

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

Group: 3

Program: Other Agency

Question No. AE15/020

Senator Wright asked the following question at the hearing on 24 February 2015:

Senator WRIGHT: I have some further questions along the line of questioning that Senator Milne was pursuing, regarding referrals in section 70 of the Crimes Act, in relation to journalists publishing information. I understand that Senator Milne has asked a few, but I have a few others. I understand that quite a lot of hers were taken on notice, but there may be some that you can answer today around procedures and so on. I think you have already taken on notice the question about the number of referrals received and broken down by number of referrals from an MP's office, a minister's office or a department or agency. I am also interested to ask how many referrals have arisen from media reports. Perhaps you could take that on notice.

Mr Colvin: We would have to. We have put on the record a number of times before how many of these investigations we have. We would need to go back and look at each of them individually, see what the genesis was and determine if we are prepared to say what the genesis was.

Senator WRIGHT: Thank you. Can I clarify the process. I understand that once such a referral has been received it is common practice for the AFP to contact the specific journalist involved and request that they identify their source of information and assist with the prosecution of the suspected section 70 offence. Is that the case and, if so, how many times has the AFP made those demands of journalists?

Mr Colvin: The usual course of events would be that once a matter was brought to our attention we would move into what we call an evaluation phase. The evaluation phase is for the AFP to determine a number of things, principal amongst which is: do we believe an offence may have been committed, and do we believe that there is a reasonable prospect that we will be able to bring evidence to bear to further that prosecution? That is all part of the evaluation phase before we accept the matter. As part of that evaluation we may speak to a journalist. We may make other inquiries before we get to that point and we may determine that, yes, there is a case or that there is not a case.

How many times we have spoken to a journalist will depend entirely on the circumstances of the matter, the type of material that is alleged to have been inappropriately released and the circumstances of its release. I would not share your view that it is a common practice that we would do that automatically. It really would depend on the case that we have in front of us.

Senator WRIGHT: When I am asking how many times those demands have been made of journalists I do not mean individual contacts with, maybe, one journalist, but is it possible to identify how many individual journalists have been contacted in the course of that part of the investigation I have described?

Mr Colvin: I guess my concern would be that to do that I would need to have someone go back through every case. To me it is irrelevant whether we have contacted a journalist or a potential witness. I do not draw a distinction; I know others do. So, to answer that question we will need to go back through every case—I would need a time frame on it as well, to be honest, because this could go back a decade or more—and look at the specifics of that case and see what inquiries were made and how we went about those inquiries. I can answer the question but I would ask that we try and refine a period of time.

Senator WRIGHT: I appreciate that. Perhaps I could ask for the last 12 months or so. Is that possible? I understand, and I certainly do not want to impose unnecessary burden on you when you have other things to do, but on the other hand I think this is a matter of real interest, particularly for journalists, who are likely to be contacted—more likely in relation to the question that I am asking than other members of the public. So could we make it the last 12 months.

Mr Colvin: We can certainly take on notice the last 12 months. It will be a fairly generic answer because we do not wish to give any specificity—

Senator WRIGHT: I understand that.

Mr Colvin: and identify individuals or cases.

Senator WRIGHT: Yes.

Mr Colvin: But I will ascertain that we give you that answer on notice.

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

In the last eighteen months the AFP has received thirteen referrals relating to the alleged unauthorised disclosure of Commonwealth information in breach of section 70 of the *Crimes Act 1914*.

Of the thirteen referrals, nine arose from the referring party where media reporting was the trigger for the referral.

Journalists may be one of many witnesses who may have information relevant to an investigation pursuant to an allegation of unauthorised disclosure (section 70 *Crimes Act 1914*). It is not AFP practice to disclose or identify witnesses who have been approached as part of an investigation.