

## Referral practices

### **TERM OF REFERENCE C: The adequacy of referral practices of the Australian Government in relation to leaks of sensitive and classified information.**

23. The AFP evaluates and prioritises all allegations of criminal wrongdoing objectively at the organisational level and in accordance with a clear organisational policy called the Case Categorisation and Prioritisation Model (CCPM). Some of the factors that are taken into account through the CCPM include:
- The impact of the alleged offending on Australian society;
  - The likelihood of success in an investigation; and
  - Whether an alternative to criminal investigation is appropriate.
24. These are all applied as objective measures. The CCPM has been applied to all referrals of alleged unauthorised disclosures of classified information. In some instances, application of the CCPM has resulted in a decision not to investigate allegations of unauthorised disclosures in the media.

## Integrity framework

### **TERM OF REFERENCE D: Appropriate culture, practice and leadership for Government and senior public employees**

25. The AFP has a strong professional standards and values framework, which must be complied with by all AFP appointees.
26. Part V of the *Australian Federal Police Act 1979* (Cth) (AFP Act) establishes the AFP's Professional Standards regime and provides a strong foundation for the AFP's corruption resilience. The AFP's Professional Standards (PRS) unit has responsibility for the development and maintenance of the AFP's integrity framework.
27. The AFP Commissioner's Order on Professional Standards (CO2) gives effect to the relevant provisions of Part V of the AFP Act by:
- Setting the professional standards of the AFP to maintain the good order and discipline of the organisation
  - Outlining the AFP complaint management methodology and processes in accordance with Part V of the Act, including the roles of AFP appointees, PRS and the Professional Standards Panel.
28. Upholding the AFP's professional standards, including the Core Values and Code of Conduct is the responsibility of every AFP appointee. This includes the requirement to comply with AFP governance mandatory compliance requirements within AFP governance instruments.
29. In addition, the AFP is subject to the oversight of a number of key bodies, including the Australian Commission for Law Enforcement Integrity, the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security. This complements the scrutiny of parliamentary oversight bodies.
30. We welcome the scrutiny of these bodies, while also working with government to ensure that these various oversight mechanisms remain complementary, rather than duplicative.

## Independence of police

**TERM OF REFERENCE E: Mechanisms to ensure that the Australian Federal Police have sufficient independence to effectively and impartially carry out their investigatory and law enforcement responsibilities in relation to politically sensitive matters.**

31. As the Commonwealth's primary law enforcement agency, the AFP is responsible for the investigation and prevention of Commonwealth offences, as passed by Parliament. The AFP fulfils this responsibility with operational independence and political impartiality at all times.
32. The Minister for Home Affairs is lawfully permitted to provide written directions to the AFP in terms of the 'general policy to be pursued' in fulfilling its functions.<sup>5</sup> However, the AFP is not, and cannot legally be, directed by the Government or an individual Minister or Department to exercise, or abstain from exercising, police powers in an individual investigation. On 8 August 2018, the Minister for Home Affairs issued a ministerial direction in relation to press freedom (**attachment A**). The AFP welcomes the new ministerial direction, which will assist the AFP to find the appropriate balance between press freedom and other public interest considerations, including national security and human safety.
33. The AFP's standard practice is to notify the Minister for Home Affairs when politically sensitive matters are referred to the AFP unless there is a conflict of interest or potential for perceived conflict of interest. This is done in accordance with the AFP National Guideline on Politically Sensitive Investigations (**attachment B**). The AFP also notifies the Minister for Home Affairs' Office of significant, overt operational activity. Permission to commence an investigation or undertake operational activity is not sought. Nor does the AFP provide regular updates to the Minister for Home Affairs on operational activity.
34. As stated above, the AFP evaluates and prioritises all referrals independently of Government and in accordance with a clear organisational policy called the Case Categorisation and Prioritisation Model (CCPM).
35. The AFP is one of the most thoroughly oversighted agencies in the Commonwealth including by the:
  - The Commonwealth Ombudsman;
  - The Australian Commission for Law Enforcement Integrity;
  - The Parliamentary Joint Committee on Intelligence and Security;
  - The Parliamentary Joint Committee on Law Enforcement;
  - The Senate Standing Committees on Legal and Constitutional Affairs; and
  - The AFP's internal Professional Standards Unit.

