

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016

Melbourne — 3 March 2017

Members

Ms Margaret Fitzherbert — Chair

Ms Nina Springle — Deputy Chair

Mr Daniel Mulino

Mr Edward O'Donohue

Ms Fiona Patten

Mrs Inga Peulich

Mr Adem Somyurek

Ms Jaclyn Symes

Participating Members

Ms Georgie Crozier

Mr Nazih Elasmr

Ms Colleen Hartland

Mr Gordon Rich-Phillips

Witness

Adjunct Professor David Watts, Commissioner for Privacy and Data Protection, Office of the Commissioner for Privacy and Data Protection.

The CHAIR — If everyone is ready, I think we will commence proceedings again. Mr O’Donohue is going to join us again in a moment. Mr Watts, I know that you have seen who is who from sitting in here earlier so I do not propose to go through the introductions again.

Mr WATTS — Chair, thank you for that. I am having a lot of difficulty hearing you. I have the flu. One of the things I am suffering from are problems with hearing and balance, so let us see how we go, but I could hear you better down there.

The CHAIR — I will speak up and hopefully that will be better. I do want to acknowledge that I understand you are unwell, so I do not want to prolong your agony any longer than is necessary. I particularly thank you for coming in today in those circumstances. Welcome to this public hearing of the Standing Committee on Legal and Social Issues. All evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any actions for what you say here today. If you go outside and repeat the same things, those comments may not be protected by privilege. I would invite you to address the committee, if you wish, and ask that you please keep any opening statement to about 5 to 10 minutes.

Mr WATTS — I have been unwell all week so we have not produced a submission for the committee on this occasion. However, our views are pretty clear — or my views are pretty clear. We published a document on 16 August 2016 entitled ‘Amendment of privacy and data protection legislation’. It is a document that was published on our website. Then we published another document on 19 August 2016, which answered questions that had been raised by an unnamed government spokesman about the supposed consultation that occurred in relation to the bill. I stand by both of those documents, and I would be happy for them to constitute what our broad submission is in relation to the issues before the committee.

The CHAIR — Thank you. In that case I might start questions and just ask: as the Commissioner for Privacy and Data Protection in Victoria, what part have you played in the development of this bill?

Mr WATTS — None.

The CHAIR — None whatsoever?

Mr WATTS — None.

The CHAIR — So how did you become aware of the bill?

Mr WATTS — This is in fact the anniversary, the one-year anniversary, of me being told about it, ironically enough. So a year ago today I had a meeting with Chris Eccles; the meeting is recounted in the 19 August document. He said that the government had decided to draft legislation to merge our office with the FOI commissioner’s office; that there would be an information commissioner and two deputy commissioners — I have referred to that structure as the information commissioner model — that both my role and the FOI commissioner’s role would be abolished; that if I unsuccessfully applied for the Information Commissioner role, I would be offered four months in lieu of notice although I was not entitled to it. He also said that if I did not apply for it, I would be offered four months salary in lieu of notice, and he apologised for the appalling way I had been treated by DPC.

The CHAIR — You referred earlier to a couple of documents and said that you wanted to let those stand as your submission. Is it possible for us to get copies of that now?

Mr WATTS — Over which document?

The CHAIR — You referred earlier, I think, to a couple of reports of the circumstances in which you became aware of the bill and so on.

Mr WATTS — I have got copies for my own benefit, but I have not brought copies for the committee’s benefit.

The CHAIR — I just thought it might make it a little bit easier if we could see the documents that are being referred to. Possibly one of the staff may be able to assist with that just while we wait.

Mr WATTS — They are on our website, and they are under ‘What’s new’.

The CHAIR — Just to follow up, then, Mr Watts, what do you understand were the reasons for you being left out of the development and consultation processes in relation to this bill?

Mr WATTS — I have no idea. The bill was developed, as I understand it, in complete secrecy and did not even go through the normal processes for coordination and comments. I know the department of justice did not see it, for example, before it got to cabinet.

The CHAIR — So what was the process?

Mr WATTS — Look, I could only speculate, but I think it was developed within the Department of Premier and Cabinet — certainly nothing was ever mentioned to me, and I was flabbergasted to have the meeting that I had with Mr Eccles — and that it went directly from DPC to cabinet. But that is an assumption, and the assumption is that it would have to get to cabinet somehow. If it did not go through the normal coordination process, then it has gone from DPC.

The CHAIR — Just for the benefit of the record, what is the normal coordination process?

Mr WATTS — Legislation is developed. Relevant parties within government would be consulted about it. A proposal to draft legislation would be produced. It would be circulated for coordination — and I actually forget the time periods. I used to do this often. Seven days seems to be my memory of it, but that might be my commonwealth memory of it. Departments would comment on it and brief ministers. It would go to the next cabinet meeting. Cabinet would make a decision.

