

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN GOVERNMENT SOLICITOR

Question No. 9

Senator Abetz asked the following question at the hearing on 14 February 2012:

Senator ABETZ: ... When were you first engaged to advise [Fair Work Australia] in relation to matters FOI?

Mr Govey: I do not have the answer to that question. I would have to take that one on notice.

Senator ABETZ: If you could, please, because my office's initial request for FOI was rejected absolutely. Not a single document was revealed—a list of documents that would not be revealed was not even provided. Simply, they would not cooperate. Mr Govey, in your experience, have you ever advised another department or agency to behave in such a blocking manner in relation to a FOI request, other than possibly the Office of National Assessments, ASIO or the Defence Materiel Organisation?

Mr Govey: Senator, I hope you will understand that I cannot really agree with the premise underlining your question. If it were put in a different way, I would have to say that I am not really in a position to talk about the generality of advice that our FOI lawyers have provided across the board.

Senator ABETZ: Perhaps you could take that on notice. We do not have to know with which department but how often in the last 12 months they have advised a department or an agency to simply not provide anything—and I mean that: anything. Not even a list of documents that they were not prepared to provide; simply a letter responding, in effect saying, 'We aren't going to provide you with anything.'

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

AGS advises Commonwealth agencies on a range of matters relating to the FOI Act including the disclosure exemption provisions in the Act. It is for the client agency to decide whether documents should be released in full, not released at all, or released with redactions. On occasions, AGS also advises clients that the FOI Act does not require an agency to confirm or deny the existence of a document if to do so would cause the FOI decision-maker's statement of reasons to be an exempt document under the relevant exemption provision.

AGS confirms that it does not give agencies advice not to release documents or not to confirm or deny that a document exists unless there is a reasonable basis for the advice. AGS has a strong culture of advising agencies on FOI consistently with both the letter and the spirit of the Act, and taking into account the guidelines issued by the Office of the Australian Information Commissioner.

It is not possible to be definitive as to how often over the last 12 months AGS has advised an agency that it is not obliged to provide information about the existence of a document or a batch of documents, without undertaking a time-consuming and thus costly search of AGS's legal files involving FOI matters. While only a very small minority of cases would justify this approach, it is one which is provided for in the Act in connection with ongoing investigations into breaches, or possible breaches, of the law (and in other cases). The Information Commissioner's Guidelines confirm that the use of this provision is permissible when the circumstances of the case require it.