Most significantly, the AFP's use of powers is tested whenever evidence derived from those powers is adduced in court.

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<sup>5</sup> Australian Federal Police Act 1979 (Cth), section 37(2).





**THE HON PETER DUTTON MP  
MINISTER FOR HOME AFFAIRS**

**Minister for Home Affairs – Ministerial Direction to Australian Federal Police Commissioner relating to investigative action involving a professional journalist or news media organisation in the context of an unauthorised disclosure of material made or obtained by a current or former Commonwealth officer**

This Ministerial Direction is issued under subsection 37(2) of the *Australian Federal Police Act 1979* (the AFP Act). This Ministerial Direction is intended to complement any previous Ministerial Direction issued under subsection 37(2) with effect from the date this Ministerial Direction commences. This Ministerial Direction does not constrain investigation by the Australian Federal Police (AFP) of an unauthorised disclosure of material made or obtained by a current or former Commonwealth officer.

This Ministerial Direction outlines the Government's expectations for the AFP in relation to investigative action involving a professional journalist or news media organisation in the context of an unauthorised disclosure of material made or obtained by a current or former Commonwealth officer.

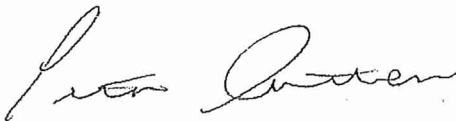
A key function of the AFP is, and must remain, the enforcement of the criminal law, without exception. In its performance of this function, however, I expect the AFP to take into account the importance of a free and open press in Australia's democratic society and to consider broader public interest implications before undertaking investigative action involving a professional journalist or news media organisation in relation to an unauthorised disclosure of material made or obtained by a current or former Commonwealth officer.

In particular, where consistent with operational imperatives, I expect the AFP to exhaust alternative investigative actions, including in relation to any other persons that may be involved in the matter, prior to considering whether any investigative action involving a professional journalist or news media organisation is necessary. Where possible, I also expect the AFP to continue to seek voluntary assistance, if relevant, from professional journalists or news media organisations.

I also expect the AFP to strengthen its guidance and processes about the types and level of information required from a Government department or agency in referring an unauthorised disclosure of material made or obtained by a current or former Commonwealth officer to the AFP for investigation. This should include an explicit requirement that the referring department or agency provides a harm statement indicating the extent to which the disclosure of the material would be expected to significantly compromise Australia's national security.

This stronger framework around the referral process should enable the AFP to comprehensively assess all relevant information and make an informed decision about whether and in what way to proceed with a criminal investigation, having due regard to relevant public interest considerations. In undertaking that assessment, the AFP must have regard to any whole-of-government guidance that may be issued concerning the levels of harm caused to Australia's national interest by disclosure of the various types of information held across Government.

Dated 8<sup>th</sup> August 2019



Peter Dutton

The Hon Peter Dutton MP

Minister for Home Affairs

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## Ministerial Direction (Commonwealth Director of Public Prosecutions)

### *Director of Public Prosecutions Act 1983*

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I, Christian Porter MP, Attorney-General of Australia, having consulted the Director of Public Prosecutions ('the Director'), revoke the direction issued to the Director on 30 October 2014 and give the following direction under subsection 8(1) of the *Director of Public Prosecutions Act 1983*.