The CHAIR — My understanding is a range of agencies or departments would usually be included in that consultation process as well for such a submission.

Mr WATTS — Yes. And in relation to a piece of legislation like this, where FOI in particular is quite a hot topic, there had been no consultation with the public and no consultation with key stakeholders.

Mr MULINO — I had a couple of follow-up questions on the process, and then I would be interested in your thoughts on a more conceptual issue. Just to drill down a little, you had a meeting with Mr Eccles, I think on the third, you said, or the second?

Mr WATTS — Yes. It would have been finishing around about now a year ago.

Mr MULINO — The timing is not a conscious decision on our part — an anniversary. The stars align sometimes.

Mr WATTS — No, I only realised it this morning, Mr Mulino, and I thought it was somewhat ironic.

Mr MULINO — Basically you had a discussion. Were there any subsequent discussions with you or anybody in your organisation with DPC around more logistical issues, as occurred with the FOI commissioner, following that?

Mr WATTS — What occurred with the FOI commissioner?

Mr MULINO — Sorry, just to go back a step. I do not know whether you heard any of the evidence from the FOI commissioner on our consultation with that organisation, but he indicated that he had a meeting — I think he said on 2 March — with Mr Eccles. There was then, following that, at some point in April a discussion in relation to some of the logistical specifics around some questions that the FOI commissioner had around how it might work in practice. Then following that, on 24 May, they were also given a draft bill, as you were, on the Tuesday for comments by the Friday. So I guess I am just asking — you have indicated that you also had a meeting with Mr Eccles in early March — to your knowledge was there any engagement with you or anybody in your organisation in March or April in relation to any of the more detailed issues, as occurred with the FOI?

Mr WATTS — No; there was no consultation about logistical issues. So if by that the reference is to what things would need to be done in an operational sense to consummate the marriage, like joining complex IT systems together — particularly ours, which does not run on CenITex and is security graded — certainly there have been no such conversations.

Mr MULINO — Were there any discussions?

Mr WATTS — No.

Mr MULINO — With nobody in your organisation?

Mr WATTS — No.

Mr MULINO — Okay. But basically, in terms of the overarching time line — so, as with the FOI commissioner, you were notified in March and then there was a follow up consultation on the specifics of the bill in late May. So in that sense the time line was similar to what occurred with the FOI commissioner.

Mr WATTS — To be specific about it, on 5 May I had a meeting with Mr Bates, the secretary at DPC responsible for coordinating our relationship, and Mr Porter and Mr Miller, who have variously seemed to slip between acting general counsel roles — I do not know who was in which capacity at that meeting. At that meeting I was told that the bill would only amend governance arrangements in relation to my legislation — so the only material change would be to the governance arrangements, i.e., my position, that the commissioners would be appointed and removed by executive government — and that the bill was planned to be introduced in June and passed in September. There was then — —

Mr MULINO — I am sorry, just to clarify, I think that was partly what I was trying to get at with my first question, which is that you had the initial meeting in early March, that there was some engagement in between that and 24 May to talk about some issues of more detailed — —

Mr WATTS — No, I was just told what was happening. That was not engagement.

Mr MULINO — A meeting in which other issues were discussed.

Mr WATTS — A meeting occurred in which DPC told me what was happening.

Mr MULINO — Sure, sure. But there was the meeting in March, there was a subsequent meeting and then on 24 May — as I think you have set out in your document, which is public — you were then provided with the draft bill, at the same time the FOI commissioner was, with an opportunity to provide details. He indicated that they provided some drafting suggestions and that some of those were taken up and some were not. Did you put some drafting suggestions in that last week of May?

Mr WATTS — No; the only change is a change to governance. Mr Eccles was abundantly clear, and I was abundantly clear on the day I spoke to him, about what I thought about those. So this was the sequence of events: on the 24th I received a preliminary draft of the bill; my comments were sought by 27 May — three days afterwards; and on the same day I received a copy of a press release, which was published later that day, from Mr Miller, which said in part that the bill would be introduced into Parliament and that the information commissioner would be adopted. That is not consultation.

Mr MULINO — I guess I would just ask — I mean the FOI commissioner was given the same time line that you were, and they put a series of proposed changes, and some of those were taken up, and then there was a subsequent discussion in the week following 27 May to discuss details with the FOI commissioner. I just wanted to ask: you did not take up that opportunity?

Mr WATTS — There was no opportunity. I was not given that opportunity. There was no discussion. No-one sought comment after 27 May — or after 24 May.

Mr MULINO — No, but you were offered an opportunity on 24 May to provide comments on the draft bill.

Mr WATTS — To comment within three days.

Mr MULINO — Right, and I am just clarifying that you did not take that up and the FOI commissioner did.

