



Police Using Journalists' Metadata to Hunt Down Whistleblowers

By [Kieran Adair](#) | 29/08/2016 | No Comments [PRINT](#)

The Nauru Files changed everything. The Guardian's publication of [leaked incident reports from the detention centre](#) finally confirmed what many suspected: that the Australian government has been complicit in a campaign of abuse and brutality against those [seeking asylum within its borders](#).

The expose, featured on front pages around the world, has turned Australia into an international pariah, and will be a black mark on our history for years to come.

Although it's received less attention, the Nauru Files have changed a lot for journalists too. Their union, the Media and Arts Alliance, has warned that they're likely to become a test case for a little known provision snuck into the [Government's Data Retention laws](#), the Journalist Information Warrant Scheme. The new laws allow police and other investigative bodies to seek [access to the phone records, emails and browser histories](#) of journalists in order to track down sources they suspect of leaking confidential information.

Even before the laws passed, the union had raised concern at the Government's willingness to use police to investigate journalists' sources.

In the past year, the Australian Federal Police has been asked to investigate a piece in The Australian about the Government's leaked [Draft Defence White Paper](#), and a Fairfax Media story on a proposal to [reform to citizenship laws](#).

Just last week, [police raided Parliament House](#) in an attempt to track down the source of an embarrassing leak about the National Broadband Network. It's feared that these investigations, along with increased penalties for whistleblowers, are hindering the ability of journalists to hold policymakers to account.

It was with this in mind that the Opposition eventually voted for the amendments that created the [Journalist Information Warrant scheme](#), and allowed the Data Retention laws to pass last year. In a last minute effort to shore up support for the legislation, the Government agreed to add provisions for 'safeguards' that would, in theory, prevent the scheme being used to target journalists' sources. However, a closer look at the scheme reveals its flaws.

How Journalist Information Warrants Work

The scheme requires the investigative authority to apply to a judge of the Federal Court, or a member of the Administrative Appeals Tribunal, for a warrant to access the journalists' data.

So far 21 Government agencies, including the Australian Border Force and the state and federal police, have access to this process. It's also worth noting that ASIO, Australia's spy agency, is exempt from this, and can instead apply directly to the Attorney-General – the bureaucrat who proposed the metadata laws in the first place.

Journalists and their employers are not allowed to challenge these warrants to the issuing body or even in court. They're not even told whether one has been granted. Instead, the legislation requires the Prime Minister to appoint two 'Public Interest Advocates' who can choose to make the case against issuing a warrant. However, these advocates aren't actually required to show support for the journalist, or media organisation, or even show up to deliver their case. Warrants can be issued without an advocate's attendance or submission, and last up to six months. The scope of the warrant extends to all the journalist's metadata captured over the previous two years.

"These laws are a violation of press freedom and seek to circumvent journalists' obligation to protect the identity of their confidential sources," the [International Federation of Journalists](#) said shortly after the scheme was put into law, "The Government needs to immediately review these laws to bring them in line with freedom of expression principles and press freedom. Neither journalists nor their sources should be threatened with jail sentences for simply doing their jobs."

National Security or Playing Politics?

In April this year, the federal police admitted to seeking access to reporter Paul Ferrel's metadata.

Ferrel, who writes for the Guardian, came under scrutiny for publishing a news report into the government's abuse of [human rights on Nauru](#) and Australia's unlawful incursions into Indonesian waters. The investigation only came to light when Ferrel petitioned the Privacy Commissioner to look at the case. The access requests were made in 2014, before the warrant scheme was created, although they've since given assurances that they 'rarely' seek access to metadata to track sources.

Still, as Ferrel has argued, that this happens at all is [cause for alarm](#): "It's become a sadly normal reality that journalists' sources can be targeted in Australia in an effort to hunt down whistleblowers... almost always it's about politics. It's not about national security. It's about stopping embarrassing leaks that tell uncomfortable truths about power in Australia."

Although it's likely the Nauru Files will lead police to finally test the new scheme, we'll never know whether they were successful. Another clause in the legislation makes it an offence, punishable by up to two years in prison, to report on the existence of a warrant or application.

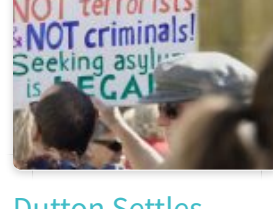
For many journalists, this means waiting for their sources to be prosecuted before finding out whether their data was accessed.

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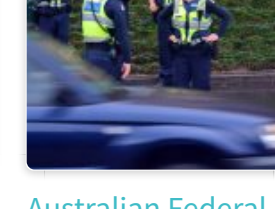
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About Kieran Adair

[Kieran Adair](#) is the previous Deputy Editor of City Hub. He has written for the Huffington Post, Guardian Australia and South Sydney Herald. He has a passion for social justice and is a member of the [Sydney Criminal Lawyers](#) content team.



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