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5-035

IMMIGRATION AND BORDER PROTECTION

1/09/2015

UNAUTHORISED USE OF PASSENGER PHONE BY CUSTOMS OFFICER**CURRENT ISSUE**

There is media interest in the actions of an officer taken in the course of a baggage examination at Sydney International Airport in November of last year.

KEY FACTS/KEY FIGURES

- During the course of an electronic examination of a traveller's mobile telephone at Sydney International Airport on 1 November 2014, an Australian Customs and Border Protection Service (ACBPS) officer (now an Australian Border Force (ABF) officer) read and responded to two text messages. The officer deleted the messages before returning the telephone to the traveller.
- The officer was conducting the examination pursuant to relevant powers. s47E(d) [REDACTED]
- ABF officers have certain powers to examine goods carried by travellers who arrive or depart Australia. 'Goods' in this sense includes electronic devices and their contents, such as mobile phones, tablets and laptops, and other storage devices such as USB sticks. Officers also have powers to make copies of documentation, including those on electronic devices. This does not include using the device or making any amendments to or deletions of data.
- The incident was self-reported by the officer to Integrity and Professional Standards on 5 November 2014, under the ACBPS integrity framework and mandatory reporting requirements.
- A formal Code of Conduct inquiry commenced on 2 December 2014 and concluded on 22 June 2015.

s47E(d) [REDACTED]

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s47E(d)

- The actions were also reported to the Privacy Commissioner.
- In the interests of transparency it was decided to advise the traveller of the incident and apologise for the officer's action as soon as it was appropriate to do so. s47E(d)
- The correspondence to the traveller was sent on 1 April 2015.
- The officer was sanctioned under the Code of Conduct established under the *Public Service Act 1999*. s47F

QUESTIONS AND RESPONSES

- What right did the officer have to download and review information stored on the personal electronic equipment of a member of the public?
Response: Under the *Customs Act 1901* officers have powers to examine goods. Those goods include electronic devices such as mobile phones, SIM cards, laptop computers and portable storage devices that may contain restricted, regulated or prohibited items or evidence of or information relevant to a Commonwealth offence.
- Why was the traveller the subject of a baggage examination?
Response: The officer had formed a reasonable suspicion that the traveller may have been carrying goods of interest relevant to Customs legislation. s47E(d)
- Is the traveller entitled to compensation for the delayed flight?

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Response: That depends entirely on the reason for the delayed flight. All such claims are investigated and assessed on a case by case basis.

- Should the traveller have been examined the second time, when that trip was the result of missing the first flight?

Response: Officers are empowered to act and make decisions to manage the security and integrity of Australia's borders. Each decision to undertake an examination is made in consideration of factors relevant at the time.

- How will the Australian Border Force ensure this will not happen again?

Response: All ABF Officers are bound by the *Public Service Act 1999* and the conduct requirements of the ABF Act. Officers have certain powers to examine goods. Officers found to breach any conditions underpinning their employment will be subject of an inquiry. While there was no evidence of systematic issues, periodic training has been recommended for all officers who conduct this type of examination as part of their official duties.

Contact: s22(1)(a)(ii)
 Division: CG - Integrity Security and Assurance
 Division
 Date first prepared: 2T
 Originating Source: DIBP

Phone: s22(1)(a)(ii)
 Action Officer: s22(1)(a)(ii)
 Date last Updated: 5/08/2015 - 2:08 PM

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s22(1)(a)(ii)

[REDACTED]

From: s22(1)(a)(ii)
Sent: Monday, 3 August 2015 8:46 AM
To: PEZZULLO Michael; QUAEDVLIEG Roman
Cc: s22(1)(a)(ii)
Subject: FW: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August [SEC=PROTECTED]

Mike, Roman

s47F [REDACTED]

I also note that as we discussed on this matter at the time, s42
[REDACTED] s47E(d)

The QTB is being done this morning.

s22(1)(a)(ii) [REDACTED]

First Assistant Secretary Integrity, Security and Assurance
Chief Risk Officer
Corporate Group
Department of Immigration and Border Protection
P: s22(1)(a)(ii) | M: s22(1)(a)(ii)
E: s22(1)(a)(ii) @border.gov.au

From: QUAEDVLIEG Roman
Sent: Sunday, 2 August 2015 1:35 PM
To: s22(1)(a)(ii) PEZZULLO Michael

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Freedom of Information Act 1982

Cc: Portfolio Media; s22(1)(a)(ii)
Subject: RE: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August [SEC=PROTECTED]

Thanks s22(1)(a)(ii) One question of detail for the Sec and I only please: What was the sanction imposed for the CoC breach?

