

Question on notice no. 41

Portfolio question number: SQ23-000404

2023-24 Budget estimates

Community Affairs Committee, Services Australia Portfolio

Senator Janet Rice: asked the Services Australia on 31 May 2023—

Senator RICE: I want to go to an issue that I've previously discussed at Senate estimates—Services Australia's use of the Israeli spyware Cellebrite, which allows cracking into smartphones and copying all data. At previous estimates I was informed that the technology was used only for serious noncompliance, so I will start by asking: what is the threshold for serious noncompliance?

Ms Skinner: Mr Birrer will take you through serious noncompliance, which includes criminal activity and those sorts of things. Mr Birrer probably has a more articulate list than I.

Mr Birrer: As we've discussed previously, the Cellebrite technology is one of the suites of capabilities we use to undertake investigations. They are of the higher end. By 'serious noncompliance' we mean an investigation that's commencing as a criminal investigation. Sometimes they don't meet the standards for us to then refer a brief of evidence to the Commonwealth Director of Public Prosecution to consider, and that's why we use the term 'serious noncompliance'. It starts at that end. There are the traditional fraud attempts against the Commonwealth, unfortunately, but, even more sadly, what we're seeing a lot of now in terms of the nature of criminal offending against the agency in relation to payments are identity crimes, which impact on our customers and other vulnerable people.

Senator RICE: How much evidence do you need to have? You say there's not sufficient evidence to refer it to the DPP, but it's starting with a criminal case: what's your definition? What is the criteria? What is the threshold?

Mr Birrer: The threshold for any brief of evidence is whether there's sufficient evidence to justify the elements of the offences which are being investigated to the satisfaction of the Commonwealth Director of Public Prosecutions. There's also a public interest factor to be considered—whether or not it's in the public interest to pursue a particular criminal matter. I would draw the distinction that they are quite different and have quite different processes to our general customer compliance activities.

Senator RICE: I want to go to when you are using Cellebrite. Who gets to decide whether Cellebrite technology is used? Do you have a policy about it? Is it only very senior levels of public servants that decide we're going to use Cellebrite technology?

Mr Birrer: We do have a process by which any investigation is considered, prioritised against agencies' resources and the seriousness of the matter. Quite often, these technologies are used to examine a suspect's device. That occurs following the execution of a search warrant, and so that requires engagement with the Australian Federal Police, who execute that search warrant. We provide forensic services to assist, again, to see about evidence that supports the elements of any offence that's under investigation.

Senator RICE: Is it only used in conjunction with the AFP?

Mr Birrer: I'd have to take that on notice. But, in general, yes.

Answer —

Please see attached answer.

Senate Community Affairs Legislation Committee

Budget Estimates – 31 May 2023
ANSWER TO QUESTION ON NOTICE

The Hon Bill Shorten MP
Minister for the National Disability Insurance Scheme
Minister for Government Services

Topic: Usage of Cellebrite

Question reference number: SQ23-000404

Outcome Number: 1

Senator: Janet Rice

Type of Question: Spoken. Hansard Page/s: 26-27

Date set by the Committee for the return of answer: 14 July 2023

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Answer:

Services Australia (the Agency) is not legally permitted to obtain a search warrant. Generally, search warrants are obtained and executed by the Australian Federal Police (AFP), however, there are some cases where search warrants are facilitated by State Police.