

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

Group 3

Program 1.6

Question No. 48

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

Senator BRANDIS: We know that two communications after 3 October you had been told, albeit in very general terms, what additional information the Americans required. What did you do to obtain that information so that the request that you had made of the US justice department could be complied with?

Mr Wilkins: You will understand that the AFP asked us to make this inquiry, so I assume that we would have passed this information on to the Australian Federal Police?

Senator BRANDIS: Did you?

Mr Wilkins: I assume that, but I will take it on notice.

Senator BRANDIS: Did you receive a response from the AFP?

Mr Wilkins: I do not know. I will take that on notice as well.

Senator BRANDIS: You see, in the chronology that was produced by your department in response to Mr Rudd's FOI request, there is endorsed an item 'follow-up from law enforcement/other government agency' on 24 October 2012. Could that be an intended reference to the response from the AFP?

Mr Wilkins: It could be, but it might not be. 'I do not know' is the correct answer to your question. I do not want to mislead.

Senator BRANDIS: We now know from what you have told us that a request was made by your department of the justice department of America some time after 3 October in which you asked what further information they needed. We know that you received a response from them in what you have described as general terms. You think that you then communicated that matter to the AFP and you think that the AFP responded.

Mr Wilkins: Yes, but I said that I would like to take those on notice.

Senator BRANDIS: I want you to take all of these matters on notice so that you can give me more particular answers, but since we are here I want to elicit from you what you are able to tell me tonight. When you received the response from the AFP, what did you do with it?

Mr Wilkins: You have to understand that I did not receive any response from the AFP.

Senator BRANDIS: Your department.

Mr Wilkins: I do not know what my department did with it because the person who actually got it is not here.

Senator BRANDIS: Do any officers at the table have any better information about step was then taken after the AFP responded?

Mr Wilkins: I am not even sure in what form the AFP responded. We are not in a position to answer your question, Senator. That is the actual answer

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

Following advice from the United States Department of Justice (the Central Authority for mutual assistance in the United States), the Department 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.

On 3 October 2012 the Department advised the Australian Federal Police (AFP) of this position and that it proposed to close its mutual assistance case file on this matter. 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.