



INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

2002/214

Mr Peter Banson
Estimates officer
Senate Finance and Public Administration
Committee
Parliament House
CANBERRA



Dear Mr Banson

QUESTIONS ON NOTICE - INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

I appeared before the Senate Finance and Public Administration Committee on Tuesday 28 May 2002. During that hearing I took questions on Notice from Senator Forshaw and gave an undertaking to respond as quickly as possible.

The Questions on Notice related to the inquiry which the Minister for Defence asked me to conduct into allegations about DSD's collection of intelligence involving the MV Tampa.

The answers to Senator Forshaw's questions are attached.

Yours sincerely

W J Blick

W J Blick
Inspector-General of
Intelligence and Security

12 June 2002

Written questions on notice (Senator Mike Forshaw, Finance and Public Administration Committee)

1. *Please confirm that the IG gave the Defence Minister a copy of his draft report into the Tampa allegations on or around 12 April 2002.*

Answer:

I sent the minister the draft on 27 March, with a letter inviting him to discuss it with me if he so wished.

2. *Why did the IG give this draft copy to the Defence Minister? In particular, did the IG give the Minister the draft for information purposes only; or to give the Minister the opportunity to comment on it, etc?*
3. *Is the IG required to give a draft of such inquiry reports to the portfolio Minister?*
 - *If yes, please specify what legal provision or policy the IG regards as the source of this requirement. If a policy, please provide a copy of it;*
 - *If no, please state why on this occasion the IG gave a draft to the Minister. For example, because the Minister requested a copy of the draft, or believed he was entitled to it.*

Answer:

Section 17(9) of the Inspector-General of Intelligence and Security Act provides as follows: *The Inspector-General shall not make a report in relation to an inquiry conducted under this Act in which the Inspector-General sets out opinions that are, either expressly or impliedly, critical of an agency unless the Inspector-General has given the responsible minister a reasonable opportunity to discuss the proposed report with the Inspector-General.*

I provided the draft to the minister in order to give him the reasonable opportunity required by the Act.

4. *Has the IG or previous IG's before him provided copies of drafts of reports to inquiries to the portfolio Minister? If yes, when and which inquiries did they relate to?*

Answer:

I cannot say with certainty that in researching the answer to this question we have identified every inquiry conducted since the office was created. In the cases we have examined it has been the practice to provide the minister with a copy of the draft report where the final report was likely to express critical conclusions. Since the details of inquiries are not normally made public, however, (the Tampa case was an exception) I regret that I am unable to provide specific details.

5. *Did the IG or any of his staff have any communication with Senator Hill's office between establishment of the inquiry and the supply of the draft report?*
6. *What was the objective or the reasons for this communication? Who initiated the contact on each occasion? How many times did such communication occur in this period?*
7. *Did the Minister suggest any specific or general matters that the IG should or might consider before sighting the draft report?*

8. *If yes, what sort of matters?*

Answer:

On 13 February 2002 I wrote to the minister informing him of the inquiry and the matters I intended it to cover. A copy of that letter is attached. On 14 February the minister's chief of staff telephoned me to inform me that the minister would be making a clarifying statement in the Senate and he later forwarded a copy. A copy of his letter and attachment are attached. It is likely also that someone telephoned the minister's office to inform them of the imminent delivery of my letter of 27 March (see answer to question 1), but apart from that there was no further contact between me or my office and the minister or his office.

9. *After receiving the draft report, did the Minister or any of his staff suggest any changes that might be made to it, or make any comments about it with the expectation that the IG would take this view into account?*

10. *Did the IG make any changes to the draft resulting indirectly or directly from the Minister's views or preferences?*

Answer:

No. I did, however, make one minor change to a paragraph in the body of the report, because it was apparent from a factual question the minister asked during our discussion that the paragraph was potentially misleading. I corrected it, at my own initiative, to remove that problem. I made another minor change before presenting the final report, but that was a change I had already decided before discussing the draft with the minister.

