

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

REVIEW OF AUDITOR-GENERAL'S REPORT NO.23 (2014-15)

ANSWERS TO QUESTIONS ON NOTICE

Department/Agency: Australian National Audit Office

Audit: Audit Report No.23 2014-15

Title: Administration of the Early Years Quality Fund

Member: Mr Ian Macfarlane (Chair)

Type of question: Proof Committee Hansard, p.2, 12 November 2015

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Question:

CHAIR: Does the ANAO have the right to get at phone records?

Ms Kairouz: I believe we do.

Mr Hehir: We would have to get legal advice on that and on how my Act relates to the Telecommunications Act. I would not like to speculate on that—

CHAIR: I would be interested in the answer.

Answer:

Based on advice from the Australian Government Solicitor, the ANAO response is as follows.

The Auditor-General would be able to obtain phone records (e.g. telephone numbers of parties to a call and the time and duration of calls) where appropriate in the performance of relevant functions. Whether or not this could be done in a particular case will depend on the circumstances of each case. In general, however, there would be scope under the *Auditor-General Act 1997* for the Auditor-General to direct a carrier or carrier service provider to provide these records. There would also be scope in some cases for the Auditor-General to obtain phone records from others, including from an entity subject to a performance audit. However, whether or not this could be done would also depend on the circumstances of each case including the terms of any secrecy provisions applying to officers in the entity and the interaction of these provisions with the powers of the Auditor-General under the *Auditor-General Act 1997*. Parliamentary privilege may also operate in some cases to restrict the Auditor-General's powers to obtain certain information.

It is unlikely that the Auditor-General could obtain and use 'stored communications' held by carriers, including voicemail and SMS messages, in view of the provisions of the *Telecommunications (Interception and Access) Act 1979*. However, that Act does not restrict access to SMS messages and voicemail from a device held by the intended recipient of the communication, and there would be circumstances in which these could be obtained by the Auditor-General in connection with an audit.