Mr WATTS — There was one comment I made. There was one comment, and it was made on 3 March. There would have been no-one in DPC under any illusion about what my view about the legislation was.

Mr MULINO — Sure, sure. I know you have made some comments about some of the policy positions, but three days for an organisation to respond to a draft bill does allow for some level of detail. It is a sufficient period to comment on some of the provisions.

Mr WATTS — I disagree. There was one change — one change as far as I am concerned. It is a change to governance. My views were abundantly clear.

Mr MULINO — It is fair to say, though, that in terms of the overall time line you were provided with a similar series of opportunities to what the FOI commissioner was.

Mr WATTS — I have no idea what opportunities the FOI commissioner has had, so I do not know. I received a bill on 27 May. The only change to my legislation was the disposal of my position — no other change — then I consider that my views had been made very, very clear. What was I going to comment about apart from that? The things that Mr Ison is concerned about? That is not within my statutory role or responsibilities. Why would I do that?

Mr MULINO — I will not get into all the merits now, because we do not have time, but clearly there are arguments around the broader impact of merging these two organisations in the sense that it might lead to better dovetailing between those functions, and it might lead to, for example, a better understanding of the privacy exemption when people are deciding FOI requests. So there is a lot more that affects your function and your organisation than just that one organisational change.

Mr WATTS — Well, we can come to that point if you like. I am very happy to address it — the coordination point.

Mr MULINO — The only reason I am raising that is that there was more for you to comment on.

The CHAIR — Is there a question?

Mr MULINO — Yes. I am just saying that there is more that you could have commented on that was relevant to your organisation than just — —

Mr WATTS — No, I disagree with you.

Mr MULINO — The last question I have is more a conceptual one. You have been involved in developing some robust privacy principles as part of your role, is it fair to say?

Mr WATTS — I have had 20 years experience in developing legislation.

Mr MULINO — Yes. I am just interested in your thoughts as to whether a robust privacy regime needs to be in conflict with a robust transparency regime. Some people have flagged the issue as to whether they can work in tandem and whether they are inherently in conflict. I am just interested in your thoughts at that more conceptual level.

Mr WATTS — There is no evidence. This was first floated and developed by the Rudd government. Try as I might, I can find no policy work in relation to it and no evidence base. It was done in New South Wales, but again I can find no evidence apart from efficiency arguments like, ‘These two organisations deal with information, and therefore they might be able to save some money by working together’, or something like that. There have been efficiency arguments, cost arguments, but the evidence is pretty clear that it just does not work.

Mr MULINO — I just mean at a conceptual level.

Mr WATTS — It has been a failure everywhere it has been tried, an absolute failure. There is no policy work that has been done in Victoria. I understand these debates, and people from DPC are coming this afternoon, and maybe at 5 to midnight they might produce such work. It would have been lovely had we seen it a long time ago. But there is no such evidence. I speak to my colleagues — the Australian information commissioner, the New South Wales privacy commissioner — and they think it is a nonsense and it does not work.

Mr MULINO — I guess I am just interested in your philosophic view as to whether you are in — —

Mr WATTS — I think I have said what my philosophical view is: it does not work.

The CHAIR — I think the witness has made that quite clear, and we might move on to Ms Symes at this point.

Ms SYMES — What is your relationship like with the acting FOI commissioner? Do you meet regularly to discuss the interaction between the release of information and privacy concerns?

Mr WATTS — I have a cordial relationship with Mr Ison. Whenever Mr Ison needs to speak to me we speak frankly and fully. But in practical terms, there is very little that touches on between the two offices. You do not need to join the offices together to have a conversation about the privacy exemption.

Ms SYMES — That was not my question.

Mr WATTS — Your colleague mentioned it before. Michael Ison and I have never had that conversation; I assume it is not a difficult issue.

Ms SYMES — So there is no role to get together to help departments deal with the tension between FOI requests and privacy matters — —

Mr WATTS — What tension?

Ms SYMES — I am referring, as came up in the evidence earlier, particularly to potentially sensitive matters like family violence orders, DHHS child protection orders. You do not have conversations about advice to departments?

Mr WATTS — If those conversations were necessary to have, we would of course have them, as we have conversations with the Auditor-General and as we have conversations with the Ombudsman.

Ms SYMES — But you do not regularly have these conversations with the acting FOI commissioner?

Mr WATTS — There is no point having regular conversations when there is no regular issue.

The CHAIR — I might intervene at this point and ask just a couple of questions, if I may. One follows up on some evidence you gave earlier. You said you made it ‘abundantly clear what I thought’ when you were speaking to Mr Eccles. Could I ask you, if you would not mind telling us, what is it exactly that you said to him?

Mr WATTS — What did I say to him?

The CHAIR — When he briefed you on this.

