

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN FEDERAL POLICE

Question No. 263

Senator Greig asked the following question on 2 December 2004:

Matters relating to the Windsor allegations: Were there any limits to the discretion that the AFP had in gathering evidence for the investigation?

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

No.

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Question No. 264

Senator Greig asked the following question on 2 December 2004:

What process governed the AFP's selection of persons for interview regarding the allegation?

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

Operational decisions, including decisions about interview of possible witnesses or offenders, are made at the discretion of investigators, with appropriate guidance from managers.

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Question No. 265

Senator Greig asked the following question on 2 December 2004:

Were any alleged principals and witnesses in the matter, including the Hon. Mr John Anderson MP, Senator Sandy Macdonald and Ms Wendy Armstrong, not interviewed, and why?

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

The AFP interviewed the source and witnesses to the alleged incident as well as another person involved in the incident. As a result of those interviews no evidence was identified to support the allegations made. Therefore no further persons were interviewed.

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Question No. 266

Senator Greig asked the following question on 2 December 2004:

It is understood that the AFP's investigation was finalised and the result announced on 22 November 2004, almost immediately after Mr Windsor MP aired his allegations in the Parliament on 17 November 2004. Given that it was in the public interest for the matter to be resolved as soon as possible, why was it not finalised prior to the 17 November 2004?

- a) When did the AFP first receive advice from the CDPP that the available evidence would not substantiate a charge?
- b) Was this advice initially received in writing or verbally? If the advice was first received verbally, when was written advice received?
- c) How long was the delay between receipt of this advice and the release of the AFP's media statement on 22 November and what caused this delay?

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

The AFP completed its initial investigation on 7 October 2004 and referred the matter to the Commonwealth Director of Public Prosecutions (CDPP) on that date.

- a) 3pm on Friday 19 November 2004.
- b) The advice was received in writing.
- c) Three days. The investigation was reviewed upon the receipt of the advice and the investigation was finalised on Monday 22 November 2004.

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Question No. 267

Senator Greig asked the following question on 2 December 2004:

Did the AFP endeavour to conclude the investigation before the sitting of the new parliament (i.e. 16 November 2004) given the nature of the allegations and possible damage to the reputations of sitting members?

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

The timing and nature of enquiries are determined on a case by case basis. The outcome of an investigation is always the primary focus for law enforcement.

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Question No. 268

Senator Ludwig asked the following question on 2 December 2004:

Does the AFP receive informal or formal advice from the Department of the Prime Minister and Cabinet on how particular investigations should be conducted?

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

No.

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Question No. 269

Senator Ludwig asked the following question on 2 December 2004:

Was any such advice given in the following incidents:

- a) November 2004 investigation into leak of cabinet documents relating to ATSI policy?
- b) November 2004 investigation into allegations of Tony Windsor MP?
- c) How many officers were assigned to investigate the above incidents?
- d) What was the estimated cost of investigating the above incidents?

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

- a) No
- b) No
- c) ATSI Investigation – 2 AFP Investigators who were supplemented during the execution of the search warrants by 3 more AFP Investigators.
Windsor Investigation – 2 AFP investigators
- d) ATSI Investigation - Approximately \$8,250
Windsor Investigation – Approximately \$22,866

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 270

Senator Ludwig asked the following question on 2 December 2004:

Are specific investigative procedures in place for the investigation of:

- a) leaked cabinet documents
- b) leaked classified material generally? Please supply details.

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

a) and b) No specific investigative procedures exist for these types of investigations. However, AFP investigations are conducted within a corporate governance and investigation methodology framework. This framework includes national operations policy, national guidelines, practical guidelines, Commissioner's orders and management of serious crime methodology. The framework also includes the AFP case management system and advisory guidelines from the Commonwealth Director of Public Prosecutions.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 271

Senator Ludwig asked the following question on 2 December 2004:

With reference to the 2003-04-05 Budget expense measure 'E-security national agenda': a) What actual amount has been spent by the National Office for the Information Economy in (i) 2002-03, and (ii) 2003-04 and (iii) 2004-05 on improving e-security? b) On what e-security initiatives has funding been spent by NOIE?