11. *Please confirm precisely how many intelligence officers were involved in the five breaches, from the point of collection of raw intercept on Australians through to distribution of the end-product reports.*

12. *In the Inspector-General's view, do the breaches identified in his report that involved "tens" of officers (evidence at Senate Estimates on 28 May 2002), represent an unusually high number of breaches in a short period?*

13. *If yes, what is the probable explanation for this?*

14. *If not, would the Inspector-General be unsurprised to find, if he were to conduct a similar examination of intelligence activity over any two month period, a similarly high number of errors?*

Answer:

As I said in answer to Senator Faulkner's questions on 28 May, the number of officers from whom I received statutory declarations was in the tens, but the number of officers involved in the actual breaches was much smaller. The reason for the large number of statutory declarations was that the inquiry was investigating allegations that went wider than the specific breaches identified. To disclose the precise number of officers involved in the breaches would reveal details of operational capacity that should remain confidential.

The breaches did involve an unusually high number in a short period. The likely explanation is that little or nothing in their training or previous experience had alerted the officers to the need for particular care when dealing with material of this kind.

15. *Has there been any action taken (eg, warning, disciplinary action) against the officers responsible? Especially the officer(s) responsible for the action that the IG indicated was probably a breach of the Telecommunications (Interception) Act.*

Answer:

Please refer to my answer at Hansard pF&PA 187, 28 May 2002.

16. *Who is responsible for prosecuting offences under the Telecommunications (Interception) Act ?*

17. *Has any consideration been given to such a prosecution?*

18. *Please refer to paragraph 25 of the IG's report. What was so 'abnormal' or unusual about the circumstances of intelligence collection during Tampa that meant DSD acted in breach of the Act?*

Answer:

The Commonwealth would be responsible prosecuting offences under the Act. It is not clear, however, that there was a breach of the Act. I regret that it is not possible to explain further the reason for the observation in paragraph 25 without revealing operational detail that should remain confidential.

19. *To the IG's knowledge, did anyone in DSD or the Government either at the time or afterwards raise questions about why the material in breach on Australians was not only being collected, but synthesised, reported and distributed?*

Answer:

My office raised the question at the time and DSD promptly ceased the activity.

20. *How can the issue of further "special internal instructions" (para 20) in DSD possibly improve compliance with privacy rules protecting Australians, if the existing rules were perfectly clear?*

Answer:

The existing rules did not deal with the specific issue of collecting or reporting intelligence relating to possible legal proceedings.

21. *Does the IG regard these breaches as systemic, not just working-level failures or one-off inadvertent collections?*

Answer:

I consider that the breaches were working-level failures in dealing with 5 instances of inadvertent collection of the communications of Australians. That does not mean, however, that systems cannot be improved and, as mentioned in the introduction and summary of the inquiry report, a number of improvements have been instituted. I will continue to work with DSD to develop means of ensuring, so far as humanly possible, that mistakes do not occur in future.

22. *Does the IG have any concerns about the effectiveness of the review system for intelligence agencies, given that it takes:*

- *An article in the Daily Telegraph five months after the event before any of these breaches are suspected;*

- *Public concern to be raised by opposition efforts about the operations of the intelligence agencies, before pressure is sufficient for;*
- *Some to go to the effort of making complaints to the IG, before the allegations are tested?*

Answer:

The premises on which the question is based are erroneous:

- The article referred to did not allege any of the breaches identified in the inquiry report;
- The allegations in the media could not be tested until they were made, given that they were without foundation;
- Far from breaches of the kind identified in the inquiry report not being suspected until then, my office identified the initial breach within a short time of its occurrence and immediately drew it to DSD's attention. As noted at paragraph 19 of the introduction and summary, I told the Director, DSD at the time: *One cannot imagine circumstances in which it would be legitimate to utilise secret intelligence collection resources for such a purpose;* and
- The decision to conduct an inquiry, which I made on the day the media story appeared, was prompted by the apparent seriousness of the issue and the need to get to the bottom of it, not by pressure from the opposition or anyone else.