Mr WATTS — I said, ‘This is a model that has never worked. There is no evidence for it. It has been a failure in New South Wales, which is where you have come from, Mr Eccles, and it has produced utter conflict and chaos’. His response to me, ‘It’s too late. It has already been done’.

The CHAIR — Because it had gone through cabinet?

Mr WATTS — Yes.

The CHAIR — Okay. I have a further question. This bill was introduced to the Parliament in June 2016, but it did not progress beyond the lower house for some time, and the government has made it a priority for the start of 2017. Call me a cynic, but I note that you announced recently that you had sought information from the Premier regarding his audit of ministers’ mobile phones. Do you think the interest in quickly progressing this bill is linked in any way to the intervention that you made in relation to the audit of ministers’ phones?

Mr WATTS — Well, it is certainly a coincidence, is it not?

The CHAIR — I think so.

Mr WATTS — Nothing happened with the legislation for months and months and months. As soon as I start making inquiries about an audit of mobile phones, the bill is desperately on. The committee can draw what conclusions it wishes to from that.

The CHAIR — May I ask, have ministers cooperated with you in relation to your work in relation to that inquiry?

Mr WATTS — I have had no cooperation.

The CHAIR — Have they responded to you at all?

Mr WATTS — The responses I received from DPC — I actually initially sent a letter to the Premier seeking information about his understanding of his legal powers to do what he was reported to have done. What I received from DPC — just let me pull the document out — was a certificate saying the Premier's knowledge of his legal powers was a matter of cabinet confidentiality

CHAIR — Could we have a copy of that response tabled for the committee's benefit?

Mr WATTS — Yes, I can.

The CHAIR — Thank you.

Mr WATTS — I then sent a notice under the Act to the secretary, Christopher Eccles, dated 13 January 2017, seeking very broadly all of his communications with KPMG or any other person who he was seeking to undertake the forensic audit. I asked for that to be done in seven days, and I received a response from Mr Porter, who I understand is giving evidence this afternoon, dated 20 January, again producing a certificate under the Act saying that my request for information about who was being engaged to undertake the forensic audit was a matter of cabinet confidentiality. In addition, though, Mr Porter invoked the secrecy provisions under section 120 of my Act. Essentially, in practical terms, how that works is that he was seeking — excuse me for being blunt — to cover up the cover-up. In other words, I could not report on the fact that a certificate seeking secrecy on cabinet confidentiality grounds had been issued.

The CHAIR — Do you believe that is legal?

Mr WATTS — I am going to produce a further report. I consider it an abuse of power. That is my view.

The CHAIR — Thank you. Would you mind tabling the second response that you mentioned as well, for the benefit of the committee? Thank you.

Mr O'DONOHUE — Thank you, Mr Watts, for your evidence. The previous witness, the acting FOI commissioner, in his evidence said that — I am paraphrasing here, but words to this effect — the way a regime will operate, and in the context of the new legislative regime as proposed, will depend very much on the appointments that are made. My point to him was that the system should ensure the integrity and not actually rely on the individual's goodwill. Are you concerned that under the proposed new regime, with the merger of your functions and the FOI commissioner's functions, being reportable to the executive rather than being reportable to the Parliament could potentially diminish the appetite to pursue matters against the executive in the future?

Mr WATTS — Of course. I mean, at the end of the day what the legislation does is, even though it says that, no, the officers cannot be directed by the minister, they can be sacked, which is the ultimate power of direction, one would have thought. So it removes a significant degree of independence. Could you imagine any of those officers doing what I have done in looking at this forensic audit of telephone records? In practice, let us acknowledge what the reality is: you know, in practice a man in a suit — invariably a man in a suit — from DPC would come and have a quiet word to you.

Mrs PEULICH — Thank you, Mr Watts. I am of the belief that centralising power is not good for democracy, so I would concur with many of the comments you have made. Part of that is because I was born under a communist regime, so I am very wary about doing that. You have referred to this bill as basically putting in a new regime. I think you spoke about consummating a marriage. It sounds to me it is more like a

shotgun wedding. What have you done to deserve such targeting and punishment, apart from the audit of the phones? Are you just too independent?

Mr WATTS — It is hard for me to answer that. I can speculate. Yes, perhaps. I have made it public before. My belief is — and I have been told this — that this is the result of upsetting the CPSU; the unions have long memories. I was given a job to do by the previous government of joining two offices together and doing something that really no-one has ever done before: joining privacy and security together in a rational way and establishing security standards. Now, that is not something that the Department of Premier and Cabinet had been able to do in 10 years of being responsible for it. We did it in 18 months. So I do not know.

Mrs PEULICH — So is this legislation basically to nobble you?

