

Senate Community Affairs Legislation Committee

SUPPLEMENTARY BUDGET ESTIMATES – 22 OCTOBER 2015 ANSWER TO QUESTION ON NOTICE

Department of Human Services

Topic: Alleged Medicare Fraud – Information Commissioner

Question reference number: HS 16

Senator: Cameron

Type of question: Hansard page 118

Date set by the committee for the return of answer: 11 December 2015

Number of pages: 1

Question:

a) Senator CAMERON: You are probably aware I have written to the Office of the Australian Information Commissioner. I understand the Information Commissioner was not aware of these issues. Is that your understanding?

Mr Sandison: That might be the case. I think we would—

Senator CAMERON: 'Might be'? Is it the case or not the case, or don't you know?

Mr Sandison: I have not had direct engagement on this, no.

Ms Campbell: Senator, were you saying that the commissioner himself was unaware or the office was unaware?

Senator CAMERON: Both.

Ms Campbell: We can take on notice when we were advised and look at the date at which you wrote—

b) Senator CAMERON: And can you provide details of all correspondence between the Department, and file notes and the like between the Office of the Australian Information Commissioner and DHS in relation to these fraud issues?

Ms Campbell: Yes.

Answer:

The Department regularly liaises with the Office of the Australian Information Commissioner. On 11 September 2015 the Department's Chief Counsel met with the Assistant Commissioner. A copy of the relevant sections of the Chief Counsel's talking points is attached.

The Office of the Australian Information Commissioner wrote to the Department of Human Services regarding the alleged Medicare fraud on 6 October 2015. The Department replied on 15 October 2015. Copies of that correspondence are attached.

Meeting with Karen Toohey - Sydney, Friday 11 September at 10am

Data breach notification

- We have recently been reviewing OAIC's "*Data breach notification — A guide to handling personal information security breaches*", dated August 2014
- We note that it does not deal in any particular detail with the intersection of privacy breaches and fraud, which for us is issue that arises from time to time. There was recently concerns raised by a caller to the Ray Hadley 2GB radio program about identity theft and fraud; the caller talked about getting letters and debit cards from the Commonwealth Bank (which she does not bank with); the caller claimed that someone had accessed her Medicare online account; we are investigating this claim and will take any appropriate action. We have not identified privacy breaches at this stage, but wanted to put the issue on the Privacy Commissioner's radar in case they receive queries.

Musolino, Annette

From: Este Darin-Cooper <Este.Darin-Cooper@oaic.gov.au>
Sent: Tuesday, 6 October 2015 12:47 PM
To: Musolino, Annette
Cc: Annan Boag; Natacha Doust; Jacob Suidgeest; Mowbray-d'Arbela, Marc
Subject: Allegations concerning misuse of Medicare records – our ref CII15/00007
[SEC=UNCLASSIFIED]
Attachments: mg_info.txt

Dear Ms Musolino

The Office of the Australian Information Commissioner (OAIC) has been informed about recent reports that medical files stolen from five medical centres were used to access Medicare records and to fraudulently appropriate rebates intended for the patient.

We have also received a letter from the office of the Shadow Minister for Human Services, Senator Doug Cameron. The letter contains allegations that:

1. 'thousands of Medicare clients have had their bank details and Medicare records improperly accessed, compromised and in some instances altered in order to fraudulently obtain Medicare refunds', and
2. 'the Department of Human Services covered up the breach of privacy of thousands of Medicare accounts'.

We would appreciate the opportunity to discuss this matter with the Department of Human Services (DHS) directly, particularly in relation to the steps taken by DHS to ensure the security of Medicare records, and the security practices, procedures and systems that the DHS has in place to protect Medicare records from unauthorised access, use and interference. We are making these inquiries under s 42(2) of the *Privacy Act 1988* (Cth).

Senator Cameron's letter also alleges that 'the Chief Executive Officer of Medicare (as "Record Repository for the RRO") has not complied with obligations under the PCEHR Act to notify [the OAIC] and the Department of Health (as "System Operator" or SO) and any potentially affected individuals about the breach.' Based on the information available to the OAIC it appears that this incident does not involve eHealth records and as such no mandatory data breach notification appears to have been required in the circumstances. We seek your confirmation that eHealth records were not affected by these incidents.

We propose a teleconference or (preferably) videoconference with DHS on 12 October 2015 at 10.30am, or at such other time as is suitable for DHS. Can you please confirm whether you are available at this time?

Regards

Este

Este Darin-Cooper
Director | Regulation and Strategy Branch
Office of the Australian Information Commissioner
GPO Box 5218 SYDNEY NSW 2001 | www.oaic.gov.au
Phone: +61 2 9284 9762
este.darin-cooper@oaic.gov.au



Australian Government
Department of Human Services

Annette Musolino
Chief Counsel
Legal Services

Ms Este Darin-Cooper
Director
Regulation and Strategy Branch
Office of the Australian Information Commissioner

Via email: este.darin-cooper@oaic.gov.au

Dear Ms Darin-Cooper

Allegations concerning misuse of Medicare Records – your reference CII15/00007

Thank you for your email dated 6 October 2015.

The department is aware of the allegations referred to in your email that medical files were stolen from medical centres and that the information may have been used to fraudulently appropriate Medicare rebates. The department is currently working jointly with the NSW Police Force to fully investigate these allegations.

The department is also aware of the substance of Senator Cameron's allegations concerning the security of the department's Medicare records. I understand that Senator Cameron has also written to the Australian Federal Police (AFP) to raise these matters. The AFP is currently evaluating the allegations, in consultation with the department.

I confirm that the department has no direct evidence of any allegedly fraudulent activity impacting on eHealth records. The department is obtaining legal advice on its obligations under the *Personally Controlled Electronic Health Records Act 2012*. That advice will be informed by the outcome of the investigations currently underway. Once it has received the legal advice, the department will take all appropriate action.

I can assure you that the department is committed to safeguarding customer privacy. As the AFP is evaluating these matters and the NSW Police Force investigations are ongoing, the department is not as yet in a position to discuss these matters with your office.

However, the department will provide your Office with regular updates of the status of the investigations and I will contact you to arrange a meeting once those investigations are complete.

Please contact me on (02) 6223 4883 should you wish to discuss this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Annette Musolino'.

Annette Musolino
Legal Services
15 October 2015