

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. SBE15/080

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

1. According to newspaper reports at the time, the evidence of these individuals' residential and employment status was to be found on the internet, on various social media sites such as Facebook.
 - a. Is this true?
 - b. Is it also the case, as reported, that these social media records were rapidly deleted once the story "broke" in the media?
2. To what extent was this social media material important in the investigation?
 - a. Did the deletion of this material make it difficult to gather evidence?
3. If the social media material was important from an evidentiary point of view in relation to the 28 referrals, how was it established that there were not other individuals who may have removed material from the internet in order to prevent further investigation?
4. If there were evidence that social media has been employed by individuals as a means of encouraging or facilitating behaviour of other individuals that was potentially in breach of the law, would such behaviour, on the face of it, amount to organised conspiracy?
5. If people self-incriminate using social media, for example, and then delete the material after it has been seen and copied digitally, how do the courts place weight on this "evidence"?
 - a. Does it cease to be evidence because it's no longer live, on a server, controlled by the author?
 - b. Does the deletion of evidence from a server, after it has been viewed, amount to impeding an investigation?
6. What is a citizen's obligation in circumstances where they become aware that someone has committed (or is about to commit) a crime – including online, via social media?
7. Did it appear, on balance, that there was some level or likelihood of organization amongst some portion of the group of 28 people under investigation?
8. In addition to the offence of providing false or misleading information to the AEC, the nature of the activity that occurred in Indi suggests that other offences may also have been potentially committed – for example joint commission, or incitement. Were other charges such as these considered during the course of your investigation?

If so-

 - a. Please list the specific offences and Acts)
 - b. How closely were these issues examined?
9. In relation to each of the possible offences that may have been applicable or considered in this matter, what is the minimum level and standard of evidence the AFP would typically require before it would be satisfied that a case of possible electoral fraud should be referred to the DPP?
10. Did the AFP restrict its investigation purely to the 28 cases referred by the AEC?
 - a. Was any additional investigative work undertaken in relation to any other people who might have been falsely enrolled in Indi?
 - i. If so, how many further people who were enrolled in Indi at the time of the 2013 election were specifically investigated?
11. If a wider investigation was not undertaken (especially given that the AEC had referred quite a significant number of suspicious cases in the same electorate), what were the reasons for not extending the investigation to determine if additional individuals may have falsely enrolled there?

12. Is it a specific offence under the law for a person to witness an electoral enrolment form without satisfying themselves as to the veracity of the information on the form?
 - a. Were the witnesses to the enrolment forms of every one of the individuals under investigation themselves questioned?
 - b. Do you believe all these witnesses did not know they were witnessing a false declaration?
 - c. Were there any cases where the same witness signed more than one of these forms for the 28 people under investigation? If so, in how many instances did this occur?
13. Every voter is required to make an oral declaration regarding their address to officials at the polling place. Is it therefore the case that, if someone is guilty of providing false or misleading information to the AEC by submitting a false address on a written form, they would also be making a false oral declaration if they gave the same address to an official at a polling place?
14. How many charges are the two individuals who are due to appear in court on 18 December each facing?
15. Of the 26 individuals who have not been charged to this point (and noting that the AFP originally referred four people for prosecution), how many would fall into the category of having evidence against them, but not enough to meet the burden of proof required for a successful prosecution under the relevant laws as they currently stand? And, conversely, how many had no evidence against them at all?
16. Of all 28 individuals investigated, how many made admissions of any kind to your officers?
17. The two people who have been charged with offences under the Criminal Code 1995 are listed to appear in the Magistrates Court in Melbourne on the same day at the same time.
 - a. What is the significance in this?
 - b. Are their cases being heard together – and, if so, why?
18. In relation to these two individuals: if it is the case that their cases are finalised without any evidence being presented in open court (i.e. if the individuals do not contest the charges), this would mean that significant and costly investigations and proceedings will have been conducted by at least three federal agencies and the court system without any transparency available to the public. Is it also obvious that even two potential prosecutions out of 28 referrals is a low return?
 - a. Would you agree that, in such circumstances, it would be incumbent on the AFP to formally report on the issues that occurred in Indi in 2013 to the Joint Standing Committee on Electoral Matters? (Including on whether the Criminal Code, as it currently stands, is adequate for dealing with matters such as deliberate enrolment fraud?)
19. In respect of false enrolment in a Federal House of Representatives seat, how many people, in total, have historically been referred by the AFP to the DPP in respect of:
 - a. The electorate of Indi;
 - b. All electorates in Victoria combined; and
 - c. All of the other States and Territories combined? (Please also indicate the time period to which these figures relate.)
20. Of the referrals cited in question 19, the cases of how many people, in total, have:
 - a. Formally proceeded to prosecution and
 - b. Had a conviction recorded?
Please indicate the relevant numbers for:
 - i. The electorate of Indi;
 - ii. All electorates in Victoria combined; and