Mr WATTS — That is my view, yes. That is my view. And, look, it is important — may I take you back to the consultation process. I had a meeting with Mr Bates on 5 May, as I have previously said in evidence. At that stage I actually said to Mr Bates — after Mr Porter and Mr Miller had left the meeting — I asked him whether the legislation was being amended specifically to remove me at the instigation of the CPSU, and Mr Bates said, ‘Well, David, the unions have got long memories’. That was actually reported; I actually made that public on 19 August. On the evening of 19 August I received a text message from Mr Bates at 8.28 p.m. This is what Mr Bates said in the text message.

I’m told you briefed James Campbell on my ALP membership. I look forward to hearing how you explain that decision to Bill and Chloe.

Perhaps I should give some background to make that explicable.

Mrs PEULICH — Please.

The CHAIR — I think that would be useful.

Mr WATTS — At the time James Campbell I think was the senior state politics reporter for the *Herald Sun*. I do not think he is anymore. I meet many people in my job. I have met Mr Campbell. At no point did I brief Mr Campbell about Mr Bates’s ALP membership, but Mr Campbell actually raised it with me. The second sentence, ‘I look forward to hearing how you explain that decision to Bill and Chloe’: I live in the same street as the leader of the federal opposition. My wife is friendly with his wife. Our children go to the same school. On occasion they have been in and out of each other’s houses, eaten at each other’s houses, the usual thing that kids do. I regarded that threat as somewhat sexist and bullying — sexist in that the friendship is not mine; it is my wife’s and my children’s, and bullying because basically Mr Bates was saying, ‘Well, I’m going to tell on you. I am going to tell on you’.

Mrs PEULICH — So this is Mr Tony Bates, deputy secretary in charge of governance, policy and coordination?

Mr WATTS — And my relationship with DPC, yes.

Mrs PEULICH — So in charge of governance, and these are the tactics that he resorts to?

Mr WATTS — Correct. That is correct. Would you like a copy?

Mrs PEULICH — Yes, absolutely.

The CHAIR — Thank you.

Mrs PEULICH — These are deplorable, absolutely deplorable. So basically this is legislation that has been framed to settle scores at the behest of a powerful union?

Mr WATTS — In the absence of any clear benefit, the fact that it has been developed in secret, the fact that at one stage — this was at some point in June; I would have to go back to my notes to confirm it — I actually said to Mr Bates, ‘Look, if the government hates me that much, I’m happy to stand down. Send me somewhere else’. He said he would raise that with Chris Eccles, and I think at a subsequent meeting he said that Chris was not at all interested in that. I also raised with him — —

Mrs PEULICH — I am sorry, Mr Eccles was not interested in?

Mr WATTS — In my offer to stand down. The custom is that when a person moves from the public service to become an independent statutory office-holder the convention is that at the end of their term they are offered a position back in the public sector. I actually raised that with Mr Bates, but there has never been any conversation about that ever again. In fact since 19 August of last year I have not had a conversation with Mr Bates. We have exchanged formal correspondence on a ‘Dear Deputy Secretary’, ‘Dear Commissioner’ basis, but I have never had another meeting with Mr Bates, and he is in charge of our relationship.

Mrs PEULICH — Back to a policy question, if I may: in your assessment and your experience, is there any reason whatsoever to believe that the merger — a shotgun wedding — of these two offices will produce significant better privacy and data security results than would otherwise occur should these offices continue to operate independently?

Mr WATTS — It is nonsense.

The CHAIR — Mr Watts, can I just ask one question before moving on to Ms Hartland, and that is: after you received that text message from Tony Bates, which you characterised as ‘bullying and sexist’, how did you respond?

Mr WATTS — I did not.

The CHAIR — The only sort of discussion the two of you have had since then, as I understand it from your evidence, has been on a formal basis, in writing, as you gave evidence earlier?

Mr WATTS — Mr Bates has written to me saying, ‘Here’s a draft cybersecurity policy. Would you like to comment on it?’ — communications of that nature.

Ms HARTLAND — I would like to understand why you believe the legislation will fail. You talked about New South Wales; could you give some examples of what has happened in New South Wales and why you believe it has not worked there?

Mr WATTS — In New South Wales the Privacy Commissioner has actually been appointed on a part-time basis, and there has been endless conflict between the Privacy Commissioner and the Information Commissioner to the point where I understand the Privacy Commissioner essentially had no staff to undertake her role. They have been subject to complaints, inquiries et cetera, but nothing has ever been done about it. So it has produced conflict within that context.

When you talk candidly and off the record to other privacy regulators who have been subject to that sort of regime the unanimous view is that it adds nothing. There are virtually nil connections. I think I answered a question before about the contact between our office and the FOI commissioner’s office. We have brought them along on information sessions that we have done and involved them in Privacy Awareness Week and regional events et cetera, and of course that is a useful thing to do. But in terms of dealing with the privacy exemption or anything like that, the contact is incredibly minimal. Mr Ison has never phoned me to seek my views about how that works.

