

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

Group 3

Program 1.6

Question No. 46

Senator Brandis asked the following question at the hearing on 12 February 2013:

Senator BRANDIS: Let me give you two documents. These are documents that were obtained from the Attorney-General's Department under a Freedom of Information Act request and have been supplied to me by a political colleague. One is essentially a chronology consisting of two pages, dated Wednesday 24 October 2012, and another is a two-page document headed 'Backpocket Brief—Operation Mesco—Kevin Rudd YouTube Investigation'. Can I show you those documents, please?

...

Yet the Attorney-General's Department file, according to the chronology, was closed only 21 days later, on 24 October. The chronology also reveals that no step was taken or actioned between 3 October 2012 and the date on which the file was closed, notwithstanding that the case officer knew that the Australian Federal Police investigation was ongoing. Why was the file closed, Mr Wilkins?

Mr Wilkins: I do not know. I will have to take it on notice.

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

On 11 May 2012 the AFP contacted the Department about making a mutual assistance request to the United States for subscriber and IP information in relation to the YouTube user account.

Before making enquiries of the United States Department of Justice (the Central Authority for mutual assistance in the United States) (USDOJ), the Department liaised extensively with the Australian Federal Police (AFP) to seek the information relating to the investigation and the connection between the assistance requested and the facts provided.

On 9 August 2012, the Department made enquiries of the USDOJ as to whether there was sufficient information currently available to satisfy the United States' threshold for obtaining the authorisation necessary to compel YouTube to provide IP address and subscriber information.

Between 9 August 2012 and 3 October 2012 the Department had a number of communications with the USDOJ about the matter, including what further information might assist in meeting the relevant legal thresholds. The Department was in regular contact with the AFP during this period to discuss the advice provided by the USDOJ and the implications for the mutual assistance request.

On 3 October 2012 the Department advised the AFP that, based on advice from the USDOJ, the Department had determined that it was not likely to be in a position to meet the relevant legal thresholds to obtain records from YouTube and, accordingly, it would not be appropriate to make a mutual assistance request at that time. The Department advised that the file could be reopened at any time in the event there were developments in the investigation that would assist the Department in meeting the necessary legal thresholds.

On 24 October 2012 the AFP confirmed that no further assistance was required from the Department at that time. The Department's file was closed on that day, following receipt of the AFP's advice.

The closure of the mutual assistance file is an administrative process and files can be reopened at any time.

On 26 October 2012 the AFP advised Mr Rudd that they were concluding the investigation into the alleged theft of Commonwealth property. The decision to conclude the investigation was a matter solely for the AFP.