



Australian Government
Attorney-General's Department

13/8475

7 August 2013

Mr G King

Sent by e-mail only: foi+request-278-0869677e@righttoknow.org.au

Dear Mr King

Freedom of Information Request no. 13/091

I am writing to advise you of my decision in relation to your request for internal review of a decision by the Attorney-General's Department to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act).

Background

2. I am an officer authorised under section 23(1) of the FOI Act to make decisions on behalf of the Attorney-General's Department in relation to FOI requests.

3. On 2 July 2013 you made the following request to the Department:

I am seeking details of the telecommunications data ('metadata') disclosed to enforcement agencies under the Telecommunications (Interception and Access) Act 1979.

The specific information I require is sources of data (e.g. 'Telstra'), types of data (e.g. 'email') and entities of data (e.g. 'recipient', 'date sent', etc).

4. On 18 July 2013 the Department advised you that – following an electronic search of documents and making inquiries of staff – it had no documents that fell within the scope of your request. The Department determined that the documents you described did not exist, and decided to refuse your request for access in accordance with subsection 24A(1) of the FOI Act.

5. In your email of 22 July 2013 requesting an internal review of the decision you indicated you did not accept the reasons provided for refusal. You stated:

I believe this to be false given that under Part 2-4 of the Telecommunications (Interception and Access Act) 1979 the Department is tasked with processing all applications relating to 'interception of communications passing over a telecommunications system' for the purpose of 'developing and testing interception capabilities'.

This clearly indicates the Department does have documents relating to 'metadata' interception options available at the behest of security authority requests.

Given the current, high level of public interest in data privacy policy and widespread use of telecommunication intercepts (including local council employees:

<http://www.theage.com.au/digital-life/consumer-security/council-under-fire-for-spying-on-residents-20130709-2poer.html>) I urge you to make available more detailed information on the mechanics of this Act so that the community may more effectively participate in the nation's democratic processes.

Decision

6. I have reviewed the earlier decision in this matter. In the course of doing so I have arranged further searches of the records held by this Department.

7. I have decided to affirm the decision to refuse access on the basis that I am satisfied that the documents you requested do not exist.

Reasons for decision

8. The reason for this review decision is that I consider that all reasonable steps have been taken to find documents that may fall within the scope of your request and no such documents have been found. The Attorney-General's Department does not receive specific details of the telecommunications data that is disclosed to enforcement agencies under the *Telecommunications (Interception and Access) Act 1979* (the TIA Act). I have sought to explain the position in further detail below.

Terminology used in relation to the TIA

9. Given the terminology adopted in your correspondence, it may assist if I outline my understanding of the terms to which you refer. Further guidance on this issue, and on the 'mechanics' of the TIA Act more generally, is available in the published annual reports on the TIA Act. The report for the year ending 30 June 2012 ('the 2012 Report') is accessible via the following link on the Department's website:

<http://www.ag.gov.au/Publications/Pages/TelecommunicationsInterceptionandAccessAct1979AnnualReportfortheyearending30June2012.aspx>

'Telecommunications' data and 'metadata'

10. As outlined in paragraphs 2.55 to 2.58 of the 2012 Report:

2.55 Part 4-1 of the TIA Act enables enforcement agencies to authorise the disclosure of telecommunications data in certain circumstances. Telecommunications data is not defined in the TIA Act. It is also referred to as 'metadata', 'communications data' and 'communications associated data', and is generally understood as comprising information that allows a communication to occur, and information about the parties to the communication.

2.56 Examples of information that allows a communication to occur, include the internet identifier or service identifier (for example, an e-mail address, phone number or VoIP number), the time and date of the communication, general location information (such as cell tower data), and information about the duration of the communication.

2.57 Examples of information about the parties to the communication include the names and addresses (home, postal, billing if different) of the parties, as well as other contact details such as telephone numbers and e-mail addresses to the extent they are known.

2.58 Telecommunications data does not include the content or substance of a communication. Section 172 specifically prohibits the disclosure of the content or substance of a communication under part 4.1.