There was no evidence for the commonwealth’s original position. I have tried to find it. There is none. It has produced a degree of disjunction, disjointedness, difficulty with putting the roles together and trying to make something coherent out of it — the same in New South Wales. In Queensland the privacy commissioner role was left vacant for years and years and years. People have not been well served by that particular arrangement. I would tell you if there had been the degree of engagement that indicated to me uncertainty in the relationship between our office and the FOI commissioner’s office, and it just has not happened.

Ms HARTLAND — But I am actually asking about this legislation. I can understand all the things that you are talking about — it is obviously around conflict between offices — but what is it about this legislation that you believe is inadequate or will not work?

Mr WATTS — First, what I just said to you: it is inadequate. The evidence is that it does not work, so that is my first answer. The second is the loss of independence of the statutory office-holders.

Ms HARTLAND — And what would you do to improve the legislation?

Mr WATTS — What I would do is wait for the root and branch review. My understanding of that is that a consultant has been engaged and was engaged as long ago as I think November last year, but no work has started because there is no agreement on the terms of reference. So I would wait for the root and branch review. There are obvious improvements that can be made in relation to FOI, and if you think about it in terms of the environment that we live in, which is an electronic environment et cetera — and I am stepping outside my remit here, but I have run FOI sections in the commonwealth — the preface or the assumption that seems to still underpin FOI is of an almost Dickensian, paper-based environment. Whereas most government departments can find things pretty easily. You know, there is a thing called TRIM that manages documents that you can query. You can put complex queries through TRIM and find documents really quickly.

The Victorian government speaks a lot about the digital age and about digital competitiveness and having a data analytics centre et cetera so that there will be better evidenced-based policy. What goes on within FOI to take account of those capabilities? I think that is an incredible advantage. If I can retrieve practically anything within 0.3 of a second on Google, why does it take 14 months to process a request within the Victorian government, when people have invested in powerful file management software? I do not understand.

Ms HARTLAND — Thank you.

Mr MULINO — I just wanted to go back to the conversation with James Campbell. What did he say to you?

Mr WATTS — ‘What do you know about Tony Bates?’.

Mr MULINO — And what did you say to him?

Mr WATTS — I said, ‘I’ve known him for years’.

Mr MULINO — Is that all?

Mr WATTS — He said, ‘We understand that he is part of the Labor Party’.

Mr MULINO — And what did you say?

Mr WATTS — I said, ‘Yes, he is’.

Mr MULINO — Right. So you were involved in a discussion with a journalist that could implicitly have you as a source for matters along these lines. Is that the kind of discussion it was?

Mr WATTS — No. I am not an employee of DPC.

Mr MULINO — Sure.

Mr WATTS — I am not an employee of DPC — —

Mr MULINO — So you confirmed it, though.

Mr WATTS — No. I am entitled to have a conversation with journalists, and I often have conversations with journalists.

Mr MULINO — Right. But you understand the context is all I am asking.

Mr WATTS — What are you trying to accuse me of? Talking to a journalist and confirming something?

Mr MULINO — Just answering questions.

Mr WATTS — Confirming something that was well known within the public sector.

Mr MULINO — But James Campbell felt the need to ask you to confirm it.

Mr WATTS — Ask James Campbell.

Mr MULINO — I do not talk to James Campbell. One other question: you and the Chair speculated on reasons why the bill might have been delayed as to why the bill might have been delayed. I just wanted to ask: are you aware that the Leader of the Government, who was responsible for this bill, had been suspended for six months by way of a motion put by the opposition? Are you aware of that?

Mr WATTS — Yes. Does that mean the work stops?

Mr MULINO — What I am saying is that bills for which he had carriage were not progressed.

Mr WATTS — How many members of the government are there?

Mr MULINO — I am asking if you are aware of that? That applied to a number of bills.

Mr WATTS — I am aware of it. Yes, of course I am aware of it.

Mr MULINO — I am just asking if you were aware.

Ms SYMES — We had a conversation about your role in merging two offices, and there has been an allegation that the CPSU have something against you. I am just wondering why you think that is.

Mr WATTS — Because Mr Bates told me.

Ms SYMES — Did you contract out staff? Did you engage consultants to do people's work? Why would the CPSU have an issue with the way you handled the role that you were — —

Mr WATTS — I made redundant a number of people who no longer fitted the new model and who did not have the skills to support it. A number of people left beforehand too.

Ms SYMES — Did you have a conversation with the CPSU?

Mr WATTS — We did everything by the book.

Ms SYMES — Why were the CPSU upset with you, in your words.

Mr WATTS — Ask the CPSU.

Ms SYMES — You have given evidence today that you think that the CPSU have something against you.

Mr WATTS — I seriously do not know why the CPSU would have done what they have done. What I understand — —

Ms SYMES — What have they done?