- iii. All of the other States and Territories combined, and the time period to which each of these figures relates.)
21. Prior to the referral in 2015 of the four cases in Indi, when was the most recent occasion that someone was formally referred by the AFP to the DPP in respect of false enrolment in the Federal electorate of Indi?
 22. Prior to the referral in 2015 of the four cases in Indi, when was the most recent occasion that someone was formally referred by the AFP to the DPP in respect of false enrolment in a Federal House of Representatives electorate within the State of Victoria?
 23. Prior to it happening in 2015 in the two cases in Indi, when was the most recent occasion that someone was formally charged by the DPP in respect of false enrolment in a Federal House of Representatives electorate within the State of Victoria?
 24. Prior to it happening in 2015 in the two cases in Indi, when was the most recent occasion that someone was formally charged by the DPP in respect of false enrolment in the Federal electorate of Indi?
 25. To the best of the AFP's knowledge, when was the most recent occasion prior to the current case involving Indi that a direct relative of a candidate contesting a Federal electorate was charged with providing false or misleading information to the AEC in relation to that electorate?
 - a. Who was the candidate, and in what electorate?

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

1. Two people have been charged in relation to these allegations and those matters are currently before the courts. It is not appropriate to comment further until those prosecutions have been concluded.
2. Please refer to the response for question one.
3. Please refer to the response for question one.
4. Please refer to the response for question one.
5. This is a matter for the Courts to determine.
 - a. No it does not cease to be evidence if it is stored telecommunications data or is the subject of recovery through means available to law enforcement.
 - b. Not if the owner of the information is unaware an investigation is underway.
6. There is no legal obligation to report a crime. This is moral/ethical question.
7. Please refer to the response for question one.
8. Please refer to the response for question one.
9. The legal standard required is proof beyond reasonable doubt.
10.
 - a. The AFP investigated 27 suspects following the referral by the AEC.
 - b. One other allegation referred by AEC at a later date was evaluated and it was determined there was insufficient evidence to support proceeding to prosecution.

11. The AFP evaluated and investigated all allegations of electoral fraud in the division of Indi referred to the AFP.
12. Firstly to clarify, an elector can change their enrolment details either on line via the AEC website or manually via a paper form which is posted to the AEC. If an elector changes his / her address on line there is no need for a witness. That person is required to declare that the information they provide electronically is true and correct.
 - a. Please refer to the response for question one.
 - b. Please refer to the response for question one.
 - c. Please refer to the response for question one.
13. This is a matter for the AEC but proving these offences confronts similar issues to proving allegations of multiple voting, which has been documented extensively (refer to the [AFP submission](#) to the Joint Standing Senate Committee on Electoral Fraud - *Inquiry into the conduct of the 2010 Federal Election and matters related thereto* – dated 27 June 2011).
14. Please refer to the response for question one.
15. The AFP prepared briefs of evidence relating to four individuals because we had reasonable grounds to believe there was sufficient evidence to support a prosecution. Two briefs of evidence were accepted by the CDPP. The AFP did not have reasonable grounds to believe offences had been committed by the remaining 24 people, therefore no prosecution was recommended.
16. Please refer to the response for question one.
17.
 - a. This is a matter for the CDPP
 - b. This is a matter for the CDPP
18. Criminal evaluations and investigations are not based on a cost benefit analysis. The AFP's focus is on justice and the ability to prove the elements of an offence. Where a decision is made to investigate allegations of criminal conduct referred to the AFP, the investigation is conducted fully and comprehensively.
 - a. The AFP provides feedback to the AEC as the complainant in the matter. The AFP welcomes opportunities to improve the application of the law to reflect the intent of parliament in representing the interests of the Australian community.
19.
 - a. From 2010 to current, the only briefs of evidence submitted to the Commonwealth Department of Public Prosecutions (CDPP) concerning electoral fraud (false enrolments) by electors in the Division of Indi, are the four resulting from the recent investigation.
 - b. As above (Statistics from 2010 to current)
 - c. As above (Statistics from 2010 to current)
20.
 - a. The two matters above mentioned are currently before the Courts.

b. i. Nil.

ii. Nil.

iii. Nil.

21. There are no previous referrals recorded with respect to the seat of Indi recorded in the past five years.
22. There are no previous referrals recorded with respect to the state of Victoria recorded in the past five years.
23. There have been no previous charges, referred by the AFP to CDPP in the past five years, with respect to Federal House of Representatives electorate in the state of Victoria.
24. There have been no previous charges, referred by the AFP to CDPP, recorded with respect to false enrolment in the Electorate of Indi.
25. There have been no previous occasions that a direct relative of a candidate contesting a Federal electorate was charged with providing false or misleading information to the AEC.
 - a. Please refer to the above.