

Parliamentary Joint Committee on Intelligence and Security

Parliamentary inquiry – Impact of the exercise of law enforcement and intelligence powers on the freedom of the press

ANSWER TO QUESTION ON NOTICE

Australian Signals Directorate

Topic: PJCIS - Impact of the exercise of law enforcement and intelligence powers on the freedom of the press - 20 September - ASD Q1 – Schemes available to raise concern - Fawcett

Question reference number: 1

Senator: David Fawcett

Type of question: Spoken

Date set by the committee for the return of answer: 9 October 2019

Question:

Senator FAWCETT: It's been put to the committee that people haven't had confidence that the response by departments either would be or has been adequate, which is why they have gone to the media. Could you provide the committee the figures—and I'm happy for you to take this on notice—

Ms Skinner: No, I've got them.

Senator FAWCETT: of how many times people have either exercised the PID scheme or gone to the Ombudsman, or one of the other avenues, and what the outcomes have been—obviously not necessarily the details. Has it been resolved satisfactorily? The final part of the question is: for any disclosures that have pertained to Defence or its agencies in the last several years, have the cases there gone through those processes and exhausted those processes before the individual went public? I'm conscious that with some cases you may not be able to talk about that right at the moment.

Senator FAWCETT: If you could. But what I'm also interested in is this: if you had 1,900 and you dealt with roughly 1,200, were the complainants satisfied—with those ones that weren't progressed through the system? And, in accordance with section 744 of the Ombudsman's guide to agencies, what processes do Defence have in place when a complainant is not happy with the result that comes back to them after they have actually used that scheme or, indeed, as you mentioned, one of your other schemes? I'm happy for that to be taken on notice. But it's vital that we give assurance to the Australian public that there is a scheme that people are trained in and aware of, there is a culture within the organisation that opens the door for people to use this system and it gets effective outcomes.

Ms Skinner: I'd add that part of the Defence mandatory training includes an element of integrity training that goes to ensuring that all staff understand the public interest disclosure scheme, and we have very high percentages of staff—in the 80 to 90 per cents—who take that training annually. But I'll get back to you on those other points on notice.

Lt Gen. Frewen: I'd add that, in ASD's case, we have a very strong security culture that requires training and ongoing consideration of individual circumstances. When it comes to

avenues for reporting, similarly, we welcome people raising any concerns with their immediate supervisors. People are able to make disclosures under the public interest disclosure scheme. We are also able to make representations directly to the Inspector-General of Intelligence and Security. We have mandatory fraud and ethics training that everybody must complete every two years. We have got very high—in the 90 percentile range—compliance with that at the moment. We will take the detail on notice, but I can give you an indication that, over the approximately 18 months that we have been a statutory agency, we have had a handful of PID matters raised. We have also, over the last five years, had about a dozen matters raised to the Inspector-General of Intelligence and Security. In amongst those there are clear cases where people have brought matters of concern forward. The IGIS have considered those. There have been some matters where fault was found and there have been remedial processes put in place, and the individuals have been satisfied with the outcome.

Answer:

Could you provide the committee the figures of how many times people have either exercised the PID scheme or gone to the Ombudsman, or one of the other avenues?

| Year | Public interest disclosures made to IGIS regarding ASD | Other complaints to IGIS about ASD |
|--------------|---|---|
| 2017/2018 | 0 | 3 |
| 2016/2017 | 5 | 2 |
| 2015/2016 | 2 | 1 |
| 2014/2015 | 0 | 1 |
| 2013/2014 | 1 | 2 |
| Total | 8 | 9 |

| Year | Public interest disclosures made to ASD |
|--------------|--|
| 2018/2019 | 2 |
| 2017/2018 | 1 |
| 2016/2017 | 5 |
| 2015/2016 | 3 |
| 2014/2015 | 0 |
| 2013/2014 | 0 |
| Total | 11 |

What have the outcomes been, were the complainants satisfied?

In ASD's view, the PID scheme and IGIS complaints scheme are effective processes that provide positive outcomes.

The IGIS public annual reports provide examples of complaints they handle in relation to ASD and other intelligence agencies. Those include examples where the complaint has been resolved in the favour of the complainant. The IGIS 2016 - 2017 Annual Report provides a relevant case study and is available at www.igis.gov.au.

For any disclosures that have pertained to Defence or its agencies in the last several years, have the cases there gone through those processes and exhausted those processes before the individual went public?

There are no applicable cases relating to ASD.

In accordance with section 744 of the Ombudsman's guide to agencies, what processes do Defence have in place when a complainant is not happy with the result that comes back to them after they have actually used that scheme or, indeed, as you mentioned, one of your other schemes?

ASD personnel can take issues, including issues with ASD's PID handling processes, directly to the IGIS. IGIS is an independent statutory office holder who works to ensure Australia's intelligence agencies act legally and with propriety, comply with ministerial direction and respect human rights.

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ANSWER TO QUESTION ON NOTICE

Australian Signals Directorate

Topic: PJCIS - Impact of the exercise of law enforcement and intelligence powers on the freedom of the press - 20 September - ASD Q2 - ASD contact with AFP - Dreyfus

Question reference number: 2

Member: Dreyfus

Type of question: Spoken

Date set by the committee for the return of answer: 9 October 2019

Question:

Mr DREYFUS: Are you aware that the Australian Federal Police initially classified the unauthorised disclosure to Annika Smethurst as a routine investigation that was of low value to the AFP, of routine impact to the client and of medium impact to Australian society?

Mr Moriarty: I'm not aware of how the AFP may have characterised it.

Mr DREYFUS: The AFP later reclassified the unauthorised disclosure as essential, the value to the AFP as high, the impact on the client—which, presumably, is you—as critical and the incident type as corruption. They'd initially classified it as 'other Commonwealth crime'. Did anyone from Defence or ASD have any contact with the AFP at this particular point, in May 2018, after the referral?

Ms Skinner: Not that I'm aware of.

Mr Moriarty: I'll take that on notice.

Lt Gen. Frewen: I'm not aware of any contact between ASD and AFP at that time, but I'll take that on notice.

Mr DREYFUS: You weren't there. You might not have known. Could you take that on notice. I'm interested in whether there were interactions that might have led to the AFP up-classifying the importance of the matter.

Lt Gen. Frewen: I was a member of ASD at the time, but I will take that on notice.

Mr DREYFUS: Sorry. 'You weren't on this,' is all I'm trying to say.

Answer:

Yes. ASD officials had contact and met with the AFP during May 2018 to assist with their investigation.