOI Act.

However, the release of personal information is also subject to public interest considerations, as outlined at section 11B of the FOI Act.

On that basis, the decision maker determined it was appropriate to release the material of public interest. That is, the material relating to the official functions of the AFP, being the execution of a search warrant. Certain other information contained in the communications (including an emoji) was of limited demonstrable relevance to the affairs of government, taking into account what was of a personal and unofficial nature.

The decision maker may obtain assistance and advice from other officers and take advice and recommendations into account. However, the decision maker is accountable for reaching an independent decision and exercising any discretion in determining whether the documents are exempt from release.

14. **Could the Commissioner of the AFP please look into whether the information redacted in these messages was appropriate and get back to the Committee?**

The FOI regime ensures accountability and good decision making through external scrutiny, review and transparency measures, including review and oversight of FOI decision making by the Office of the Australian Information Commissioner.

## **Medevac Leak**

15. **Turning to the unauthorised disclosure of information regarding ASIO advice on the so-called “Medevac bill”: That matter was referred to the AFP on 7 February 2019. Is that correct?**

Yes, the matters was referred to the AFP on 7 February 2019.

16. **The AFP has told the Intelligence Committee – in a public submission – that the leak of ASIO’s advice on the Medevac bill allegedly took place between 11 December 2018 and 6 February 2019. Is that still the AFP’s understanding? If not, what is the AFP’s current understanding?**

Yes, it is alleged the unauthorised disclosure of information took place between 11 December 2018 and 6 February 2019.

17. **In a section entitled “Email Logs” in Attachment A of the referral to the AFP, the Department writes that “[s]ince 1 December 2018, the only direct contact with the author of this article on departmental systems has been with the Minister for Home Affairs’ staff member ...” and the name of the staff member is redacted. In other words, the referral identified a single individual who had direct contact with the person who received the leaked information, Simon Benson, over the relevant period using department systems. Is that correct?**

Yes. The additional information provided by the Department indicated the person who had contacted Simon Benson did not have access to the leaked material.

18. **So the AFP was told that – as far as the Department knew – only one person had been in contact with the recipient of the leaked information over the relevant period. Correct?**

Yes.

19. **And that person worked in Minister Dutton’s office?**

Yes.

20. **And the AFP never contacted that individual to ask whether he or she had provided the classified information to the recipient of the leaked information?**

No. Additional information provided by the Department indicated the person who had contacted Simon Benson did not have access to the leaked material.

21. **Did the individual named in the referral have access to ministerial briefings that included the leaked information?**

Additional information provided by the Department indicated the person who had contacted Simon Benson did not have access to the leaked material.

22. **Did the AFP suspect that individual of leaking the information to the recipient of the leaked information? If not, why not?**

No. Contact was expected in the course of their duties. Additional information provided by the Department indicated the person who had contacted Simon Benson did not have access to the leaked material. The AFP cross checked the individual against the list of people with access to the leaked information and they were not on that list.

23. **On what basis did the AFP conclude the named individual could not have leaked the information to the recipient of the leaked information?**

Information provided by the Department of persons who had access to the leaked information did not include the individual who had contact with Simon Benson

24. **The AFP told the Intelligence and Security Committee that there were no communications between the AFP and the Minister or the Minister's office in relation to the leak of the classified material. Why?**

The referral was from the Dept of Home Affairs. Based on the information provided there was no suggestion the the Minister or his office were implicated in leaking the material.

25. **The AFP took the leaking of information that was embarrassing to the government so seriously – including the emails about Mr Dutton granting tourist visas to au pairs or the material Annika Smethurst reported on – that it executed search warrants, including on journalists, in order to gather evidence about the leaker. Now here we have a leak of classified ASIO advice that was politically favourable to the Government, which was described by ASIO as**

**“seriously damaging” and as undermining all that ASIO stands for, and the AFP is given the name of an individual who:**

- a. was in contact with the journalist who received the leaked information over the relevant period;**
- b. likely had access to the leaked information;**
- c. worked for a person who had a motive to leak the information, and**  
**and the AFP did not launch a formal investigation or even contact that individual. Why?**

Premise ‘b’ in the above question is incorrect. The one person for whom there is evidence of contact with Simon Benson in the relevant period did not, based on information provided by the Department of Home Affairs have access to the leaked information. However the AFP was able to determine over 200 other individuals had access to the leaked information, and it would have been an unreasonable diversion of AFP resources to interview all 200 persons with access to the information.

26. **In the timeline it provided to the Intelligence Committee on its response to the Medevac referral, the AFP says that on 14 March 2019 “[t]he Department of Home Affairs provided the AFP with Ministerial Submissions to help with the evaluation. These were believed to be the documents from which the leaked information was sourced.” So, to be clear, it was believed that the leaked information was sourced from Ministerial Submissions?**

Yes.