The Director must not proceed with a prosecution of a person in for alleged contravention of the following sections without the written consent of the Attorney-General:

- a) section 35P of the *Australian Security Intelligence Organisation Act 1979*
- b) section 3ZZHA, 15HK, 15HL and 70 of the *Crimes Act 1914*
- c) section 131.1 and 132.1 of the *Criminal Code*
- d) section 73A of the *Defence Act 1903*

where the person is a journalist and the facts constituting the alleged offence relate to the work of the person in a professional capacity as a journalist.

Dated 19 September 2019

**The Hon Christian Porter MP**  
**Attorney-General**

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## Existing legal protections & safeguards for journalists

### Journalist privilege

- Statutory 'journalist privilege' applies to court proceedings in NSW, Victoria, WA, ACT, and the Federal Court.
  - Does not apply at the investigation stage, only during court proceedings.
  - Enables journalists to refuse to give information that would identify a confidential source.
  - E.g. section 126K of the *Evidence Act 1995*.
- The *Evidence Act* also includes a general provision enabling a court to exclude evidence where the public interest in maintaining confidentiality outweighs the public interest in admitting the evidence (s.130)

### General

- Some Cth secrecy offences include defences/exemptions for previously published information, disclosures to police, reporting to oversight bodies.

### Journalist defence for secrecy offences

(Division 122 of the Criminal Code – section 122.5)

- This defence only applies to the offences in Division 122 of the Criminal Code.
  - It does not apply to theft of Commonwealth property for example.
- This defence only applies where:
  - The disclosure, use, possession etc. was made in the defendant's capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media, and
  - The [journalist] reasonably believed it was in the public interest.
- Division 122 also includes defences for:
  - Disclosing information that has already been made public with the authority of the Commonwealth.
  - Disclosing information to an integrity agency, or reporting it to police because it relates to a crime.
  - Disclosing the information under the Public Interest Disclosure regime.

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## **Journalist information warrants (JIWs)**

(Division 4C of the TIA Act)

- Introduced in 2015 during the data retention amendments.
- For most matters, access to telecommunications data is internally authorised. However, for matters relating to journalists and their sources, a JIW must be obtained before the authorisation to access the data. A JIW is issued by a judge or AAT member.
  - The issuing authority must be satisfied that the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the source.
    - One consideration is whether the information could be obtained by other means.
  - The issuing authority must consider any submission by the Public Interest Advocate.

## **Controlled operations – secrecy offences**

- Section 15HK *Crimes Act 1914*
- In 2018, the controlled operation secrecy offences were separated out into offences for 'insiders' and 'outsiders'.
  - For outsiders, including journalists, the prosecution must prove that disclosure would endanger a person or prejudice an operation.

## **Agricultural protection Act 2019**

- Introduced two new offences in relation to the incitement of trespass or property offences on agricultural land. Included an exemption for public interest disclosures by professional journalists.
  - This Bill was introduced to Parliament one month after the ABC and News Corp warrants.

## **Declared area offence**

- Division 119 of the Criminal Code
- The declared area offence includes an exemption for persons who travel to a declared area solely for the purpose of making a news report of events in the area where the person is working (or assisting a person) in their capacity as a professional journalist.

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### **Abhorrent violent material offences**

- Division 474 of the Criminal Code
- The offences for failing to remove abhorrent violent material include a defence where the material relates to a news report or a current affairs report that is in the public interest and made by a person in their professional capacity as a journalist

### **Treason, advocating terrorism/genocide**

- The offences of treason, advocating terrorism, and advocating terrorism in Part 5.1 of the Criminal Code include a defence for acts done in "good faith" (section 80.3)
  - The Court is permitted to consider whether the acts were done "in the dissemination of news or current affairs".