RQ

Roman Quaedvlieg
Commissioner
Australian Border Force
s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: 2/08/2015 12:59
To: [PEZZULLO Michael](#); [QUAEDVLIEG Roman](#)
Cc: [Portfolio Media](#); s22(1)(a)(ii)
Subject: RE: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August [SEC=PROTECTED]

PROTECTED

Secretary, Commissioner

Re the media article on improper use of a passengers phone, attached are the TPs prepared by I&PS following the FOI decision and updated following a media enquiry from Natalie O'Brien on Friday 31 July 2015. For ease of use I've copied the background into the text of this email which confirms a Code of Conduct investigation has been completed; a breach was found and sanction applied.

BACKGROUND (*not* for public release)

On 1 November 2014, a Counter Terrorism Unit (CTU) Officer examining the mobile telephone belonging to a passenger read and responded to two Short Message Service (SMS) messages without the knowledge or permission of the passenger. The CTU Officer then deleted those messages before the mobile telephone was returned to the passenger.

On advice from the shift supervisor, Aviation Travellers NSW, the Officer self-reported the incident to the Integrity and Professional Standards Branch on 2 November 2014. The matter was formally investigated under the former ACBPS Code of Conduct Procedures for investigating suspected breaches of the Code of Conduct.

The Breach Decision Maker determined that the Officer had breached the Code of Conduct, and the Sanction Delegate imposed a sanction that was commensurate with the breach decision. The inquiry concluded 22 June 2015.

s47F

The s47E(d) Privacy Commissioner have been made aware of the incident and provided a copy of the letter to the passenger in the event the passenger elected to disclose this event to external relevant authorities or the media.

We will prepare QTB tomorrow and respond to any media enquires (nil to date following the publishing of the article)

Regards

s22(1)(a)(ii)
Assistant Secretary
Integrity and Professional Standards Branch | Integrity, Security and Assurance Division
Corporate Group

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PROTECTED

From: §22(1)(a)(ii)
Sent: Sunday, 2 August 2015 10:13 AM
To: PEZZULLO Michael; QUAEDVLIEG Roman
Cc: §22(1)(a)(ii) Portfolio Media
Subject: RE: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August [SEC=PROTECTED]

We knew through FOI notification this was likely to hit. Nat was referred to the decision letter, which she declined to note in her article.

MediaOps: we will need a line or two from I&PS on the incident itself.

§22(1)(a)(ii)

Sent with Good (www.good.com)

-----Original Message-----

From: Michael PEZZULLO
Sent: Sunday, August 02, 2015 09:55 AM AUS Eastern Standard Time
To: Roman QUAEDVLIEG
Cc: §22(1)(a)(ii)
Subject: RE: FW: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August [SEC=PROTECTED]

Roman

Thanks,

I was just thinking the same thing...

MP

Michael Pezzullo
Secretary
Department of Immigration and Border Protection
P §22(1)(a)(ii) | E: michael.pezzullo@border.gov.au

From: QUAEDVLIEG Roman
Sent: Sunday, 2 August 2015 9:54 AM
To: §22(1)(a)(ii)
Subject: [SEC=PROTECTED]FW: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August

§22(1)(a)(ii)

Re the Natalie O'Brien article relating to inappropriate use of a pax mobile telephone by an ACBPS officer: Can we get a status report on any referral and/or internal investigation?

s22(1)(a)(ii)

Did we get a heads up this article was being published; and can you work with I&PS to set TPs for media/QTB use?

Thanks

RQ

Roman Quaedvlieg
Commissioner
Australian Border Force

s22(1)(a)(ii)

From: [Isentia Daily Briefings](#)

Sent: 2/08/2015 6:35

Subject: Immigration and Border Protection Portfolio Daily Briefing Sunday 02 August

SUNDAY, AUGUST 02, 2015

Daily Briefing

A summary of media coverage from Immigration and Border Protection monitoring briefs.



Prepared by Isentia for the Immigration and Border Protection Portfolio.

