

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

Group 3

Program 1.6

Question No. 47

Senator Brandis asked the following question at the hearing on 12 February 2013:

Senator BRANDIS: Then listen to my questions carefully. We know that the American justice department told you that they did not have sufficient information to enable them to satisfy your department's request. My question to you is: did your department inquire of the American authorities what further information they required?

Mr Wilkins: Yes.

Senator BRANDIS: You did?

Mr Wilkins: Yes.

Senator BRANDIS: Did you receive a response from the American authorities?

Mr Wilkins: Yes, we did.

Senator BRANDIS: And that was responsive to your request in that they told you what further information they required?

Mr Wilkins: In general terms.

Senator BRANDIS: They did?

Mr Wilkins: In very general terms.

Senator BRANDIS: On what date was that response received?

Mr Wilkins: I am not sure.

Senator BRANDIS: Does anyone at the table know?

Mr Wilkins: No. We will have to take that on notice.

Senator BRANDIS: We know from the note from which I have read that the Americans told you in a communication received on 3 October that they did not have enough information. You have now told us that you asked them what more they needed and that they responded, albeit, as you say, in very general terms. How long a lapse between those respective communications was there?

Mr Wilkins: I do not know. I would have to take that on notice.

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

On 11 May 2012 the Australian Federal Police (AFP) contacted the Department about making a mutual assistance request to the United States in the matter of Operation Mescos.

Before making enquiries of the United States Department of Justice (the Central Authority for mutual assistance in the United States) (USDOJ), the Department liaised extensively with the AFP to seek the information relating to the investigation and the connection between the assistance requested and the facts provided.

On 9 August 2012, the Department made enquiries of the USDOJ as to whether there was sufficient information currently available to satisfy the United States' threshold for obtaining the authorisation necessary to compel YouTube to provide IP address and subscriber information.

Between 9 August 2012 and 3 October 2012 the Department had a number of communications with the USDOJ about the matter, including what further information might assist in meeting the relevant legal thresholds. The Department was in regular contact with the AFP during this period to discuss the advice provided by the USDOJ and the implications for the mutual assistance request.

Following a teleconference on 3 October 2012, the Department concluded, based on the advice provided by the USDOJ and the information currently available in the AFP's investigation to support the mutual assistance request, that it was not in a position to meet the relevant legal thresholds and that it would not be appropriate to make the request at that time. On the same date, the Department informed the AFP of its position but advised that it could consider making a request at any time in the event further information became available to assist in meeting the relevant legal thresholds.