27. **Was it the Department or the AFP that believed the leaked information was sourced from Ministerial Submissions?**

The AFP believed this to be the case based on the information provided by the Department

28. **Is that because the Department or the AFP believed the source of the leak was the Minister’s office?**

- a. If not, why did the Department or the AFP believe the leaked information**



**was sourced from Ministerial Submissions?**

The AFP believed the leak to be from the submissions based on the information provided. The AFP cannot speak for the Department.

29. **The AFP has stated publicly that over 200 people had access the classified material that was leaked to Mr Benson. Is that correct?**

Yes, that is correct. During the initial assessment of the referral, the AFP ascertained over 200 people accessed or had access to the information.

30. **Of those, how many had access to the Ministerial Submissions?**

174 from Home Affairs plus an unknown number from additional agencies had access to the associated email addresses that received copies of the ministerial submissions.

31. **How many people in the Minister for Home Affairs' office had access to the relevant Ministerial Submissions?**

That number is unknown as the email addresses provided do not stipulate if the member was working in the Minister's office.

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

One.

33. **Did the AFP obtain copies of all of the emails that the people on that list sent to Mr Benson over the relevant period?**

The AFP did not obtain copies of the emails.

34. **Did any of those emails contain – or refer to – any of the information that appeared in Mr Benson's story?**

The titles of the emails did not indicate a correlation to the story.

## **Au Pair Emails**

**PLEASE NOTE THE FOLLOWING CAVEAT FOR RESPONSES TO QUESTIONS 35 – 41.**

This investigation has been finalised by the AFP as a result of the findings of the Senate Standing Committee of Privileges 172<sup>th</sup> Report.

35. **The AFP's standard practice is to notify the Minister for Home Affairs about politically sensitive matters under AFP investigation unless there is a conflict of interest or "potential for perceived conflict of interest". Is that correct?**

Yes, that is correct.

36. **And, when it comes to the AFP's engagement with the Minister during an investigation, Part 11.3 of the National Guidelines provide that case officers should:**

- a. **"ensure they address any real or perceived conflict of interest when reporting on politically sensitive investigations involving MPs to the [Minister for Home Affairs]; and**
- b. **"consider briefing the [Minister for Home Affairs] parallel to, or after, operational activity has taken place to avoid any perception of irregularity". Is that correct?**

Yes, that is correct.

37. **Did the AFP notify the office of the Minister for Home Affairs in advance of a search warrant being executed to search the home of the suspected leaker of the au pair email?**

Yes, that is correct. On 10 October 2018, AFP National Manager Crime Operations, Assistant Commissioner Debbie Platz, attempted to call the Minister for Home Affairs' adviser and Chief of Staff. When these phone calls were not answered a text message was sent to the Minister's Chief of Staff at 11:14am on 10 October 2018:

*"Craig. Hi. Our team are executing some search warrants today that may cause some media attention. These relate to the leak of emails relating to the au pair matter. Pls call if you would like further information. Regards Debbie."*

38. **The AFP told the Intelligence and Security Committee that, in its view, the fact**

that the subject matter of the emails was a controversial decision made by Peter Dutton (to grant au pairs tourist visas) did not give rise to a conflict of interest. Is that correct?

Yes, that is correct.

39. However, the AFP acknowledged to the Intelligence and Committee that, because the leak related to a controversial decision made by Mr Dutton, there was potentially a perceived conflict of interest between Mr Dutton and this investigation. Is that correct?

Yes, that is correct.

40. In fact, Mr Jerga, the then-Acting Chief Counsel of the AFP, told the Intelligence and Security Committee in a public hearing that “I don’t think that’s questionable”. Is that also correct?

Yes, that is correct.

41. Given the AFP has acknowledged publicly that, in relation to the au pair emails, there was a perceived conflict of interest in relation to Mr Dutton, and given the AFP’s standard practice is to notify the Minister for Home Affairs when politically sensitive matters are referred to the AFP *unless there is a conflict of interest or potential for perceived conflict of interest*, does the AFP believe that it followed its own guidelines by notifying Mr Dutton’s office in advance of the execution of the search warrant in relation to the au pair emails investigation? If so, please explain why.

The AFP followed its standard practice by complying with the AFP National Guideline on politically sensitive investigations.

Part 11.3 of the National Guideline governs the AFP’s engagement with the Minister *during* an investigation. Part 11.3 states:

*To ensure the AFP's reporting obligations are maintained without compromise to any operational activity, case officers must:*

- *consult with the relevant manager when considering the timing and content of ministerial reports*
- *ensure they address any real or perceived conflict of interest when reporting on politically sensitive investigations involving MPs to the MHA*
- *consider briefing MHA parallel to, or after, operational activity has taken place to avoid any perception of irregularity.*

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The AFP accepts there could be a perceived conflict of interest. However, the AFP considered all aspects of the matter, and considers it appropriately addressed the perceived conflict of interest by waiting until the morning of the (originally) proposed warrant execution (10 October 2018) to brief the Minister on the planned activity, on his department.

For unrelated operational reasons, the warrant was ultimately executed the following day.

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