



Support Capability



ABN 17 804 931 143

27 September 2016

Senator the Hon Ian Macdonald
Chair
Senate Standing Committee on Legal
and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Senator

**Additional Estimates February 2016, Attorney-General's Portfolio—
Question on Notice 059**

Regarding the Additional Estimates hearing of 9 February 2016, Senator Xenophon asked a question in writing directed to the Australian Federal Police (AFP) regarding preservation orders and access to telecommunications data. The response to Question on Notice 059 was tabled on 30 March 2016.

I am writing to provide an amended response to the Committee. The amended response is attached.

The amended response clarifies the basis on which the AFP is unable to provide the requested information, and flags AFP reporting obligations through which aggregate data will be published in accordance with statutory obligations.

The action officer for this matter is Ms Megan Duffy who can be contacted on [REDACTED].

Yours sincerely

David Stewart
Performing the duties of
National Manager Support Capability

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS AUSTRALIAN FEDERAL POLICE

Question No. AE16/059

Senator Xenophon asked the following question at the hearing on 9 February 2016:

1. Have any federal politicians been the subject of an AFP initiated metadata domestic preservation order in the last 12 months? If so, how many?
2. Have any federal politicians phone or internet metadata been accessed by the AFP in the last 12 months? If so, how many?
3. Have any federal political staffers been the subject of an AFP initiated metadata domestic preservation order in the last 12 months? If so, how many?
4. Have any federal political staffer's phone or internet metadata been accessed by the AFP in the last 12 months? If so, how many?
5. Have any journalist information warrants been requested by the AFP within the last 12 months? If so, how many?
6. Have any journalist information warrants been granted to the AFP within the last 12 months? If so, how many?

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

1. The Australian Federal Police is unable to provide this information. For operational security reasons, the AFP can neither confirm nor deny the existence of preservation orders in relation to classes of particular persons.

Section 133 of the *Telecommunications (Interception and Access) Act 1979* makes it an offence to communicate specific preservation notice information to another person.

However, section 159 of the Act requires the Commissioner to provide the Attorney-General within 3 months after each 30 June a written report that sets out the number preservation notices and revocations made by the AFP in that year. The AFP will provide statistical information on the use of preservation notices for all investigations for inclusion in the 2015-16 *Telecommunications (Interception and Access) Act 1979* Annual Report. The Attorney-General is required to table the Annual Report in Parliament each year.

2. The Australian Federal Police is unable to provide this information. For operational security reasons, the AFP can neither confirm nor deny the existence of telecommunications data disclosure authorisations in relation to classes of particular persons.

Section 181B of the TIA Act makes it an offence to disclose whether a Division 4 authorisation to access telecommunications data has been, or is being, sought. It is also an offence to disclose information about the making of a Division 4 authorisation, the existence or non-existence of such an authorisation, the revocation of such an authorisation, or the notification of such a revocation.

However, section 186 of the Act requires the Commissioner to provide the Attorney-General within 3 months after each 30 June a written report that sets out the number of telecommunications data disclosure authorisations made by the AFP in that year. The AFP will provide statistical information on the use of telecommunications data disclosure authorisations for all investigations in the 2015-16 *Telecommunications (Interception and Access) Act 1979* Annual Report. The Attorney-General is required to table the Annual Report in Parliament each year.

3. Please refer to the answer provided in response to question one.
4. Please refer to the answer provided in response to question two.
5. The Australian Federal Police is unable to provide this information. For operational security reasons, the AFP can neither confirm nor deny whether journalist information warrants have been requested or issued to the AFP in relation to a class of persons.

Section 182A makes it an offence to disclose whether a specific journalist information warrant has been, or is being, requested or applied for.

However, section 186 of the Act requires the Commissioner to provide the Attorney-General within 3 months after each 30 June a written report that sets out, inter alia, the number of telecommunications data disclosure authorisations made under a journalist information warrant by the AFP in that year, as well as the number of journalist information warrants issued to the AFP in that year. The AFP will provide statistical information on the use of journalist information warrants for all investigations in the 2015-16 *Telecommunications (Interception and Access) Act 1979* Annual Report. The Attorney-General is required to table the Annual Report in Parliament each year.

6. Please refer to the answer provided in response to question five.