

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

Program: Administrative Appeals Tribunal

Question No. SBE16/053

Senator Lambie asked the following question at the hearing on 18 October 2016:

Senator LAMBIE: Were you aware of the fact that former ADF members' private medical records and lawyer-client privilege documents could be the subject of free information searches from members of the Australian media through the AAT?

Ms Leatham: I am only aware of the particular matter that you have issued a press release on.

Senator LAMBIE: Is it a fair state of affairs? Do you consider that section 35 of the AAT Act is a legal loophole for journalists to bypass the costs and carefully monitored nature of FOI searches should they decide to target veterans who appeal the DVA matters through the AAT?

Ms Leatham: That is a matter of policy.

CHAIR: That is asking for an opinion, and it is not allowed.

Senator LAMBIE: How many applications have been made for information under section 35 of the AAT Act in the last 10 years?

Ms Leatham: Again, I would be happy to take that on notice.

Senator LAMBIE: Thank you. How many of these applications under section 35 for access to information by nonparties have been approved by AAT commissioners?

Ms Leatham: I am not sure that we would have that data. We could certainly tell you the number of applications that have been made and possibly the finalisation as to whether they were affirmed or—

Senator LAMBIE: While you are doing that, could you also name those AAT commissioners who did grant access to nonparties for information considered by the AAT?

Ms Leatham: Sorry, are you asking for the names of members of the tribunal?

Senator LAMBIE: Yes.

Ms Leatham: Who have been involved in the decisions?

Senator LAMBIE: I am asking for the names of the AAT commissioners who did grant or have granted access over the past 10 years to nonparties for information that has been considered by the AAT when it comes to Veterans' Affairs matters.

CHAIR: Can I try to help here: are there such things as AAT commissioners?

Ms Leatham: No, they are members of the tribunal. We do not have commissioners.

Senator LAMBIE: Okay, so your members.

Ms Leatham: Again, I am not sure that we would be able to produce—we would certainly be able to identify the number of matters. Whether or not we would actually be able to identify the members, I am not entirely sure. Again, we are happy to take that on notice.

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

Requests by non-parties for access to documents in applications made to the AAT and action taken in relation to them are not recorded in the AAT's electronic case management systems in a way that permits the AAT to identify the number of requests made, the members who considered such requests and the outcomes of the requests. The AAT's experience is that requests made by non-parties to access documents that were before the AAT in a case are infrequent.

Consistent with the principle set out in section 35 of the *Administrative Appeals Tribunal Act 1975* that it is desirable that evidence given before the

Tribunal and the contents of documents received in evidence by the Tribunal should be made available to the public, the AAT will usually allow a non-party to access the documents that were before the AAT and any transcript of the hearing held by the AAT after a public hearing has been held. This is subject to the AAT making any order to prohibit or restrict the publication or disclosure of any information. The parties to an application are generally given the opportunity to apply for such an order or make other submissions about a request by a non-party for access before any decision is made on the request.