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<b>OLD s.70 - Disclosure of information by Cth officers</b>	
Dates in force	1960 – 28 December 2018
Location in law	Crimes Act - Section 70 (repealed)
Type of information covered	Facts or documents which the Defendant had obtained by virtue of being a Commonwealth officer and had a duty not to disclose
Type of person covered	Only current and former Cth officers
Journalist defence	No
Max penalty	2 years
Consent to prosecute?	AG consent NOT required by statute
<b>OLD s.79 - Official secrets</b>	
Dates in force	1946 – 28 December 2018
Location in law	Crimes Act - Section 79 (repealed)
Type of information covered	Documents etc. given to the Defendant by a current or former Cth officer, where it was the Cth officer's duty to keep the document as secret.
Type of person covered	Anyone, including Cth officers.
Journalist defence	No
Max penalty	6 months to 7 years depending on knowledge and conduct
	79(2) Intention of prejudicing the security or defence of the Cth 7 years
	79(3) Communicates or gives access to 2 years
	79(4) Retains the document, fails to comply with a direction, or fails to take reasonable care 6 months
	79(5) Receives knowing or having RGB the Cth officer is breaching 70(2) 7 years
	79(6) Receives knowing or having RGB the Cth officer is breaching 79(3) 2 years
	AG consent required by statute

NEW ss.122.2 and 122.3 - Cth officers	
Dates in force	29 December 2018 -
Location in law	Sections 122.1 and 122.2 of Part 5.6 of the Criminal Code (in force)
Type of person covered	Only current and former Cth officers
Type of information covered	122.1 - Inherently harmful info made/obtained by the Defendant as a Cth officer. 122.2 - Any info made/obtained by the Defendant as a Cth officer where the officer's conduct is likely to cause harm to Australia's interests.
Journalist defence?	Yes 122.5(6) - where the journalist had <b>reasonable belief it was in the public interest</b> , and excluding conduct that identifies intel officers or participants in witness protection.
Max penalty	3 - 10 years depending on the type of conduct
	Communicating the info 7 years (10 years for aggravated)
	Dealing with the info (other than communicating) 3 years (5 years for aggravated)
	Breach of proper place of custody 3 years (5 years for aggravated)
Aggravated offence	Failure to comply with a lawful direction 3 years (5 years for aggravated)
	Aggravated offence applies where:
	- Dealing with AUSEO classified info,
	- dealing with over 5 documents,
Consent to prosecute?	- removing the classification, or
	- Defendant has NV1+
AG consent required by statute	

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<b>NEW s.122.4 - Cth officers</b>					
Dates in force	29 December 2018 – 29 December 2023 (sunset provision)				
Location in law	122.4 of Part 5.6 of the Criminal Code (in force)				
Type of information covered	Info made/obtained by the Defendant as a Cth officer where there is a duty at Cth law not to disclose.				
Type of person covered	Only current and former Cth officers				
Journalist defence?	Yes – where the journalist had <b>reasonable belief it was in the public interest</b> , and excluding conduct that identifies intel officers or participants in witness protection.				
Max penalty	2 years				
Consent to prosecute?	AG consent required by statute				
<b>NEW s.122.4A – non-Cth officers</b>					
Dates in force	29 December 2018 -				
Location in law	Section 122.4A of Part 5.6 of the Criminal Code (in force)				
Type of person covered	Non-Cth Officers				
Type of information covered	<p>Info made/obtained by someone else as a Cth officer that is:</p> <ul style="list-style-type: none"> <li>- SECRET or TOP SECRET,</li> <li>- Communication damages the security or defence of Australia,</li> <li>- Communication interferes with a criminal investigation or prosecution, OR</li> <li>- Communication prejudices the health/safety of the public or a section of the public.</li> </ul>				
Journalist defence?	Yes – where the journalist had reasonable belief it was in the public interest, and excluding conduct that identifies intel officers or participants in witness protection.				
Max penalty	<div>2 - 5 years depending on type of conduct</div> <table> <tr> <td>Communicating the info (other than communicating)</td><td>5 years</td></tr> <tr> <td>Dealing with the info (other than communicating)</td><td>2 years</td></tr> </table>	Communicating the info (other than communicating)	5 years	Dealing with the info (other than communicating)	2 years
Communicating the info (other than communicating)	5 years				
Dealing with the info (other than communicating)	2 years				
Consent to prosecute?	AG consent required by statute				

