

Further advice to ANAO Submission 2 - Supplementary Submission 2.2

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

REVIEW OF AUDITOR-GENERAL'S REPORT NO.23 (2014-15)

FURTHER ADVICE TO ANSWERS TO QUESTIONS ON NOTICE

Department/Agency: Australian National Audit Office

Audit: Audit Report No.23 2014-15

Title: Administration of the Early Years Quality Fund

Member: Mr Ian Macfarlane (Chair)

Type of question: Proof Committee Hansard, p.2, 12 November 2015

Date set by the committee for the return of answer: 4 December 2015

Number of pages: 1

Question:

CHAIR: Does the ANAO have the right to get at phone records?

Ms Kairouz: I believe we do.

Mr Hehir: We would have to get legal advice on that and on how my Act relates to the Telecommunications Act. I would not like to speculate on that—

CHAIR: I would be interested in the answer.

Answer:

On 22 December 2015, and in response to this question on notice, the ANAO advised that based on advice from the Australian Government Solicitor, the ANAO response was as follows:

It is unlikely that the Auditor-General could obtain and use 'stored communications' held by carriers, including voicemail and SMS messages, in view of the provisions of the Telecommunications (Interception and Access) Act 1979. However, that Act does not restrict access to SMS messages and voicemail from a device held by the intended recipient of the communication, and there would be circumstances in which these could be obtained by the Auditor-General in connection with an audit.

The Australian Government Solicitor has provided new advice relating to the Auditor-General's capacity to obtain stored communications held by third party carriers (including SMS messages and voicemail), as follows:

There would also be scope for the ANAO to access text messages from a telecommunications carrier (e.g. in the event that the relevant official no longer has the text message) if the intended recipient of the message has knowledge of this..... This knowledge might be obtained by way of a notice being issued to the intended recipient of the communication under s 32 of the Auditor-General Act 1997. However, it is our understanding that the

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practice of carriers is not to store stored communications for any length of time (ie beyond a couple of weeks).

Accordingly, based on advice from the Australian Government Solicitor, the Auditor-General would be able to:

- obtain phone records (e.g. telephone numbers of parties to a call and the time and duration of calls) where appropriate in the performance of relevant functions;
- direct a carrier or carrier service provider to provide these records;
- obtain phone records from others, including from an entity subject to a performance audit;
- Obtain access to text messages directly from relevant officials of the agency subject to an audit (where the official still has the message on their phone); and
- Access text messages from a telecommunications carrier (e.g. in the event that the relevant official no longer has the text message) if the intended recipient of the message has knowledge of this.

The Australian Government Solicitor caveat the above by advising that access would depend on the circumstances of each case including the terms of any secrecy provisions applying to officers in the entity and the interaction of these provisions with the powers of the Auditor-General under the *Auditor-General Act 1997*. Parliamentary privilege may also operate in some cases to restrict the Auditor-General's powers to obtain certain information.