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

This question should be directed to the Department of Communication, Information Technology and the Arts, the responsible Department for the National Office for the Information Economy (or its replacement body, the Australian Government Information Management Office (AGIMO)).

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 272

Senator Ludwig asked the following question on 2 December 2004:

With reference to the 2003-04-05 Budget expense measure “E-security national agenda”:

- a) What actual amount has been spent by the Australian Federal Police in 2003-04-05 on e-security?
- b) On what e-security initiatives has funding been spent by the AFP?

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

- a) The e-security national agenda measure has been allocated to the Australian High Tech Crime Centre (AHTCC) and the Australian Federal Police (AFP) Computer Forensics Team (CFT). During the 2003 – 2004 financial year the AFP expended \$2.54 million on e-security. In the current financial year up to 31 December 2004, the AFP has expended \$1.264 million on e-security.
- b) The e-security initiative has allowed the AFP to:
 1. continue its placement of two High Tech Crime investigation teams in Sydney and Melbourne which are co-located on police premises;
 2. continue to host the AHTCC;
 3. continue to develop specific skills including computer forensics and electronic evidence retrieval; and
 4. develop strategic partnerships with domestic and international law enforcement agencies, technology providers and public & private sector agencies.

The development of those skills and partnerships, together with its ongoing commitment to the AHTCC, provides the AFP with the capacity to investigate crimes such as denial of service attacks, phishing, hacking and the use of technology to facilitate the investigation of other crimes such as terrorism, fraud and drug smuggling.

The AHTCC was established by the Commissioners of the AFP and all State and Territory Police Services to:

- Provide a national coordinated approach to combating serious, complex and multijurisdictional high tech crimes, especially those beyond the capability of single jurisdictions;
- Assist in improving the capacity of all jurisdictions to deal with high tech crime; and
- Support efforts to protect the National Information Infrastructure (NII).

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Question No. 273

Senator Ludwig asked the following question on 2 December 2004:

How many breaches of security in relation to the maintenance of an adequate level of security for in confidence and sensitive material have been reported in the financial years 00-01-02-03-04?

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

The following table sets out the number of such breaches reported to the AFP during the periods in question:

2000	2001	2002	2003	2004 YTD	Total
14	13	12	16	4	69

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Question No. 274

Senator Ludwig asked the following question on 2 December 2004:

On what date did the AFP notify Minister Ellison that a police investigation had commenced into Deputy Prime Minister John Anderson and the Deputy Leader of Nationals in the Senate Sandy Macdonald based on allegations of Mr Tony Windsor? (specify also means by which this communication was given, by whom and to whom)

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

The AFP first notified the Minister for Justice and Customs of the investigation on 17 November 2004. The Minister asked the AFP to prepare a possible parliamentary question brief, in response to media articles on the same day. The brief was prepared by AFP officers and submitted to the Minister's office via the Attorney-General's Department as per the normal process.

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Question No. 275

Senator Ludwig asked the following question on 2 December 2004:

Did the AFP at the time notify officially or unofficially any other Member or Senator or their staff that an investigation had commenced into Deputy Prime Minister John Anderson and the Deputy Leader of Nationals in the Senate Sandy Macdonald? (If so specify by who, to who, by what means and when)

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

No.

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Question No. 276

Senator Ludwig asked the following question on 2 December 2004:

Did the AFP at the time notify officially or unofficially officials from the Department of the Prime Minister and Cabinet, or the Department of Transport and Regional Services that an investigation had commenced into Deputy Prime Minister John Anderson and the Deputy Leader of Nationals in the Senate Sandy Macdonald? (If so specify by who, to whom, by what means and what dates)

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

No.

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Question No. 277

Senator Ludwig asked the following question on 2 December 2004:

On what date did the AFP notify Minister Ellison that the police investigation into Deputy Prime Minister John Anderson and the Deputy Leader of Nationals in the Senate Sandy Macdonald based on allegations of Mr Tony Windsor had been completed? (If so specify by who, to whom, by what means and what dates)

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

On 22 November 2004 the AFP provided Senator Ellison with a written brief about the allegations made by Mr Tony Windsor MP. The brief was submitted through the Deputy Commissioner to Senator Ellison's office.