'Interception'

11. In contrast, the concept of 'interception' *can* include details about the content or substance of a communication. As outlined in paragraph 2.5 of the 2012 Report:

2.5 The term 'interception' is defined in section 6 [of the TIA Act] to mean listening to or recording, by any means, a communication in its passage over a telecommunications system without the knowledge of the person making the communication.

Details of 'telecommunications data' disclosed to enforcement agencies

12. Chapter 6 of the 2012 Report includes statistical information in relation to authorisations made by authorised officers of 'enforcement agencies' under Part 4-1 of the TIA Act. 'Enforcement agency' is defined in detail in subsection 5(1), and summarised as follows in paragraph 6.2 of the 2012 Report:

6.2 Agencies are able to authorise the disclosure of telecommunications data if they are an enforcement agency. An enforcement agency is an agency responsible for the administration of legislation which enables them to enforce a criminal law, impose pecuniary penalties or protect the public revenue.

13. As outlined in the advice to you of 18 July 2013, the Attorney-General's Department is not considered to be an enforcement agency for the purposes of the TIA Act. That advice also explained that the TIA Act imposes restrictions on the disclosure and use of information about authorisations. Section 181B of the TIA Act prohibits disclosure of information about an authorisation or information which has been obtained under an authorisation except in limited circumstances (e.g., where it is reasonably necessary for the enforcement of the criminal law, a law imposing a pecuniary penalty or for the protection of the public revenue).

14. The Attorney-General's Department does not process and is not provided with authorisations which have been made for the disclosure of telecommunications data issued under Part 4 of the TIA Act by an enforcement agency. Additionally, the Department does not receive details of the telecommunications data that is disclosed to an enforcement agency in response to an authorisation issued by the enforcement agency. Accordingly, this Department would not be expected to hold documents detailing the specific information described in your request of 2 July 2013.

15. In your email of 22 July you referred to an article in the *Age* dated 10 July 2013 concerning authorisations made for access to telecommunications data by Wyndham City Council. The article referred to 'figures from the Attorney-General's Department'. The figures cited in the article are the same as those recorded for Wyndham City Council in Table 57 (at page 69) of the 2012 Report.

Part 2-4 of the TIA

16. With respect to your reference to Part 2-4 of the TIA Act (see paragraph 5, above), I do not see this as relevant to your request. The operation of Part 2-4 of the TIA Act was outlined in the Replacement Explanatory Memorandum for the legislation under which Part 2-4 was inserted into the TIA Act in 2007 (the *Telecommunications (Interception and Access) Amendment Bill 2007*). The Explanatory Memorandum noted (at page 43) that:

New Part 2-4 will be inserted to allow the heads of security authorities, which have functions that include activities relating to developing or testing technologies, to request authorisations from the Attorney-General to intercept communications for the purpose of developing or testing technologies or interception capabilities.

17. It further noted (at page 41):

A security authority is a Commonwealth body which has functions relating primarily to security, the collection of foreign intelligence, the defence of Australia, or the conduct of the Commonwealth's international relations. The definition would include ASIO, the Department of Defence and the Department of Foreign Affairs and Trade.

18. Thus, the provisions in Part 2-4 of the TIA Act relate to exceptions to the prohibition against 'interception' (see paragraph 11, above) rather than to authorisations for the disclosure of

'telecommunications data' (see paragraph 10, above). Moreover, they relate to authorisations for 'security authorities' (see paragraph 17, above), rather than to 'enforcement agencies' (see paragraph 12, above).

19. Accordingly, I do not see how the existence of the provisions in Part 2-4 of the TIA Act would have any bearing on the question of whether the Department would hold any documents that fall within the terms of your request for details of the telecommunications data disclosed to enforcement agencies under the TIA Act.

Material taken into account

20. I have taken the following material into account in making my decision:

- the representations included in your email requesting an internal review
- the provisions of the FOI Act (and, in particular, section 24A of that Act)
- the results of searches conducted of document held by the Department
- advice from the relevant line area confirming that the Department does not receive details of telecommunications data disclosed to enforcement agencies under the TIA Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Information Commissioner review

21. If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

22. More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website: <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

23. I hope the above information clarifies the position. If you wish to discuss this decision, please contact the Department by email at foi@ag.gov.au.

Yours sincerely



Steven Marshall
Acting Corporate Counsel
Attorney-General's Department