

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

Group: 3

Program: Other Agency

Question No. AE15/110

Senator Xenophon asked the following written question from the 24 February and 27 March 2015 hearings:

I refer the statement by AFP Deputy Commissioner Phelen at the Legal and Constitutional Affairs Senate Estimates Committee of 20 November 2014 that the AFP received a number of pieces of legal advice from the Attorney General's office, as well as from independent Legal Counsel, that were instrumental in the AFPs decision not to proceed with the Balibo 5 war crimes investigation.

Given that over \$500,000 and 5 years were expended in this failed investigation, and that the Attorney General Senator Brandis acknowledged that the decision to release this legal advice rests solely with the government, I now call upon the government to fully release this vital information.

For 40 years the Australian public and the families of the murdered men have sought clarity on this tragic matter, and for 40 years successive Australian governments have hidden behind a spurious "national interest" excuse to deny natural and legal justice.

At a time when Australians have a significant crisis of confidence in the ability of our own government and Federal Police force to uphold fundamental human rights, the only transparent option is to fully disclose the legal basis on which the Balibo 5 investigation into war crimes was abandoned.

Will you therefore immediately release the departmental and independent legal advice which lead to the abandonment of the Balibo 5 war crimes case?

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

It is the position of the Australian Federal Police that we will not waive privilege on the legal advice obtained during the course of the investigation.