Mr WATTS — Mr Bates indicated it pretty clearly. 'The unions have long memories' is what he said to me.

Ms SYMES — I do not understand the reference. What did you understand the reference to mean?

Mr WATTS — Let me take you to the document:

On 5 May 2016 I attended a meeting with Tony Bates of DPC.

...

In the later stages of the meeting ... Tony Bates and I were still present —

Mr Porter and Mr Miller had left —

At that time I asked Tony Bates why the legislation was being amended specifically to remove me at the instigation of the CPSU. Tony Bates did not contradict that construction of events. Rather, he commented that 'the unions have long memories'.

So you take that piece of evidence, and then you combine it with the fact that a piece of legislation that was working is being amended and the only amendment so far as my responsibilities are concerned is to remove me. Take that — and there has been no consultation about it, no prior notice — the fact that I offered to stand down and was told that that was not something that was on the agenda, the fact that I have been isolated and the fact

that I have been left out of the loop. I have seen these things happen many times within government. I must say to you that I am surprised that it has happened to me. But all of the signs are there to do it. You and I might contest this — —

Ms SYMES — I was not arguing with you, Mr Watts.

Mr WATTS — Do I have a statement from Karen Batt saying, ‘He’s got to go’? No, of course I do not have that. I have given you the evidence, and I have told you I think it is a reasonable inference. No-one has contradicted it. Sorry — the CPSU contradicted. They said it was false.

Ms SYMES — How do you reconcile what you have just said? You have said you think the bill was a construction to get rid of your role, but your offer to stand down was not accepted.

Mr WATTS — I beg your pardon?

Ms SYMES — Your offer to stand down was not accepted, but you are saying that — —

Mr WATTS — I think they are easy to reconcile. They are very simple to reconcile. Why move me to somewhere else? The government were expecting me to fall over a long time ago. Practically every public sector trick in the book has been played on me to make me go.

Ms SYMES — Just to confirm, you think the ultimate aim of this bill is to get rid of you.

Mr WATTS — I think insofar as the bill applies to the Privacy and Data Protection Act, yes, of course.

The CHAIR — Mr Watts, I have two questions. The first is: you gave evidence just before on that extraordinary text message from Tony Bates. Are you aware that there was any follow-through on the threat to raise this with Bill and Chloe?

Mr WATTS — Pardon me, can you repeat that?

The CHAIR — Yes, I can. In relation to the text message from Mr Bates, are you aware of any follow-through on the threat to tell Bill and Chloe?

Mr WATTS — No.

The CHAIR — My second question is: you referred earlier to the terms of reference not being agreed for the root and branch review. Do you have any insight into where the disagreement is and what it is over?

Mr WATTS — No.

Mr O’DONOHUE — Mr Watts, can I just ask, further to the Chair’s question about the text message from Mr Bates and reference to Bill and Chloe, would Mr Bates know that you live in that same street — well, assuming from his Labor Party affiliation that he knows your residence is in the same street as the federal Leader of the Opposition?

Mr WATTS — Yes.

Mr O’DONOHUE — What do you think should happen with this legislation? I mean, this committee is conducting an inquiry into this legislation. What would be your advice to the committee about the future of this legislation?

Mr WATTS — I think the root and branch review should take place. I think it should not and would not take very long. It should have been done. Well, it is supposed to be done by the end of March. I have no idea why that has not occurred. But then you have a much better idea of in fact what you are trying to govern and how the governance arrangements would actually work in practice.

I would be waiting for that. I would continue to urge the committee that we should not be included in this piece of legislation. What happens now works incredibly effectively. There is no evidence that it is ineffective; there is no cost argument, other than a negative cost argument — you know, things like joining our IT systems together would be a nightmare — and there is a human resources argument.

My staff are sick and tired of going through contested restructure. They have been getting down and doing a fabulous job. My staff are just sensational examples of public sector diligence and imagination, and they have worked under a cloud for the last year. They are naturally concerned, they are naturally upset and that can create some management challenges. That would be my recommendation.

Mr O'DONOHUE — Thank you, Mr Watts. How many staff do you have in your office?

Mr WATTS — About 20.

Mr O'DONOHUE — Thank you.

Mr WATTS — Small but perfectly formed, Mr O'Donohue.

Mrs PEULICH — Thank you, Mr Watts. The area of privacy and data protection is a particular concern and interest for me. In particular I imagine that — and this is just looking at how your role and this area may actually need to exponentially increase — your dealings with federal agencies would have to be substantial. I ask you, if you are able, to comment on that. But also there are breaches of which I have become aware — for example, the sale of telephone numbers internationally, where companies can actually provide a service and have access to the text messages of any particular telephone number that they see fit. Are you just able to very briefly sketch out, apart from obviously this internal effort to demolish your independence, what sorts of challenges there are and how we ought to be responding with legislation to actually strengthen your role to better at least defend privacy and data?

