

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

Group 2

Question No. 37

Senator Hanson-Young asked the following question at the hearing on 24 February 2014:

Senator HANSON-YOUNG: To cast your mind back, the security breach from the immigration department last week mistakenly released online the personal details of over 10,000 asylum seekers. What in your view is the implication of a massive security breach such as that?

Mr Wilson: I have to say that I am yet to receive my full briefing from the commission on legal and policy dimensions around asylum seekers, so all I can say is that it is obviously a deeply concerning event, but I do not have the specific details. That may be a question better answered by the president herself.

Senator HANSON-YOUNG: You may also need to refer this question to Professor Triggs, but I will ask you directly. Would it be appropriate for the department to inform those people who were the subject of the breach of their personal information that it has indeed happened to them?

Mr Wilson: My personal opinion, which may be different from what they are legally obliged to do, is yes, but I am happy for the president to answer the question.

Senator HANSON-YOUNG: Professor Triggs, in relation to the data breach last week in the immigration department, would it be appropriate for the department to inform all of those whose personal information was released that the breach had occurred and they were part of that security breach?

Prof. Triggs: I was in China until yesterday. Again, this is something I have only been reading in the press. I have not myself had a briefing on it. My immediate answer would be that in the interests of transparency and the safety of those people they need to know that authorities in other countries may be now aware of personal details of which they were not previously aware. That is obviously the concern that one would have from the human rights law point of view. Before giving you any kind of categorical answer, frankly I would like to have a briefing with my own legal experts and get back to you on notice.

Senator HANSON-YOUNG: Could you, between you and Mr Wilson, take those questions on notice?

Prof. Triggs: We will be pleased to.

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

- a) Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), provides, *inter alia*, for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy. This right extends to the protection of 'personal information on computers, data banks and other devices.' The gathering and holding of such information 'must be regulated by law' (UN Human Rights Committee, General Comment 16 (1988) §10).
- b) The protection of personal information in Australia is regulated by the *Privacy Act 1988* (Cth). Under that Act as in force at the time of the disclosure, the Office of the Australian Information Commissioner (OAIC) had stated that in cases of data breach, "agencies and organisations should consider whether their obligations... require them to notify affected individuals... as a 'reasonable step' to ensure the security of the personal information that they hold." Further, the OAIC had stated: "[i]n general, if a data breach creates a real risk of serious harm to the individual, the affected individuals should be notified." (Office of the Australian Information Commissioner. *Data breach notification: a guide to handling personal information security breaches*, April 2012). (The Commission notes that the unintentional disclosure of the asylum

seekers' personal information occurred prior to the amendments to the Privacy Act which came into effect on 12 March 2014).

- c) The Privacy Commissioner has announced that he is undertaking an own-motion investigation into the Department's release of personal information. The Commission respectfully refers the Committee to the Office of the Australian Information Commissioner in that regard.