

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN FEDERAL POLICE

Question No. 176

Senator Ludwig asked the following question at the hearing on 24 May 2005:

In relation to reports that the AFP is considering implementing production notices:

- a) When is the AFP's preliminary research expected to be complete?
- b) Please provide a list of the stakeholders that the AFP has been in discussion with over this issue?
- c) Has work commenced on a draft bill?
- d) Are any discussion or issues papers slated for release?
 - i) If so, when are they due to be released?
 - ii) If not, are any expected to be released.
- e) What sort of information would be available to gather
- f) Would the AFP be required to specifically state the information it is attempting to gather, or would it be allowed to go on fishing expeditions?
- g) Would it extend to internal memos, emails, correspondence, etc.?
- h) What would be the requirements for the issuance of such a notice? eg. Would it have to be issued by a magistrate, judge, etc.?
- i) To what extent will the produced information be kept confidential?
- j) What is the current procedure for forcing compliance in situations where an organisation refuses to provide information on Privacy Act grounds?
- k) How many times has that occurred?
- l) To what extent have you been working on this issue with the Office of the Privacy Commissioner?
- m) Have there been any meetings? When, where?

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

- a) The AFP's research is on hold pending the recruitment of additional permanent staff to its Legislation Program and the finalisation of higher priority legislative issues by the existing staff.
- b) The AFP has raised this issue with the Commonwealth Attorney-General's Department and the Federal Privacy Commissioner (in its submission to her review of private sector provisions of the Privacy Act) as well as in its submissions to the current inquiry by the Senate Legal & Constitutional Affairs Committee into the *Privacy Act 1988* and the Senate Standing Committee on the Scrutiny of Bills Inquiry into Entry, Search and Seizure Provisions in Commonwealth Legislation.
- c) No.
- d) The AFP has not considered developing a public discussion paper as part of the development of a proposal for a notice to produce power.

- e) The AFP envisages that notices to produce would facilitate essential and basic inquiries with, for example, utilities companies related to an investigation such as confirming the existence of an account, account holder details, account history and payment details.
- f) Any proposal for a notice to produce power would be framed in accordance with the principles established by the Government's *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, which outlines that notice to produce powers should require notice to be given in writing, and that the notice outlines the grounds for seeking information, the information sought and how it should be provided, and a deadline for compliance.
- g) The AFP's research has not advanced to a stage sufficient to answer this query.
- h) Any proposal for a notice to produce power would be framed in accordance with the principles established by the *Government's A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, which outlines that the authority to issue a notice to produce should be conferred on the chief executive of an Australian Government agency, but can be delegated.
- i) The AFP's research has not advanced to a stage sufficient to answer this query.
- j) Where information is requested for law enforcement purposes under the *Privacy Act 1988* but access is denied, AFP personnel do attempt to negotiate release. However, not all negotiations are successful. There have been instances where organisations have insisted on a search warrant to provide this information.
- k) The AFP does not collect those statistics.
- l) As referred to in the answer to question b) above, the AFP raised this issue with the Federal Privacy Commissioner in its submission to her for her review of private sector provisions of the *Privacy Act*. The Privacy Commissioner has recommended to the Attorney-General in her review report, *Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988*, which the Attorney-General released in May 2005, that her Office will work with the Law enforcement community, private sector bodies and community representatives to develop more practical guidance to assist private sector organisations to better understand their obligations under the *Privacy Act* in the context of law enforcement activities. The Government is considering its response to her Report.
- m) No.