None of the above should be taken to mean that I am complacent about the effectiveness of the review system. I and my staff continue to look for ways of improving it.

23. Please explain what the "procedural issues" are (para 28 of report summary) that the IG commented resulted in the situation where he could "easily have missed" detection of the DSD reporting errors.

Answer:

As explained at paragraph 27 of the introduction and summary, we were using a sampling approach to inspecting DSD reports, rather than reading every report (which would not have been physically possible) or using computerised searching to identify reports that might be of interest.

This was supplemented by regular visits to DSD to examine the records they were required to keep of reports identifying Australians. The rules that were in force at the time, however, did not require DSD to bring to our attention reports that reported on Australians' communications without naming or otherwise identifying them, unless another agency sought access to the identity.

The circumstances in which we might miss a relevant report, therefore, could occur if:

- DSD reported intelligence about an Australian without naming the Australian;
- our sampling methodology did not pick it up; and
- no other agency asked DSD for the name.

Since the Intelligence Services Act came into operation DSD is required to retain records of such reporting for our inspection. In addition, we have moved from sampling to computerised searching for keywords and other identifying data.

24. *Senator Hill made the following comments at his doorstep releasing the Executive Summary on 2 May 2002 (at page 6):*
Journalist: Did Mr Blick investigate whether the Government had used that information [obtained by DSD through breaches of the privacy rules]?
Sen. Hill: I don't know the answer to that. You'd better ask Mr Blick that.
25. *Following on from the journalist's question, did the IG inquire into whether the Government made any use, direct or indirect, of the material acquired as a result of any of the breaches?*
26. *In particular, when did DSD pass on (in end product reports or other form) the legally privileged information?*

Answer:

I satisfied myself that the government could not have made use of information deriving from the legally privileged communications of Australians. DSD issued the first report of a communication that would probably have been subject to legal professional privilege on 30 August 2001 at 12.25 pm AEST. That report, which is the report referred to in the second sentence of paragraph 18 of the introduction and summary, contained reference to intelligence about legal proceedings that were contemplated at the time but did not eventuate. DSD issued the second report of a communication that would probably have been subject to legal professional privilege on 3 September 2001 at 15.44 pm AEST. That report contained no information that the government could have used in connection with legal proceedings.

27. *Did the IG find any evidence at all to suggest that a minister or minister's office may have played any part in DSD's collecting and reporting on Australians during the relevant 2-month period?*

Answer:

No. See paragraph 11 of the introduction and summary.

28. *Confirm that neither the Intelligence Services Act 2001 nor any other law prohibits DSD from intercepting and communicating intelligence on communications between Australians in Australia and non-nationals overseas.*
29. *When did the IG first become aware that the Intelligence Services Act 2001 did not restrict DSD in this way?*
30. *Did the IG request the classified directive issued by then Minister Reith on this subject to be issued, or play any part in its ultimate issuance?*

Answer:

DSD has never been completely prohibited from collecting or distributing intelligence on Australians' foreign communications, whether the Australian is located overseas or in Australia. For many years, however, there have been constraints on DSD's collection of intelligence on Australians, first under rules issued by government and, since October 2001, under the Intelligence Services Act.

I have on file a copy of the submission of 26 October 2001 from the Director, DSD to the minister recommending the direction referred to and other proposed directions. The submission noted that since the passage of the Act on 27 September DSD had been working with various agencies including the Inspector-General to develop the legal instruments required under the Act.

That accords with my recollection but apart from that I cannot recall the precise details of my involvement with the particular direction.