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## Legal thresholds for information access

Threshold		Authoriser
<b>Telecommunications (Interception and Access) Act 1979</b>		
Telecommunications intercept warrants (audio and data)		
<ul style="list-style-type: none"> <li>Offences of 7+ years involving certain conduct (plus certain other offences including terrorism)</li> </ul>		Judge or AAT member
Stored communications warrants		
<ul style="list-style-type: none"> <li>Offences of 3+ years</li> </ul>		Judge or AAT member
Historical data (subscriber, call charge records, internet metadata)		
<ul style="list-style-type: none"> <li>Enforcement of the criminal law</li> <li>Finding missing persons</li> <li>Enforcement of law imposing a pecuniary penalty of protection of public revenue</li> <li>Enforcement of criminal law in a foreign country</li> </ul> <p><i>NOTE: For journalists must first obtain a journalist information warrant</i></p>		Internally authorised
Prospective data requests (future call associated data [no content] – calling identities, date, time and location)		
<ul style="list-style-type: none"> <li>Offences of 3+ years</li> <li>At request of foreign country for offences of 3+ years following a formal MAR approved by AG.</li> </ul>	<p>AND RELEASED IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH)</p> <p>BY THE AUSTRALIAN FEDERAL POLICE</p>	Internally authorised



<b>Telecommunications Act 1997</b>		
Section 313 reasonable assistance		
Australian carriers/carriage service providers must give such help as is reasonably necessary for:		Internally authorised
<ul style="list-style-type: none"> <li>- Enforcing the criminal law and imposing pecuniary penalties</li> <li>- Assisting the enforcement of the criminal laws in force in a foreign country</li> <li>- Protecting the public revenue</li> <li>- Safeguarding national security</li> </ul>		

<b>Surveillance Devices Act 2004</b>		
Surveillance device warrants (listening, tracking, optical and data)		
- Offences of 3+ years		Judge or AAT member
Tracking devices (where no trespass)		
- Offences of 3+ years		Internally authorised
Computer Access Warrant		
- Offences of 3+ years	THIS DOCUMENT HAS BEEN DECLASSIFIED AND RELEASED IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH) BY THE AUSTRALIAN FEDERAL POLICE	Judge or AAT member

## Consolidation of AFP QoNs

### PJCIS Press Freedom inquiry

#### News Corp / Smethurst / ASD investigation / Operation WOOLF

**AFP1: What evidence was there of harm? (PJCIS 21.1 p.4; PJCIS sub21.2 Q9-10)**

A: The Secretary of Defence did not provide information on the potential harm in the referral on 30 April 2018 in relation to News Corp reporting.

The Australian Signals Directorate provided the AFP with information on actual and potential harm in relation to the unauthorised disclosure.

**AFP2: Did the same forensics officers attend both the News Corp and ABC warrants? (PJCIS Sub21.1 p.7)**

A: The search warrants executed at Ms Annika Smethurst and the ABC's premises were attended by different AFP digital forensic team members.

**AFP3: What is the total cost to the taxpayer associated with this investigation? (PJCIS Sub21.1 p.11)**

A: As at 6 August 2019, the total estimated cost of the investigations were:

- Investigation into the ASD disclosure: \$134 900

These figures do not include ongoing legal costs in relation to the Federal Court of Australia and High Court of Australia proceedings.

**AFP4: When did the AFP make the decision to launch a full investigation into the News Corp matter? (PJCIS Sub21.2 Q6)**

A: The AFP made a decision to commence an investigation into this matter on 8 May 2018.

**AFP5: Did the AFP obtain a journalist information warrant for the Smethurst investigation? (PJCIS Sub21.2 Q8b)**

A: No journalist information warrants were obtained in relation to this investigation. Under section 185D of the *Telecommunications (Interception and Access) Act 1979* a copy of any journalist information warrant issued to the AFP must be given to this Committee as soon as practicable.

