

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

**Question No. SBE15/012**

**Senator Collins asked the following question at the hearing on 20 October 2015:**

Senator JACINTA COLLINS: Can I ask Mr Pilgrim some questions around FOI and ministers using—I want to use the right word here—non-official means of communication. Are you aware of the advice that was tabled in the Senate Finance and Public Administration Committee yesterday by Mr Allan McKinnon with respect to non-official communication systems?

Mr Pilgrim: No Senator, I am not aware of that advice.

Senator JACINTA COLLINS: Mr Pilgrim, this has been an issue, as I understand it, in the UK and in the United States. Have you addressed this issue at all?

Mr Pilgrim: No, I have not considered that issue at this point.

Senator JACINTA COLLINS: Would you see it as a concern if the use of non-official means of communication, which involves the destruction of documents, were being used to the effect that future searches under the FOI Act would not be possible?

Mr Pilgrim: I think there are couple of overlapping issues there, and one would be relating to the Archives Act for which I do not have responsibility.

Senator JACINTA COLLINS: You don't?

Mr Pilgrim: Not for the Archives Act, no.

Senator JACINTA COLLINS: Who does?

Mr Pilgrim: The National Archives office has responsibility for the Archives Act. To try to not prolong the conversation, it is not a matter that I have actually turned my mind to at this point in time, so I do not know that I would be in a position to be able to answer your question directly at this stage.

Senator JACINTA COLLINS: Have you got a copy of that advice yet?

Mr Pilgrim: It has just been provided to me, yes.

Senator JACINTA COLLINS: It might be easier for me to ask you on notice to consider that advice with respect to FOI matters. I will ask my following question on notice as well, which is: will you consider conducting an own motion investigation into this issue?

Mr Pilgrim: I will certainly look at the advice and see what response we can provide. In terms of an own motion investigation, I will take that on notice and have a look at the advice in the first instance.

Senator Brandis: You should point out, Senator Collins, that the advice you have given was tabled by me last night in the Finance and Public Administration Estimates Committee, without having been requested to do so, because the government believe in open government. We, of our own motion, put this material before the parliament so that the parliament can know the advice the Prime Minister got.

Senator JACINTA COLLINS: We certainly have that piece of advice, but that piece of advice is but one part of that story. You will recall that Mr McKinnon referred us—

Senator Brandis: The questions are about the advice. This is the advice.

Senator JACINTA COLLINS: to the Australian Signals Directorate. I have questions well beyond just the advice, Senator Brandis, as indeed did the opposition last night.

Senator Brandis: Please do not try to muddy the waters here, Senator. This is the advice. The Prime Minister sought advice on this issue that you have raised. This is the advice that he received.

Senator JACINTA COLLINS: Senator Brandis, I am not muddying any waters, with respect. If anything, I suspect your attempt to narrow it down to this one piece of advice is—

Senator Brandis: This is all it is, Senator. This is the advice.

Senator JACINTA COLLINS: Yes, this is the advice that the Prime Minister received with respect to a particular issue. It is not the only relevant issue with respect to the matter.

Senator Brandis: I am just making it plain that this is the only advice the Prime Minister has received.

Senator JACINTA COLLINS: I have not even asked that question. Mr McKinnon referred us to the ASD last night. I think it is also an issue pertinent the Office of the Information Commissioner in relation to FOI, thus I am asking questions.

Senator Brandis: You are entitled to your opinions, Senator Collins. I am merely pointing out that this is the only advice the Prime Minister received. It was put on the public record by the government last night, not at the urging of the opposition, but in order to avoid the very thing you are trying to do now and suggest that there is some other dimension to this other than the mere fact of this advice.

Senator JACINTA COLLINS: There are many other dimensions to it.

Senator Brandis: The go again, Senator Collins.

Senator JACINTA COLLINS: I am not going anywhere. I have asked a question. Mr Pilgrim, have you taken a question on notice?

Mr Pilgrim: I will take that on notice, Senator.

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

The Office of the Australian Information Commissioner has noted the advice provided to the Prime Minister on the application of the *Freedom of Information Act 1982* to official documents of a Minister and is continuing to monitor the issue.