

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. 23

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

Senator LUDLAM: As foreshadowed before the break, I have a few questions about WikiLeaks. First, I want to confirm some information that was provided last year. On the request of the Attorney, the AFP reported on 17 December 2010 that it did not identify any criminal offences regarding WikiLeaks publishing US cables. You made it fairly clear during our last conversation that you were not conducting an investigation, you were evaluating primary material to see whether there was sufficient material to commence an investigation over which you would have jurisdiction. Is that a reasonably accurate summary?

Mr Negus: I do not have the dates in front of me, but I would take that as being accurate.

Senator LUDLAM: You provided a report to the Attorney. Did the report take them through the process you undertook and your line of logic, or did you just provide advice that there was no basis on which to continue?

Mr Negus: I will have to take that on notice. I was not involved in writing that report. Given it is some time ago, I do not have access to it in front of me.

Senator LUDLAM: If you are going to take the shape of the report and what form it took on notice, I invite you to table it for the benefit of the committee, if that is possible.

Mr Negus: I would have to examine the report and see whether that is appropriate, given it was correspondence to the Attorney-General about an operational matter. I will certainly take it on notice and make that assessment.

Senator LUDLAM: That would be much appreciated. If you find that a year and a half on it could be redacted and it is appropriate to table it, that would be greatly appreciated.

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

1. You provided a report to the Attorney. Did the report take them through the process you undertook and your line of logic, or did you just provide advice that there was no basis on which to continue?

A report was not provided to the Attorney-General. On 16 December 2010, Peter Drennan, Australian Federal Police Deputy Commissioner, National Security wrote to the Secretary of the Attorney-General's Department, Mr Roger Wilkins responding to his letter of referral on 30 November 2010.

The letter to Mr Wilkins outlined the Australian Federal Police (AFP) evaluation of the matter and subsequent outcomes.

2. If you are going to take the shape of the report and what form it took on notice, I invite you to table it for the benefit of the committee, if that is possible.

A redacted version of the letter to Mr Wilkins, including the Aide Memoir is attached for tabling. Full disclosure of the letter would reveal operational information.

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16 December 2010

Mr Roger Wilkins AO
Secretary
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

Dear *Roger*

I refer to your letter to the Australian Federal Police (AFP) dated 30 November 2010, relating to matters surrounding the publication of documents on the WikiLeaks website.

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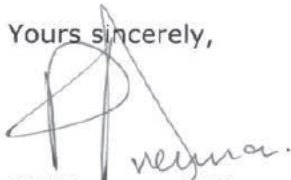
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I intend to inform the Attorney General and Minister for Home Affairs and Justice regarding the outcomes of our evaluation process by way of ministerial brief. Once the Attorney General and Minister have been briefed the AFP will publish a short statement on the AFP website to the effect that the AFP has evaluated the material available in regards to the disclosure of information by WikiLeaks, the AFP has not identified any criminal offences where Australia has jurisdiction and as a result has not commenced a criminal investigation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P T Drennan', is written over a large, faint, stylized watermark or signature.

P T Drennan APM
Deputy Commissioner National Security

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Aide Memoire

Departments and Agencies re WikiLeaks

A number of potential Commonwealth criminal offences exist which may be relevant to material disclosed by WikiLeaks. To assist relevant Department/Agency representatives, the following information is provided as an Aide Memoir for the evaluation of whether the disclosure of material on the WikiLeaks website may be in breach of Australian law.

Potential Criminal Offences

1. Disclosure of information by a Commonwealth Officer – Section 70 Crimes Act 1914.

Material relevant to this offence must be information that has been disclosed by a current or former employee of the Commonwealth.

2. Disclosure or retention of material relevant to official secrets – Section 79 Crimes Act 1914. This includes prescribed information and information relating to prohibited places:

Prescribed information is: a sketch, plan, photograph, model, cipher, note, or document, that has been entrusted to them by a Commonwealth officer.

The following places shall be **prohibited places**:

- (a) any work of defence, arsenal, factory, dockyard, aerodrome, camp, ship, aircraft, telegraph or signal station, or office, belonging to the Queen or the Commonwealth, and any other place belonging to the Queen or the Commonwealth used for the purpose of building, repairing, making, obtaining or storing any ship, aircraft, arms, or materials or instruments for use in time of war, or any plans or documents relating thereto;
- (aa) any camp, barracks or place where prisoners of war, internees or members of the Defence Force are detained;
- (b) any place not belonging to the Queen or the Commonwealth where any ship, aircraft, arms, or materials or instruments of use in time of war, or any plans of documents relating thereto, are being made, repaired, obtained, tested or stored under contract with, or with any person on behalf of, the Queen or the Commonwealth;
- (c) any place belonging to the Queen or the Commonwealth which is for the time being declared by the Governor-General to be a prohibited place for the purposes of this Part on the ground that information with respect thereto, or damage thereto, would be useful to an enemy or to a foreign power; and
- (d) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, electricity works or other works for purposes of a public character, or any place where any ship, aircraft, arms,

or materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, obtained, tested or stored otherwise than on behalf of the Queen or the Commonwealth, which is for the time being declared by the Governor-General by proclamation to be a prohibited place for the purposes of this Part, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy or to a foreign power.

This offence also applies to a person who may have been given the above and causes it to be published or retains it when they have no right to do so.

The disclosure of the material relevant to this offence need not necessarily be by a Commonwealth Officer.

3. Espionage and similar activity – Division 91 *Criminal Code Act 1995*.

Material relevant to this offence includes information concerning the Commonwealth's security or defence including the operations, capabilities and technologies of, and methods and sources used by, the country's intelligence or security agencies.

This offence may be committed by any person with the specific intent to prejudice Australia's security or defence.

Referral to AFP

Should the respective Department/Agency identify material that may indicate potential breaches of Australian criminal law, the AFP Coordinator Head Office Investigations is to be contacted in the first instance on telephone (02) 61314737.