



Australian Government
Civil Aviation Safety Authority

Legal Services Division

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Attorney General's Department

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Enforcement agency access to telecommunications data

I refer to an email from the Attorney General's Department of 26 May 2015, attaching a guidance note on enforcement agency induction process. CASA considers that, from 13 October 2015, it will require direct access to historical telecommunications data. In support of this, CASA provides the following information as outlined in the guidance note.

Legislation underpinning CASA's functions

CASA has enforcement functions relating to aviation. The legislation underpinning CASA's function and powers is the *Civil Aviation Act 1988*. Part IIIA of the Act provides CASA with investigative powers necessary to perform its functions as Australia's aviation safety regulator. These investigative powers include:

- i. Search with consent to monitor compliance;
- ii. Search with consent for evidence in relation to civil aviation offences;
- iii. Consent to enter premises;
- iv. Applying for and issuing a monitoring warrant;
- v. Applying for and issuing an offence related warrant;
- vi. Warrants granted by telephone;
- vii. Seizures related to civil aviation offences;
- viii. Power to require persons to answer questions and produce documents;
- ix. Powers in relation to aircraft;

CASA also has responsibility for the investigation of internal fraud in accordance with the Australian Government Fraud Control Guidelines. CASA also conducts investigations resulting from complaints and allegations made under the *Public Interest Disclosure Act 2013*.

Why CASA cannot perform its functions using alternative information sources (i.e. without access to telecommunications data)

CASA has responsibility for conducting investigations into suspected breaches of civil aviation and attendant legislation, i.e. *Civil Aviation Act 1988*, *Civil Aviation Regulations 1988*, *Civil Aviation Safety Regulations 1998* and *Criminal Code Act 1995*. The offences investigated are often serious and carry significant penalties including terms of imprisonment, i.e. indictable offences.

CASA has a range of investigative powers (listed above) required to be undertaken without assistance from other law enforcement agencies. Access to historical telecommunications data provides essential avenues of enquiry and evidence to support the commission of an offence; or in some circumstances to negate the alleged commission of an aviation offence (see table below for examples).

CASA has responsibility for the immediate suspension of authorisations following a serious and imminent risk to aviation safety (Division 3A of the Act). CASA is required to undertake an immediate investigation that could potentially be hampered by delays if a request for historical telecommunications data had to be obtained through other law enforcement agencies.

CASA has recently set up the iKey system a method approved by Telstra in compliance with the TIA Act to receive encrypted information to protect the data. The system restricts access to the data to only 5 staff approved by CASA. To receive this data through another law enforcement agency would require it to be sent by facsimile that is less secure.

CASA Instrument CASA-ADMIN 05/10 dated 12 August 2010 authorises the person holding or performing the duties of Manager Investigations Branch, Legal Services Division in CASA as an authorised officer for the purposes of subsection 5(1) of the *Telecommunications (Interception Access) Act 1979 (TIA Act)*.

On 27 June 2014, the Telecommunications and Surveillance Law Branch of the Attorney-General's Department confirmed receipt of the CASA instrument and authorisation under s 5AB of the TIA Act (dated 12 August 2010) and advised this instrument fulfilled CASA's obligation under the TIA Act.


Evidence and examples of past use of historical telecommunications data

Details	Outcome
<p>A CASA investigation currently being undertaken is relying on extensive use of mobile telephone records to establish a prima facie case for a potential prosecution and administrative action. The investigation relates to a Licenced Aircraft Maintenance Engineer (LAME) who issued a new maintenance release for his personal aircraft. It was suspected the LAME did not perform the maintenance inspection or attend the maintenance premises. The LAME is based in Sydney and his twin engine aircraft is located at Jandakot WA. The CASA investigator obtained IPND, CCR and mobile cell locations that identified the airline the suspect travelled on from Sydney to Perth as well as the accommodation he stayed while in Perth. The investigator was able to determine from the CCR data that the LAME did not attend at Jandakot Airport until a particular time and date. The investigator was also able to track the movements of the LAME and that of another engineer by date, time and location which established the LAME was only on site for a maximum of 2.5 hours at the aircraft and could not have carried out a 100 hourly inspection as was certified by him.</p>	<p>Criminal prosecution and administrative action to be recommended.</p>
<p>A major helicopter company was investigated for operating an aircraft during off-shore passenger carrying operations to oil platforms off the coast of Western Australia. The aircraft suffered a defective fuel system that should have grounded the aircraft. The company pilots and engineering staff were suspected of conspiring to cover-up the defect to allow the aircraft to continue in-service with potential catastrophic consequences. The chief pilot was suspected of being involved in the conspiracy, however, CCR records were obtained that showed the chief pilot had not been contacted or made aware of the cover-up.</p>	<p>Criminal prosecution action and administrative action was averted against the chief pilot.</p>
<p>During a protracted investigation telecommunication data was pivotal in proving the suspect was dishonest about his location and his ability to produce documents required under the relevant legislation. Telecommunications data was also used to corroborate immigration records to show the suspect was in/out of Australia when he was logging flight time at different locations.</p>	<p>Revocation of Commercial and Private Flight Crew Licences and potential prosecution action.</p>

Details of a nominated contact officer

I am CASA's nominated contact officer for the purposes of this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. Anastasi', enclosed within a large, hand-drawn oval.

Adam Anastasi
General Counsel and Executive Manager
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