

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

Program: Australian Security Intelligence Organisation

Question No. SBE16/090

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

In reference to tabled QON 8 sub-question 5 and 6, ASIO declined to answer the question on the grounds doing so would breach Section 182A of the Telecommunications (Interception and Access) Act 1979 (TIA Act). However, the following is noted:

From the TIA Act Explanatory memorandum:

Section 182A makes it an offence for a person to use or disclose information about whether a journalist information warrant, has been, or is being requested or applied for, the making of such warrant, the existence or non-existence of such a warrant and the revocation of such a warrant. The maximum penalty for this offence is 2 years imprisonment. Section 182A is consistent with equivalent offence provisions already in place in relation to other warrants, including telecommunications interception warrants and stored communications warrants. These provisions create a “need-to-know” within an agency to protect the privacy of the person who is the subject of a TIA Act warrant.

From Malcolm Turnbull MP's second reading speech:

Last year, a major Australian ISP reduced the period for which it keeps IP address allocation records from many years to three months. In the 12 months prior to that decision, the Australian Security Intelligence Organisation (ASIO) obtained these records in relation to at least 10 national security investigations, including counter-terrorism and cybersecurity investigations. If those investigations took place today, vital intelligence and evidence simply may not exist.

From the response of the AFP commissioner at Estimates on 17 October 2016

Senator XENOPHON: Thank you very much. Commissioner, I just want to ask some questions in respect of the journalist information warrants. On 9 February this year I asked the following two questions: broadly, whether any journalist information warrants had been requested by the AFP within the past 12 months and, if so, how many; and whether any journalist information warrants had been granted to the AFP in the last 12 months and, if so, how many. The response was that the AFP could not provide this information because it would be an offence under section 182A to disclose a specific journalist information warrant. That was not the question. I note that section 186 requires the commissioner to provide the Attorney-General, within three months of 30 June, with a written report about the number of data disclosure authorisations under a journalist information warrant. My question is: do you agree that there is a distinction between asking in broad terms for the numbers of warrants sought and granted and asking for specific information on each, which I did not request?

Mr Colvin: Senator, I agree with you to the extent that the legislation prohibits me from talking about specific cases. I think you were asking a more general question. I do not have the question on notice in front of me. I will ask my deputy commissioner who deals with that area to answer.

Senator XENOPHON: Sure. But, Commissioner, you can understand it is somewhat infuriating to be asking a general question, which would fall within the purview of section 186, but to have

the AFP cite section 182A as a reason not to provide it, when that was not the question at all.

Mr Colvin: I do not have the question in front of me. I agree in principle with what you are saying. The AFP never seeks to not be full and frank in our answers to questions. But the deputy commissioner probably has much more direct knowledge of that question and the issue.

Senator XENOPHON: The initial question was: has that report been provided to the Attorney-General as required under section 186?

Mr Jabbour: Senator, I accept what you say. The answer is: yes, we have furnished a report. In answer to your question, I can confirm the AFP has not made any applications for journalist information warrants since the amendments came into effect.

Senator XENOPHON: No applications at all? Okay. So that means that the report that has been provided to the Attorney basically says zero, in terms of the number of information warrants.

Mr Jabbour: That would be correct.

Senator XENOPHON: Okay. Well, this is a much simpler line of questioning than I anticipated!

ASIO is asked to reconsider its position and answer the following questions:

1. Have any journalist information warrants been requested by ASIO within the last 12 months? If so, how many?
2. Have any journalist information warrants been granted to ASIO within the last 12 months? If so, how many?

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

For reasons of national security ASIO does not comment on operations or investigations.

The requested information was reported in ASIO's 2015-16 classified annual report in accordance with statutory reporting requirements and is the subject of independent review by the Inspector-General Intelligence and Security (IGIS) as reflected in the IGIS Annual Report 2015-16.