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**AFP6: What factors did the AFP consider at the outset of this investigation? Why did AFP decide it was in the public interest to investigate? (PJCIS Sub21.2 Q11)**

A: The AFP evaluates and prioritises all allegations of criminal wrongdoing objectively at the organisational level in accordance with an established evaluation process. This determines whether the AFP will:

- investigate
- refer the matter to a partner agency and, if so, whether AFP will collaborate in a joint investigation
- record it as a criminal matter without investigation due to:
  - o the level of criminality
  - o allocation of resources to higher priority matters
  - o likelihood of successful prosecution
  - o not in the public interest
- reject the matter

The Case Categorisation and Prioritisation Model (CCPM) is also applied during the evaluation of a referral. The CCPM describes the essential characteristics of operational matters that affect the referral and selection process. The factors that are taken into account in the CCPM assessment include:

- Resources
- The impact of the alleged offending on Australian society
- The likelihood of success in an investigation
- Whether an alternative to criminal investigation is appropriate
- The impact of the alleged offending on Australian society
- Whether an alternative to criminal investigation is appropriate

A CCPM rating is completed at the time of referral and is also revised when any aspect of the matter changes significantly.

**AFP7: Explain why the CCPM for this referral was amended. (PJCIS Sub21.5 Q15-17)**

A: The original classification, of 'other Commonwealth crime', was entered in error on 3 May 2018. Upon review by an AFP team leader the correct classification of 'corruption' was entered on 7 May 2018, consistent with the AFP's Case Categorisation and Prioritisation Model (CCPM). The outcome of each criteria is pre-determined by the CCPM. For example, once a crime type is entered the criteria are automatically filled by the system. As such, once the error in crime type was corrected the other values were automatically amended

**AFP8: How many potential suspects did the AFP identify at the outset of its investigation? (PJCIS Sub21.2 Q13)**

A: The AFP is not able to comment on sensitive aspects of investigations that have been, are being, or are being proposed to be undertaken by the AFP. Such sensitivities include the use of statutory powers and the extent to which such powers may be used, or not used, in relation to those persons under investigation.



**AFP9: What had the Department of Defence done before it referred the matter to the AFP?**  
**(PJCIS Sub21.2 Q14a)**

A: The AFP understands the Australian Signals Directorate undertook (which at the relevant time was part of the Department of Defence) their own initial enquiries to determine the classification and ownership of the documents. Any further question should be directed to the Australian Signals Directorate.

**AFP10: Did the government subsequently declassify all or part of the document cited by Annika Smethurst in her story on 30 April 2018? (PJCIS Sub21.2 Q16)**

A: The AFP is not aware of the relevant document cited by Annika Smethurst being declassified.

**AFP11: Please provide details of correspondence between AFP and any Minister's Office on this investigation. (PJCIS Sub21.2 Q18)**

A: On 4 June 2019, Assistant Commissioner Debbie Platz advised the Minister for Home Affairs office that a search warrant had commenced and to expect media activity. On 1 July 2019, the AFP provided the Minister for Home Affairs with a general briefing on the proceedings against the AFP in the High Court and the Federal Court respectively in relation to the search warrants executed on 4 and 5 June 2019, and the public comments made by the Attorney-General on 19 June 2019 in relation to the investigation. On 3 July 2019, AFP Deputy Commissioner Neil Gaughan attended a meeting with the Attorney-General to discuss the public comments made by the Attorney-General on 19 June 2019.

**AFP12: Please provide details of correspondence between AFP and the Department of Home Affairs on this investigation. (PJCIS Sub21.2 Q18)**

A: On 30 April 2019, the Secretary of Defence referred News Corp reporting to the AFP for investigation, copying in the Secretary of Home Affairs.

