

To the Attorney-General's Department,

I am extremely concerned at the proposed expansion of the mandatory data retention regime, specifically the potential use of collected data in civil proceedings.

When the data retention scheme was introduced, Australians were promised by the Attorney-General that the regime "can't be and won't be" [expanded beyond serious criminal offenses...] "the mandatory metadata retention regime applies only to the most serious crime, to terrorism, to international and transnational organised crime, to paedophilia, where the use of metadata has been particularly useful as an investigative tool, only to as a tool, only to crime and only to the highest levels of crime. Breach of copyright is a civil wrong. Civil wrongs have got nothing to do with this scheme." [1]

When the bill that introduced the metadata regime was being debated in Parliament, Andrew Wilkie voiced concerns about the slippery slope that a regime like this represented. "This massive metadata... volume of metadata being stored and before we know it, people will be making applications to access it, perhaps in in civil matters. And what will the government of the day make of that?" [2]

As recently as the 28th of April 2016, the FAQ page published by the Attorney-General's Department assured Australians that the Act would "preclude access to telecommunications data retained solely for the purpose of complying with the mandatory data retention scheme for the purposes of civil litigation." [3] This paragraph is not present on current versions of the same page [4]. Has the decision already been made?

When the data collection regime entered law, agencies could apply to be considered "criminal law-enforcement agencies" and gain access to retained telecommunications data. This included the National Measurement Institute [5], which is absurd. Businesses using phony measuring instruments are not the serious criminals and terrorists that this scheme targets. What is clear is that now that the data is available, more and more individuals and groups will seek to access it. It is the role of the government to limit that access to what is acceptable to the community.

The information that is collected about individuals as part of this data retention scheme is invasive and powerful, and its access should therefore be restricted to people who can handle it safely. As recently as this month, the Victorian Government accidentally mailed out a list of nearly 9,000 people with a gun licence instead of sending out renewal forms [6]. As privacy advocates pointed out when the data retention scheme was first proposed, personal metadata can be extremely invasive. To mitigate the risk of its misuse (accidental or intentional), its access should be heavily restricted; an internet search will uncover a ready supply of examples of misuse, even by trusted individuals such as police. To expand access to arbitrary civil proceedings is just inviting trouble.

I urge the Attorney-General to remain consistent with his earlier remarks, and to recommend that metadata access be denied to civil matters. I further urge the Attorney-General to recommend that the government increases the privacy safeguards in the regime by:

- * Requiring a warrant to access the data collected about any person, not just journalists, and
- * Reviewing and heavily restricting the list of agencies permitted to access collected data.

When publishing this submission, please withhold my name.

References:

[1]: <https://youtu.be/bczBOZNS9D0?t=3460>

[2]: <https://youtu.be/DZz86r-AGjl?t=375>

[3]:

<https://web.archive.org/web/20160428205854/https://www.ag.gov.au/NationalSecurity/DataRetention/Pages/Frequentlyaskedquestions.aspx>

[4]: <https://www.ag.gov.au/NationalSecurity/DataRetention/Pages/Frequentlyaskedquestions.aspx>

[5]: <https://www.theguardian.com/world/2016/jan/19/lamb-chop-weight-enforcers-want-warrantless-access-to-australians-metadata>

[6]: <http://www.abc.net.au/news/2017-01-18/gun-owners-personal-details-released-in-email-error-in-breach/8191594>