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22 SEP 2011

ATTORNEY-GENERAL

Online Privacy Inquiry - Response Recommendation 9

Deadline: Required by 30 September 2011 to align with timeframe for whole of Government response to the Committee's Recommendations being coordinated by the Department of Prime Minister and Cabinet.

Key Issues: The Senate Standing Committee on Environment and Communications completed their inquiry into the adequacy of protections for the privacy of Australians online on 7 April 2011. The Committee made nine recommendations in total. Recommendation nine specifically relates to mandatory data retention. A response to Recommendation 9 is at **Attachment A**.

The Department of Prime Minister and Cabinet is coordinating the response to the report with additional input from the Department and the Department of Broadband, Communications and Digital Economy. Department of Prime Minister and Cabinet are expected to finalise the Government response early October 2011.

AGD Analysis: A mandatory data retention proposal regime continues to be of public interest. In response to a request under freedom of information the Department released documents relating to the development of a data retention proposal (including documents relating to the Inquiry) which were published by the Australian Newspaper in July 2011. The Committee's recommendations focused on further justifying why such a regime is necessary, quantifying costs and greater consultation. These recommendations are consistent with the Departments approach in further developing data retention proposal options as part of holistic reconsideration of the *Telecommunications (Interception and Access) Act 1979*.

Financial Implications: None.

Sensitivities and Communications Plan: No specific communications strategy is being developed in response to this Inquiry however the Department of Prime Minister and Cabinet is coordinating a communications strategy as part of the broader Government response on privacy issues generally.

Recommendation: I recommend that you:

- a) approve the proposed Government Response to Recommendation 9 of the Committee Report, and

Approved / Not Approved (Discuss)

- b) sign the letter to the Minister for Privacy and Freedom of Information at **Attachment B**.

Signed / Not Signed

Catherine Smith
Assistant Secretary - Telecommunications and
Surveillance Law Branch
02 6141 2901
21/9/2011

No further action required -
amendments to attachment
to draft letter agreed with
Senior Adviser, as recorded
in e-mails in 10/27823-01.
Shankarreddy 12/10/2011

[Signature]
Attorney-General

26/9/2011

Cleared by: *[Signature]*
Geoff McDonald
21/9/2011

Action Officer: Wendy Kelly, 02 6141 2906. Date completed by AO 19/09/2011

Background

2. The Senate Environment and Communications References Committee tabled their report on "The adequacy of protections for the privacy of Australians online" on 7 April 2011. The Department of Prime Minister and Cabinet is coordinating the Government response to the Committee's report on behalf of the Minister of Privacy and Freedom of Information.
3. The Department appeared before the Committee and provided evidence about a possible data retention regime, part of this evidence was given in-camera. Recommendation nine of the Committee's report relates to data retention. Specifically, the Committee recommended that the Government must undertake an extensive analysis of the costs, benefits and risks of such a scheme, demonstrate the necessity of the data to law enforcement agencies to therefore justify the collection and retention of the data and the expense to Internet Service Providers, as well as assure the security of the information and consult with a range of stakeholders.
4. Consistent with previous public statements, the proposed response outlines the Government's commitment to an open, transparent and consultative approach. The concept of data retention is being progressed as part of holistic reconsideration of the *Telecommunications (Interception and Access) Act 1979* and it is intended that options for data retention regime will be put forward in the public discussion paper produced as part of the reform process.

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IRRELEVANT



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

10/27823-01

COPY

The Hon Brendan O'Connor MP
Minister for Privacy and Freedom of Information
Parliament House
Canberra ACT 2600

Dear Minister

I am writing to you in relation to the Senate Standing Committee on Environment and Communications report into the adequacy of protections for the privacy of Australians online which was completed on 7 April 2011.

One of the matters inquired into by the Committee was the concept of a mandatory data retention regime in Australia. The Attorney-General's Department, along with the Department of Prime Minister and Cabinet, the Department of Broadband, Communications and the Digital Economy, Australian Federal Police and the Australian Security Intelligence Organisation appeared before the Committee and gave evidence regarding the development of a mandatory data retention proposal.

Recommendation nine of the Committee's report specifically relates to data retention which falls within my portfolio responsibilities. Please find attached a response to Recommendation nine. I understand that the Department of Prime Minister and Cabinet is coordinating the Government response on your behalf.

The action officer for this matter in my Department is Wendy Kelly who can be contacted on 02 6141 2906.

Yours sincerely

Robert McClelland

BACKPOCKET BRIEF

DATA RETENTION

The Department is evaluating the benefits of a mandatory data retention regime which aims to ensure that telecommunications data continues to be available for law enforcement and national security purposes. Mandatory Data Retention was the subject of a recommendation from an inquiry into the adequacy of protections for the privacy of Australians online undertaken by the Environment and Communications References Committee. It was also the subject of several Freedom of Information requests and documents released to The Australian newspaper which were published on their website.

Mandatory data retention has attracted significant media attention on numerous occasions.

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- The ability to access telecommunications data held by industry is a vital tool for agencies to investigate crime and protect national security.
 - The Department remains in an evaluation phase in respect of proposals for retention of telecommunications data.
 - Any proposal must strike the correct balance between community expectations regarding individual privacy, that unlawful behaviour is investigated and prosecuted, as well as the provision of competitive commercial telecommunications services.
 - Should these proposals advance, the Department will undertake an assessment of the costs, benefits and risks of the proposal.

The Department will assess the accountability and monitoring mechanisms contained within the current legislation and the applicability to a data retention regime.

[if asked about public consultations]

- No decision has been made as to a public consultation process or details of any future data retention proposal.
- Broad consultation will be undertaken should a proposal be sufficiently developed to allow meaningful consultation with a range of stakeholders including the broader community.
- The Department is consulting with Industry during the development to seek their views on the potential impacts of a data retention proposal, including the financial implications.
- *[if asked what is the purpose of a data retention scheme]*
- Data retention would be the required retention of non-content information about a telecommunications subscriber and their communications.
- For example, data could include the name, address information linking a real person to a telecommunications service, as well as calling times and duration, or the IP addresses allocated to the person by their carrier.
- Typically, carriers' systems create this information and the carrier retains it for its own business purposes and deletes it at a later date.
- A data retention scheme would require carriers retain the information they generate for set periods to maintain critical evidence for criminal and national security investigations.