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Ministerial and Departmental

s22(1)(a)(ii)

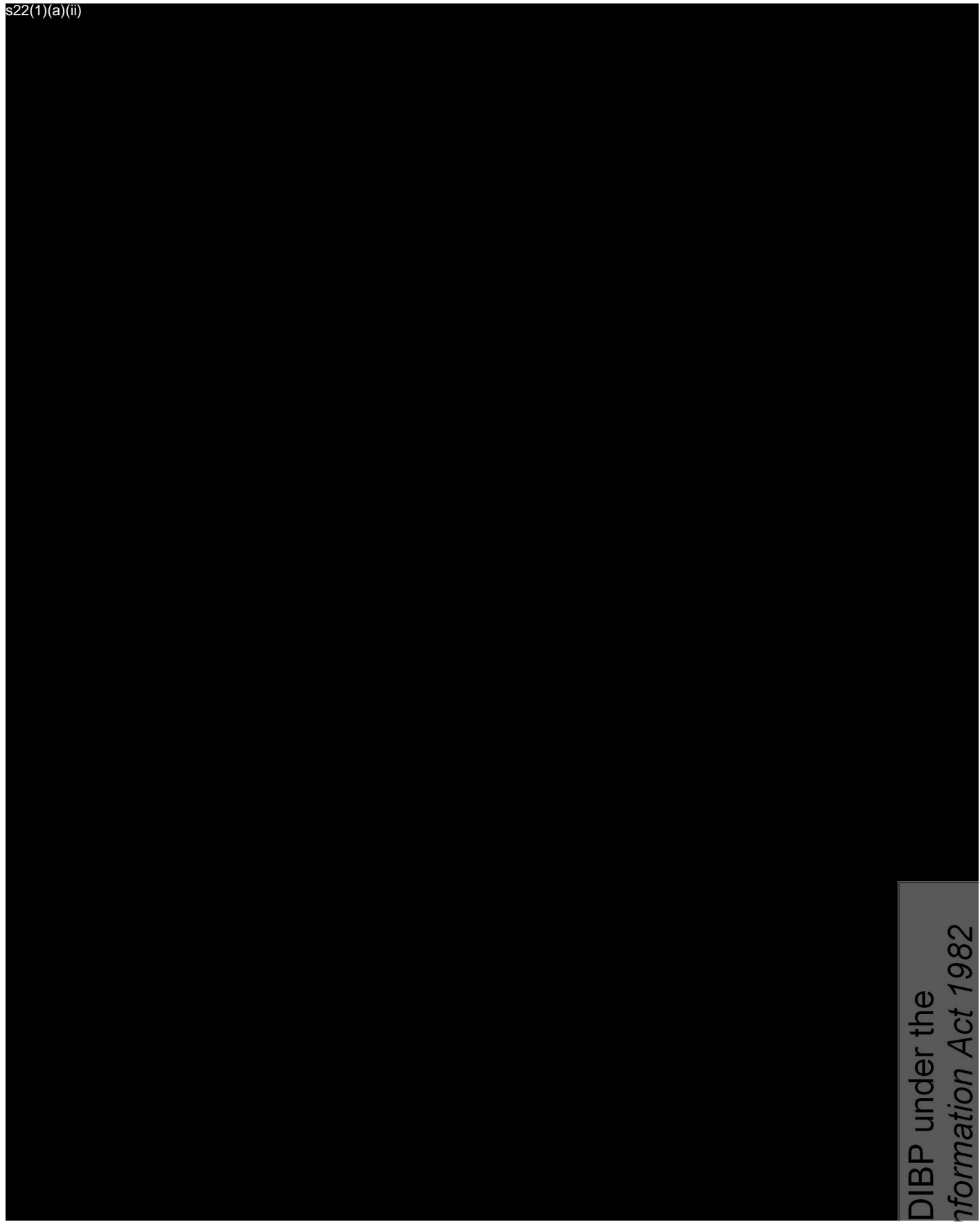
Customs secretly used passenger's phone

[Sun Herald, General News, 02/08/15, Natalie O'Brien, page 8](#)

A customs officer at Sydney international airport confiscated a mobile phone from a passenger during a baggage search and then secretly used it without the passenger's knowledge. The November incident has been referred to the Australian Federal Police, but the new Department of Immigration and Border Protection has refused to release further details, prompting widespread concern and a call for a federal police investigation into the actions of the customs officer.

s22(1)(a)(ii)

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