The Department of Communications and the Arts 23 December 2016
Attorney-General's Department – National Security Division

Consultation – Access to Retained Data in Civil Proceedings

Re: 3 - Are there particular kinds of civil proceedings or circumstances in which the prohibition in section 280(1B) of the Telecommunications Act 1997 should not apply?

I wish to raise the following unintended consequences of affording protection from discovery of data retention records in civil proceedings:

1 – The use of the internet for stalking, harassment, including "revenge pornography". There appears to be no valid reason around privacy such that a plaintiff should not be able to gain access to data retention records in such cases.

2 – The growing incidence of "fake news", which has appeared in the last few years, where there is systematic dissemination of propaganda and mistruths, by corporations, political lobbies, and nation states, to pursue political agendas, or to smear reputations and careers of political and business adversaries, including people and companies. In this instance, there is a strong public interest argument that it is in the interests of democracy that the disseminators of propaganda and mistruths for political purposes, be compelled to reveal their identity and motives in the public arena, rather than sniping from behind a veil of anonymity. Or where there are suits for libel, there appears to be no compelling argument to afford privacy rights to prevail against disclosure of data retention records.

3 – In instances where corporations have sustained a data breach, and there is subsequent use of their intellectual property by unauthorised users, there would appear to be no good grounds if there is evidence from data retention records that would connect the data breach to the unauthorised users, that that connection not be explored as part of action taken to protect intellectual property rights.

Kind regards

Paul Wilkins