**AFP13: Please provide details of correspondence between AFP and Defence on this investigation. (PJCIS Sub21.2 Q18)**

A: On 30 April 2019, the Secretary of Defence referred NewsCorp reporting to the AFP for investigation. Further details of communication between the AFP and the Department of Defence is sensitive operational information. Therefore, the AFP is not in a position to provide further details to the inquiry.

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**ABC / Afghan files investigation / Operation KLASIES**

**AFP14: What is the total cost to the taxpayer associated with this investigation?**

**(PJCIS Sub21.1 p.4; 21.2 Q40)**

A: As at 6 August 2019, the total estimated cost of the investigations were:

- Investigation into the Afghan files disclosure: \$140 600

These figures do not include ongoing legal costs in relation to the Federal Court of Australia and High Court of Australia proceedings.

**AFP15: When did the alleged unauthorised disclosure of information take place?**

**(PJCIS Sub21.2 Q19)**

A: The timing of the alleged disclosure is a central fact in issue that needs to be proven in the criminal prosecution and may be relevant to civil proceedings. The AFP is not in a position to provide further details to the inquiry.

**AFP16: When did the AFP make the decision to launch a full investigation into the leak?**

**(PJCIS Sub21.2 Q267)**

A: The AFP made a decision to investigate this matter on 19 July 2017.

**AFP17: Has the AFP obtained any covert warrants in relation to Dan Oakes, Sam Clark, any other ABC journalist or the ABC itself? If so, when were those warrants obtained? (PJCIS Sub21.2 Q27)**

A: The AFP is not able to comment on sensitive aspects of investigations that have been, are being, or are being proposed to be undertaken by the AFP. Such sensitivities include the use of statutory powers and the extent to which such powers may be used, or not used, in relation to those persons under investigation.

**AFP18: Did the Department of Home Affairs or Defence provide the AFP with any evidence that the ABC story had caused any harm to anyone? (PJCIS Sub21.2 Q28-9)**

A: The Department of Defence provided the AFP with information on actual and potential harm in relation to the unauthorised disclosure.

**AFP19: What factors did the AFP consider at the outset of this investigation? Why did AFP decide it was in the public interest to investigate? (PJCIS Sub21.2 Q30)**

A: The AFP evaluates and prioritises all allegations of criminal wrongdoing objectively at the organisational level in accordance with an established evaluation process. This determines whether the AFP will:

- Investigate

- refer the matter to a partner agency and, if so, whether AFP will collaborate in a joint investigation
- record it as a criminal matter without investigation due to:
  - o the level of criminality
  - o allocation of resources to higher priority matters
  - o likelihood of successful prosecution
  - o not in the public interest
  - o reject the matter

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- The impact of the alleged offending on Australian society
- Whether an alternative to criminal investigation is appropriate

A CCPM rating is completed at the time of referral and is also revised when any aspect of the matter changes significantly.

**AFP20: Is it still possible that journalists could be charged in relation to the Afghan Files matter?**  
**(PJICIS Sub21.2 Q31-33)**

A: When the AFP is conducting an investigation, there is a range of phases the investigation goes through. One of which is a discovery phase, where the AFP collects evidence in relation to people we believe may have committed an offence. As this is an ongoing investigation we cannot rule anything out.

**AFP21: how many potential suspects did the AFP identify at the outset of its investigation?**  
**(PJICIS Sub21.2 Q35)**

A: The AFP is not able to comment on sensitive aspects of investigations that have been, are being, or are being proposed to be undertaken by the AFP. Such sensitivities include the use of statutory powers and the extent to which such powers may be used, or not used, in relation to those persons under investigation.

**AFP22: How many people's telecommunications data was accessed by the AFP for the purpose of identifying the source?** **(PJICIS Sub21.2 Q36)**

A: The AFP is not able to comment on sensitive aspects of investigations that have been, are being, or are being proposed to be undertaken by the AFP. Such sensitivities include the use of statutory powers and the extent to which such powers may be used, or not used, in relation to those persons under investigation.