Inspector-General of Intelligence and Security
12 June 2002



COPY

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

2002/74

File Ref: 2002/16

Senator the Hon Robert Hill
Minister for Defence
Parliament House
CANBERRA

Dear Minister

I refer to the message from your office on 12 February and your letter of 13 February 2002, asking me to review records relating to DSD compliance with the *Rules on Sigint and Australian Persons* during the period 29 August to 10 September 2001, in connection with allegations that have been made about DSD activities in this period.

I have also received a written complaint about DSD under the Inspector-General of Intelligence and Security Act and have seen a notice of motion signed by Senator Stott Despoja relating to these allegations.

In the circumstances I consider it appropriate, therefore, to conduct an inquiry under the IGIS Act and this will begin immediately.

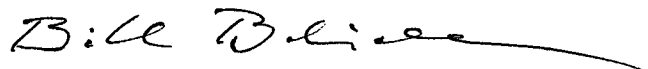
The inquiry will deal with the following:-

- DSD's intelligence collection activities during the period, so far as they may be relevant to the allegations that have been made;
- the authority for such activities;
- whether such activities were in accordance with the *Rules on Sigint and Australian Persons*, applicable at the time;
- DSD's reporting during the period, so far as it may be relevant to the allegations that have been made;
- the authority for such reporting;
- the distribution of reports;
- whether such reporting was in accordance with the *Rules*; and
- any other relevant matters arising in the course of the inquiry.

In accordance with section 22 of the Act I will furnish you with a copy of my report at the conclusion of the inquiry, which will be completed as soon as possible.

In view of the public interest in this matter the above list of issues to be examined in the course of the inquiry will be posted on the IGIS web site (www.igis.gov.au).

Yours sincerely

A handwritten signature in cursive script that reads "Bill Blick". The signature is written in black ink and has a long, sweeping underline that extends to the right.

W J Blick
Inspector-General of
Intelligence and Security

13 February 2002



COPY

MINISTER FOR DEFENCE

Mr W Blick PSM
Inspector General of Intelligence and Security
3-5 National Circuit
Barton, ACT, 2600

Dear Inspector General,

Further to our telephone conversation, I am faxing you a copy of the Hansard record of the Minister's clarifying statement to the Senate, made this morning (February 14, 2002).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Matt Brown', with a long horizontal line extending to the right.

MATT BROWN
Chief of Staff

14/02/02

(One page follows)

Turn # 1 at 14/02/2002 9:30:00 AM

Senator HILL (South Australia—Minister for Defence) (9.31 a.m.)—Madam President, I seek leave to make a statement clarifying an answer I gave in question time yesterday.

Leave granted.

Senator HILL—I wish to clarify an answer I gave in question time yesterday in response to a question from Senator Faulkner. In my answer I stated: And DSD, I am assured, with one small exception, operated within those rules.

This accurately represented the advice given to me by the DSD and reflected a similar comment I made in a public statement on Tuesday, 12 February. Last night I was informed by the director of the DSD that the one breach I had been advised of was a breach in a line of reporting relating to the border protection issue. The director has advised me that the Inspector General of Intelligence and Security first informed the DSD of his concerns with this line of reporting on a Monday. This concern related to a specific DSD report from the previous Thursday. The director has advised me that upon receipt of this advice the DSD acted immediately to discontinue this line of reporting. In the interim, however, between the first report on the Thursday and the Inspector General's advice on the Monday, a further three reports had been issued by the DSD.

The director advises me that he believes that this issue will be considered as a single breach by the Inspector General. While this may be technically correct, I believe that it is important, given the openness and transparency already shown by the government on this issue, to clarify the record. I am advised by the director that the statements I have made in relation to the Maritime Union of Australia and the International Transport Federation stand correct. Any reference to this issue by the Prime Minister or the Minister for Foreign Affairs, Mr Downer, was of course based on the original advice provided by the Director of the Defence Signals Directorate. The four reports covered by this breach will be made available this morning to the Leader of the Opposition, Mr Crean, and also to the Leader of the Opposition in the Senate, Senator Faulkner, in the form of a confidential briefing.