

MEDIA RELEASE

Data retention: universal warrant requirement is only effective protection

Canberra, 1st May 2017

Last week's revelation by the Australian Federal Police that they illegally accessed the retained telecommunications data ('metadata') of a journalist without first obtaining a warrant demonstrates the complete lack of effective protection provided by the current legislation.

AFP Commissioner Andrew Colvin asserted that 'the police officers investigating the leak did not realise they were required to obtain a warrant to access the journalist's metadata.'ⁱ The requirement to obtain a warrant to access the data of journalists came into effect on 13th October 2015. It is therefore inexcusable for the officers involved to be unaware of this requirement. In addition, of course, ignorance of the law is no defence.

As journalist Paul Farrell told ABC's The Drum, this incident is "a systemic, structural failure of the AFP's internal policies and the law".ⁱⁱ

EFA has warned in the past that a warrant requirement limited to one group provides no effective protection whatsoever in the context of an indiscriminate, society-wide mandatory data retention scheme.

EFA Executive Officer Jon Lawrence said, "A whole range of relationships are no less deserving of independent protection than are journalist's communications with their sources, including lawyers and their clients, doctors and their patients, and any other relationship where privacy is critical. The only effective means to achieve such protection is to have a universal warrant requirement for access to retained telecommunications data.

"Without a universal warrant requirement we will continue to see instances of unauthorised access to data, regardless of whether such access is inadvertent or malicious.

"A majority of European Union member states have some form of independent, judicial authorisation required for access to telecommunications data. Such arrangements are therefore clearly workable and Australians are no less deserving of the same protection."

EFA therefore calls for the immediate introduction of a universal warrant requirement for all access to retained telecommunications data.

About EFA

Established in January 1994, Electronic Frontiers Australia (EFA) is a national, membership-based non-profit organisation representing Internet users concerned with digital freedoms and rights.



EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties in the digital context. EFA members and supporters come from all parts of Australia and from diverse backgrounds.

EFA's major objectives are to protect and promote the civil liberties of users of digital communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political and civil liberties issues involved in the use of digital communications systems.

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ⁱ As reported by Michael Koziol, SMH, 28th April 2017, accessible at: <http://www.smh.com.au/federal-politics/political-news/police-illegally-obtained-journalists-phone-records-under-new-metadata-retention-regime-20170428-gvutjx.html>

ⁱⁱ See: <https://twitter.com/ABCthedrum/status/857860983858937856>