

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN CUSTOMS AND BORDER PROTECTION

Question No. 71

Senator Xenophon asked the following question at the hearing on 26 May 2011:

Senator XENOPHON: Will you take on notice whether Customs is aware that Ms Ayliffe was interviewed by the AFP in relation to the Kessing matter?

Mr Pezzullo: What I am willing to take on notice—and I will take advice on this—is the extent to which I can disclose particulars of the AFP investigation. Whether they interviewed person X or Y, I will take some advice on that. If I am then able to respond to your question, I will do so on notice.

CHAIR: I think what Mr Pezzullo is saying is there might be someone in Customs who may well be aware the AFP interviewed that person, but it might not be able to be public knowledge that the interviewed even occurred. Knowledge that it occurred would reveal that. Within those constraints, are you happy for that question to be taken on notice?

Senator XENOPHON: I am not happy at all, Chair. I am grateful for your assistance. Let's go to general policy principles here because I agree with Mr Kessing: this whole thing is like a septic tank. From a general policy point of view, what harm would there be in disclosing the nature of the information I have requested? Leave aside the question of the Kessing case and Ms Ayliffe. If there has been an investigation about a section 70 matter—whether or not questions have been asked of a particular Customs officer, and the matter has been dealt with in the courts and Commissioner Negus considers the case is closed, even though I disagree with him—what is wrong with advising whether the AFP has interviewed a Customs officer? From a public policy point of view, how would that prejudice Customs or anything else for that matter?

Mr Pezzullo: In general terms, going back to our exchange a moment ago, in the ordinary course such an interview would be made known to the senior leadership of the agency. I accept that proposition. I am willing to take on notice whether I am in a position to put on the public record who—in this case, Ms Ayliffe—the AFP investigated. This is a general matter that I want to get some advice on, including by consultation with my partner agency, the AFP. If there is an ability for me to disclose that and, through a clearance process, I can get agreement to that then I am willing to put a response to your question on notice.

Mr Wilkins: I do not know the answer to the question, but there may well be considerations: for example, around privacy in that hypothetical case; forget about this particular case.

Senator XENOPHON: How so?

Mr Wilkins: If the AFP is investigating or questioning somebody and the media is going to make a lot out of this and put that person's identity before the public in some way then there may be a legitimate concern. I am not saying there would be, but you asked me hypothetically about considerations. Privacy is one.

Senator XENOPHON: Mr Wilkins, if a person's identity is already out there and it is narrowed down to a question of whether that person was interviewed by the AFP—

Mr Wilkins: You just asked a hypothetical question and I am giving you a hypothetical answer. Privacy could be one consideration in that sort of situation. I am not saying it is, but it could be. I do not know the facts of the case. There may be other considerations. Off the top of my head I cannot think of them, but it would be sensible for Mr Pezzullo to at least take some advice.

Senator XENOPHON: I will not pursue it any further.

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

Inquiries have been made with the AFP, the CDPP and relevant Customs and Border Protection officers. These inquiries indicate that Ms Ayliffe was not interviewed by the AFP in relation to the

Kessing matter. However, a statement by a more senior Customs officer was prepared in 2006 for the purposes of the proceedings against Mr Kessing. The statement described and attached a series of emails. One of the emails was sent by Mr Lipson to Ms Ayliffe. Another email, sent between officers of Customs, stated that Mr Lipson had indicated that he had more than one source. The CDPP has confirmed that the statement, including the attachment, was provided to Mr Kessing's legal team by the CDPP on 17 October 2006.