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Question No. 278

Senator Ludwig asked the following question on 2 December 2004:

Did the AFP time notify officially or unofficially any other Member or Senator or their staff that this investigation had been completed into Deputy Prime Minister John Anderson and the Deputy Leader of Nationals in the Senate Sandy Macdonald? (If so specify by who, to whom, by what means and what dates)

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

No.

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Question No. 279

Senator Ludwig asked the following question on 2 December 2004:

Did the AFP notify officially or unofficially officials from the Department of the Prime Minister and Cabinet, or the Department of Transport and Regional Services that an investigation had been completed into Deputy Prime Minister John Anderson and the Deputy Leader of Nationals in the Senate Sandy Macdonald? (If so specify by who, to whom, by what means and what dates)

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

No.

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Question No. 280

Senator Ludwig asked the following question on 2 December 2004:

Interrogation:

- a) Does the AFP have in place a policy regulating the process of obtaining evidence from persons during interrogation?
- b) If not, are AFP officers bound by any Australian laws or regulations regarding the process of obtaining evidence from persons during interrogation?
- c) Does this policy, law or regulation require that a lawyer be present during the interrogation of a person?
- d) If not, does this policy, law or regulation require that a lawyer be present during the interrogation of a person, if that person requests that a lawyer be present?
- e) Is this policy, law or regulation altered by the fact that the person makes a confession during their interrogation?
- f) Is this policy, law or regulation altered by the fact that the person the subject of the interrogation is not currently in Australia?
- g) I refer you to the recent charging of Mr Jack Thomas with terrorist offences. In that instance, was this policy, law or regulation complied with?
- h) If not, why?
- i) Has the AFP subsequently adopted any new policies to ensure that such policies, laws or regulations are complied with in the future?
- j) If not, why?

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

a) and b) Part 1C of the Crimes Act 1914 (*Cwlth*) provides the legislative framework within which the AFP conducts its investigations of Commonwealth offences involving persons under arrest or protected suspects. Investigating officials must comply with these legislative provisions.

c) No. Section 23G of the Crimes Act 1914 requires that prior to commencing any questioning of a person under arrest or a protected suspect in relation to a Commonwealth offence, an investigating official must inform the person that he or she may communicate, or attempt to communicate, with a legal practitioner of the person's choice and arrange, or attempt to arrange, for a legal practitioner of the person's choice to be present during the questioning. The investigating official must defer questioning for a reasonable time to allow for these arrangements to be made, and to allow the legal practitioner to attend the questioning. Section 23L of the Crimes Act 1914 sets out exceptions to the rules in section 23G.

d) Subject to sections 23G(3)(b) and 23L of the Crimes Act 1914, if the person who is under arrest or the protected suspect wishes to communicate with a legal practitioner, the investigating official must allow the legal practitioner to attend the questioning.

e) This legislative framework is not altered by the fact that a person makes or does not make admissions during the taped record of interview.

f) No. Part 1C applies to an interview conducted by the AFP overseas with a person who is under arrest for a Commonwealth offence or who satisfies the definition of protected suspect. Its application may be subject to and affected by the laws and conditions within the host country.

g) and h) The AFP always endeavours to comply with Australian law. As this matter is currently before the court, the AFP cannot comment on specific detail of this case.

i) and j) The relevant agency of a foreign jurisdiction will often require that the laws of the jurisdiction in which the interview is being conducted be complied with. Admissability of information arising from such interviews, whether conducted in Australia or overseas, in subsequent legal proceedings in Australia, is regulated by Australian laws. Commonwealth agencies, including the AFP, have commenced a review of the reasonable application of Part 1C of the Crimes Act 1914 overseas

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Question No. 281

Senator Ludwig asked the following question on 2 December 2004:

Cooperation with ASIO:

- a) Did the AFP consult with ASIO before arresting Mr Thomas?
- b) At the time of Mr Thomas' arrest, was the AFP aware that Mr Thomas had been assisting ASIO?
- c) If not, at what time did the AFP subsequently become aware of this fact?

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

- a) In accordance with the whole of government principles, the AFP did provide notification to ASIO of the planned arrest of Mr Thomas.
- b) and c) The AFP does not comment publicly on the nature or content of information which it may or may not receive from ASIO.