Mr WATTS — The area of privacy is one of the most complex areas of policy, technology, regulation and globalisation that you can imagine. There are some incredibly serious and interesting issues associated with it. One is whether information can be truly deidentified. The federal Department of Health released a billion lines of health data last September, and within a week it was reidentified. It is said, for example, that data like that can help produce better outcomes, better policy settings et cetera, but can it ever be really properly deidentified? The debate rages internationally. What are the benefits and what are the risks of big data? There are benefits in knowing things about better traffic flow, but do you want government to have an ability to link a whole range of different datasets, some generated within the public sector but some purchased from commercial service providers like Google, Facebook or whatever, to conduct surveillance on citizens? So issues around big data, issues around deidentification — but two of the complex issues.

When I speak to my colleagues internationally the consensus is that the amount of complexity around privacy issues, but more particularly data protection if you try and look at that as a broader term, has a greater emphasis on security, which is really what we have in Victoria — a data protection regime. Establishing the standards of working out where the vulnerabilities lie in relation to data protection or security issues et cetera are of significant complexity and require specialist assistance. It is right out there in terms of computer science, analytics et cetera. So internationally my colleagues and I have a conversation about scarcity of resources, about international cooperation and working together — pooling resources — and developing expertise in particular areas.

So the policy functions and the intellectual or thought leadership functions that are associated with privacy are significantly more complex than are the largely operational issues that go with FOI. I would not want any members of the committee to think that I was downgrading FOI, because I am not. But the issues are different. There are processing issues, there are speed issues, there are availability issues and there are exemption issues; all of those issues are important. But in the privacy sphere, the issues are at the cusp and at the cutting edge of the development of public policy, computer science — —

Mrs PEULICH — In a word, are any of these facilitated by this new bill?

Mr WATTS — No.

Mrs PEULICH — A last question if I may, the CPSU is a union associated with the Socialist Left, the same faction as the Premier.

Mr WATTS — I was not aware of that.

Mrs PEULICH — It has just been confirmed, and unfortunately you cannot access my phone on the basis of privacy, otherwise you would have to write to me.

Mr WATTS — I did not know that unions were entitled to privacy, but I am happy to raise that separately.

Mrs PEULICH — No, this is not a union. Are you able to inform us, or should we reserve that for Mr Bates, whether most of Mr Bates's employees — people in the department — would be members of the union and would he himself be a member?

Mr WATTS — I do not know.

The CHAIR — Ms Hartland?

Ms HARTLAND — I only wanted to ask questions about the bill, not about these other issues.

The CHAIR — Okay. Any further questions?

Mr O'DONOHUE — I have one. Mr Watts, on the bill, I am not sure if you are aware that the coalition is proposing three amendments to the bill. The first is to preserve the appointments of the existing CPDP and FOI commissioners and see them become the inaugural deputy commissioners for data protection and FOI respectively. The second is to ensure that the proposed deputy commissioners can only be removed by resolution of Parliament, as is currently the case with the existing commissioners. And the third, and less related to your function, is to remove the automatic right for agencies to extend FOI responses from 30 days to 45 days when they need to consult. Noting your response to the bill itself, can I have your feedback on those proposed amendments of the coalition?

Mr WATTS — My preferred option is the one I have stated. That would be a second option. Would I support it? Yes, but I would support my option more.

Mr O'DONOHUE — Yes, sure.

The CHAIR — I am conscious that our time has nearly expired. Are there any further questions?

Ms SYMES — I would just like to follow on from that. If you were the information commissioner and you had the two deputies under you and you had a situation in the office where there was poor performance or conflict or inability to work together, how would you seek to deal with that situation in the event that resolutions might have to go through Parliament?

Mr WATTS — This has happened in the commonwealth now. That is really a hypothetical question. Set some more facts around it. And if you are putting to me that that is the only way of managing, I would object to that.

Ms SYMES — I was not.

Mr WATTS — Okay. Thank you.

Mr O'DONOHUE — If I could ask one further question following on from Ms Symes, do you think the integrity of the office, either as it currently exists or is proposed, would be better upheld by being reportable to Parliament or to the executive?

Mr WATTS — To Parliament of course.

Mrs PEULICH — Are you able to give us an update on the phone audit?

Mr WATTS — There will be a further report, but you will have to wait.

The CHAIR — Commissioner, can I thank you for your evidence today, particularly when you are obviously feeling unwell. Is there anything further that you would like to say to the committee?

Mr WATTS — No, thank you.

The CHAIR — In that case on behalf of the committee I thank you for your contribution today. You will receive a copy of the transcript within a few weeks for proofreading.

Mr WATTS — Thank you.

Committee adjourned.