



Ms Scarlet Kim
Legal Officer
Privacy International
62 Britton Street
LONDON EC1M 5UY
UNITED KINGDOM

Dear Ms Kim

I refer to your letter expressing concerns about lack of transparency in intelligence sharing arrangements between the Australian government and foreign governments, and seeking information about my office's oversight of intelligence sharing arrangements.

The Office of the Inspector-General of Intelligence and Security commenced in 1987 as a means of providing effective oversight of the Australian intelligence agencies. In the thirty years since then, the office has developed a systematic and wide-ranging oversight regime, giving assurance to the Australian government as to the legality and propriety of the activities of the Australian intelligence agencies.

The attached information addresses your specific questions.

Yours sincerely

Margaret Stone
Inspector-General

/ November 2017

FOI and Archives Act warning:

This is an exempt document under the *Freedom of Information Act 1982* and may be an exempt record under the *Archives Act 1983*. Consult the Inspector-General of Intelligence and Security on any FOI or Archives Act request.

Response to questions raised by Privacy International – October 2017

1. *Is the government and/or the intelligence agencies required to inform the IGIS about intelligence sharing arrangements they have made with other governments?*

The IGIS has oversight of the agencies which comprise the Australian intelligence community (AIC). The IGIS does not have oversight of the government itself, or of government agencies outside the Australian intelligence community other than in particular circumstances (see below).

The AIC agencies have provided the IGIS with all relevant policies and guidelines for the exchange of information with foreign authorities. The IGIS is satisfied that AIC policies and guidelines comply with relevant Australian government legislation, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of which Australia is a signatory, and have the approval of relevant Australian government ministers.

Examples of guidelines governing the activities of the Australian intelligence community include:

- Attorney-General's Guidelines¹
- Rules to protect the privacy of Australians².

The IGIS is satisfied that AIC agencies have sound frameworks for the approval and conduct of intelligence sharing activities. Regular inspections of intelligence agency activities, promoting a compliance culture within the agencies, and encouraging agencies to report problems proactively has proved to be an effective way of providing independent assurance to the Prime Minister, senior ministers and Parliament as to whether Australia's intelligence and security agencies act legally and with propriety.

2. *Does the IGIS mandate include independent oversight of the intelligence sharing activities of the Australian government?*

The IGIS mandate is limited to oversight of the AIC, but, at the request of the Prime Minister, the IGIS can also inquire into intelligence or security matters relating to other Australian government agencies.

¹ Attorney-General's Guidelines are online at <https://www.asio.gov.au/sites/default/files/Attorney-General's%20Guidelines.pdf>

² The Privacy Rules are online at <https://www.asd.gov.au/publications/broadcast/20121002-privacy-rules.htm>

The role of the IGIS is established under the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act). Under the IGIS Act, the role of the IGIS is to assist Ministers in overseeing and reviewing the activities of the Australian intelligence agencies for legality and propriety and for consistency with human rights.

Section 15 of the *Intelligence Services Act 2001* (ISA) provides that the ministers responsible for ASIS, ASD and AGO must make written rules to regulate the communication and retention of intelligence information concerning Australian persons (privacy rules). The term 'Australian persons' includes citizens and certain permanent residents and companies. The rules regulate the agencies' communication of intelligence information concerning Australian persons to other Australian agencies and to foreign authorities, including Australia's closest intelligence partners. Communication to foreign authorities is also subject to additional requirements. The privacy rules are unclassified and listed on the agencies' websites.

Privacy rules require that agencies may only retain or communicate information about an Australian person where it is necessary to do so for the proper performance of each agency's functions, or where retention or communication is required under another Act.

The IGIS routinely inspects agencies' application of the privacy rules for compliance with requirements. Separately, if a breach of an agency's privacy rules is identified by the agency, the agency in question must advise the IGIS of the incident and the measures taken by the agency to protect the privacy of the Australian person, or Australian persons more generally. Adherence to this reporting requirement provides us with sufficient information upon which to decide whether appropriate remedial action has been taken, or further investigation and reporting back to the IGIS is required.

3. *Does the IGIS have the power to access in full all relevant information about the intelligence sharing activities of the Australian government?*

The IGIS has the power to access in full all relevant information about the intelligence sharing activities of the AIC. The IGIS carries out regular inspections of the intelligence agencies that are designed to identify issues of concern, including in the agencies' governance and control frameworks. Early identification of such issues may avoid the need for major remedial action. These inspections include our staff directly accessing electronic records and reviewing hardcopy documentation. Under the IGIS's inquiry powers, the IGIS can require a person to produce documents, but this is not routinely necessary.

4. *Does the IGIS have the power to review decisions to share intelligence and/or undertake independent investigations concerning the intelligence sharing activities of the Australian government?*

The IGIS does not review decisions to share intelligence prior to an agency sharing the intelligence, however the IGIS may be consulted by the relevant agency before it makes the decision to share. The IGIS cannot overturn any decision made by an Australian intelligence agency, but where

concerns are identified, such as a breach of the privacy rules, the IGIS will ask the relevant agency to examine their handling of the matter, bearing in mind the particular concerns, and provide the IGIS with the outcome of their review. If not satisfied with this the IGIS could launch an inquiry into the matter.

Under the IGIS Act, the IGIS can conduct an inquiry into a matter based on a complaint, of the IGIS's own motion, or in response to a ministerial request. The IGIS Act establishes certain immunities and protections and provides for the use of strong coercive powers to compel the production of information and documents, to enter premises occupied or used by a Commonwealth agency, to issue notices to persons to attend before the IGIS to answer questions relevant to the matter under inquiry, and for the IGIS to administer an oath or affirmation when taking evidence.

The Prime Minister may request the IGIS to inquire into intelligence or security matters relating to other Australian Government agencies, and the IGIS must comply with such request.³

5. Does the IGIS cooperate with any other oversight bodies, domestic or foreign, to oversee the intelligence sharing activities of the Australian government?

We frequently liaise with other accountability and integrity agencies, both in Australia and overseas. This liaison provides opportunities for us to discuss matters of mutual interest, learn from each other's practices and keep abreast of significant developments in other jurisdictions.

A separate Australian entity, the Independent National Security Legislation Monitor (INSLM), complements the IGIS role, by reviewing the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an ongoing basis. This includes considering whether legislation contains appropriate safeguards for protecting the rights of individuals, remains proportionate to any threat of terrorism or threat to national security or both, and remains necessary.⁴

6. Please share any non-confidential work products reflecting answers above.

An example of the IGIS's examination of the exchange of intelligence information by Australian government agencies can be found in the 2011 Inquiry into the actions of Australian government agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005. Of particular relevance are the IGIS recommendations 3, 4, 5 and 6. The inquiry is online at the following link:

<http://www.igis.gov.au/sites/default/files/files/Inquiries/docs/habib-inquiry.pdf>

Further examples of IGIS focus on the Australian intelligence agencies' compliance with the privacy rules can be found in the IGIS annual reports located online at the following link:

<http://www.igis.gov.au/publications-reports/annual-reports>

³ Section 9(3) and 9(4) IGIS Act

⁴ <https://www.inslm.gov.au/about>

