

Dear Assistant Secretary

Re: Access to telecommunications data in civil proceedings

Thank you for the opportunity to make this submission.

For many years:

- telecommunications data has been retained by telecommunications companies;
- a wide range of agencies have had access to that retained data, without needing a warrant; and
- there was no express provision applying the Privacy Act to such retained data.

Hundreds of thousands of incidents of warrantless access to retained telecommunications data were occurring each year.

During the 44th Parliament, the government sought to make data retention mandatory, including by prescribing a dataset that was to be retained. Following an inquiry by the Parliamentary Joint Committee on Intelligence and Security, more than thirty recommendations were made, to improve the government's then proposed legislation.

The bill as ultimately passed reduced the number of agencies that had warrantless access to the data, increased oversight of the use of retained data, and for the first time contained an express provision applying the Privacy Act to the retention of telecommunications data.

The PJCIS report, referred to above, recommended that the telecommunications data retained only for the purposes of compliance with the data retention legislation not be available for civil litigation purposes. A regulation making power was recommended, to allow for exceptions, and a review of this issue was also recommended.

For reasons including:

- civil liberties and privacy; and
- the need to avoid increasing the costs of discovery in civil proceedings (and thereby further exacerbating the problem of costs being a significant impediment to access to justice),

the government should refrain from widening the availability and use of retained telecommunications data in civil proceedings.

Among the telecommunications data presently being retained by firms, there would be:

- data that would have been retained even if the Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015 had not been passed; and

- data being retained only for the purposes of complying with the law following that the enactment.

Data that falls into the latter category should not be made available in civil litigation. It should be available only for the purposes of preventing, detecting and prosecuting crime and terrorist activities, and only under the circumstances contemplated by the data retention legislation.

Instead of widening access to retained telecommunications data, the government should consider further limiting access. Specifically, in situations where retained telecommunications data can still be obtained without a warrant, albeit by fewer agencies than before, the government should consider whether there should be greater restrictions on access to retained data.

Thank you again for the opportunity to make this submission.

Yours sincerely

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