



8 July 2026

9(2)(a) privacy

9(2)(a) privacy

Official Information Act Request

Our Ref: OIA 2026-0184, OIA 2026-0185, OIA 2026-0186, OIA 2026-0187,

I refer to your four Official Information Act 1982 (OIA) requests received by the Public Service Commission Te Kawa Mataaho (the Commission) on 16 June 2026 (ref: OIA 2026-0184 and OIA 2026-0185), and 19 June 2026 (ref: OIA 2026-0186 and OIA 2026-0187).

As we advised in our letter of 26 June 2026, we have transferred parts of your requests to the Department of the Prime Minister and Cabinet, and the Ministry of Justice.

The Commission will respond to the remaining parts of each of these four requests in this letter. For ease of reference, we have provided each of your requests below in italic text with our responses directly underneath.

OIA 2026-0184:

(1) Any publications in relation to investigations of NZ Army NZ Defence Force 2002–2012; and NZ High Commission to the UK 2017–2020; and/or poor workplace cultures / acts done within those periods (if investigations followed after); please? – And including GCSB 2011, please? PS: Also any of the same re GCSB 2012–2020 please?

The following information is covered by part one of your request and is publicly available on the Commission's website at the link provided for in the table below. We have attached a printed copy to this letter.

Item	Date	Document Description	Website Address
1	16 July 2002	Review of the Performance of the Defence Force in Relation to Expected Standards of Behaviour, and in Particular the Leaking and Inappropriate Use of Information by Defence Force Personnel	https://www.publicservice.govt.nz/publications/review-of-the-performance-of-the-defence-force-in-relation-to-expected-standards-of-behaviour-and-in-particular-the-leaking-and-inappropriate-use-of-information-by-defence-force-personnel

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the OIA on the grounds the information requested is or will soon be publicly available.

(2) Just wondering if you can please forward codes and commentaries on the independence of administrative departments from the Executive Council; the maintenance of political neutrality – Including any statutory provisions

(3) How far up the hierarchy of public office does the code apply? Does the code apply inclusively to Governor-General? Prime Minister?

In our letter to you dated 19 June 2026 [our ref: OIA 2026-0147] we provided you with a copy of the Code of the Conduct for the Public Sector (the Code), as well as a written explanation of who the Code applies to. Our letter of 19 June 2026 therefore also provides our response to parts two and three of your request.

OIA 2026-0185:

(1) Can you advise if the Commission acted in any way — either secondary to a complaint or autonomously — in reaction to the December 2014 parliamentary facts found that the PM had enacted various aspects of impropriety. This was to do with NZSIS and GCSB staff working without independence and from inside level 9 of the Beehive; and where information inappropriately from SIS had been used for a political undue advantage.

As such the matter related to the “Dirty Politics” outrage; and also involving an NZSIS report by Rebecca Kitteridge.

Can you advise if PSC had some action around this matter please?

If you can please provide a printed copy of any report of investigation after, please?

We have interpreted your request to be asking if the Commission conducted any review, made any recommendations, or undertook any investigation in response to the release of the ‘Report into the release of information by the New Zealand Security Intelligence Service in July and August 2011’, which was released by the Inspector-General of Intelligence and Security on 25 November 2014.

The Commission did not conduct any review following the release of this report. This report is publicly available on the Inspector-General of Intelligence and Security’s website at the link provided in the table below. Actions requiring involvement from the Commission (known as the State Services Commission at the time) are referenced in a number of the report’s recommendations. We have provided a printed copy of the report.

Item	Date	Document Description	Website Address
2	25 November 2014	Report into the release of information by the New Zealand Security Intelligence Service in July and August 2011	https://igis.govt.nz/assets/Inquiries/FINAL-REPORT-INTO-THE-RELEASE-OF-INFORMATION-BY-NZSIS-IN-JULY-AND-AUGUST-2.pdf

It is not clear which 'NZSIS report by Rebecca Kitteridge' you are referring to, so I am refusing this part of your request under section 18(e) of the OIA as the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found. If you would like to provide a clearer scope to this your request, the Commission will be able to consider your request.

(3) Is the Human Rights Commission subject to the Code?

The Human Rights Commission is an independent Crown entity to which the Code of Conduct for the Public Sector (the Code) has been issued. The Code primarily sets standards of integrity and conduct for public servants (i.e., those working in a public sector organisation).

However, the Human Rights Commissioners are not subject to the standards outlined in the Code, they are instead subject to the Code of Conduct for Crown Entity Board Members.

Both Codes do not override any statutory provisions, including those in an entity's empowering legislation. Accordingly, the Codes apply alongside the Human Rights Commission's functions and obligations under the Human Rights Act 1993.

OIA 2026-0186

(1) A copy of your key operational definition on corruption, wrongful or dishonest influence, trading influence or allegiance for the grant of an office; political independence; etc; and the discretionary or objective dicta/elements of codifying/identifying breaches of those principles please. Particularly, a civil employment discipline standard.

The Commission does not hold key operational definitions for the terms you have outlined. I am therefore refusing this part of your request under section 18(e) of the OIA on the grounds the information requested does not exist.

Such terms, where relevant, may be defined in investigation reports themselves, with reference to standards/guidance in place at the time. For example, please refer to the information provided via our letter of 19 June 2026, including the guidance on the public service principles: Political Neutrality, Free and Frank advice, Merit-based Appointments, Open Government and Stewardship.

(2) Guidelines on maintaining independence of appointing officials (by Ministers).

The Commission does not hold guidelines on maintaining independence of appointing officials by Ministers. I am therefore refusing this part of your request under section 18(e) of the OIA on the grounds the information requested does not exist.

The process for appointing Public Service secretaries is set out in schedule 7 of the Public Service Act 2020 (the Act). The Act provides for input by the Government but provides statutory independence for the Public Service Commissioner or Deputy Public Service Commissioner in the selection of the person for the job.

OIA 2026-0187

(1) Can you write advising if PSC has a role in weeding and vetting political candidates that intend/do become elected to Parliament, and if so, what part candidates/electees might be required to be screened, please?

The Commission does not weed or vet political candidates. I am therefore refusing this part of your request under section 18(e) of the OIA on the grounds the information requested does not exist.

If you wish to discuss this decision with us, please feel free to contact Enquiries@publicservice.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this response (with your personal details removed) on the Commission's website.

Yours sincerely



Nicky Dirks

**Manager – Ministerial and Executive Services
Public Service Commission Te Kawa Mataaho**

Review of the Performance of the Defence Force in Relation to Expected Standards of Behaviour, and in Particular the Leaking and Inappropriate Use of Information by Defence Force Personnel

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16 July 2002

A review of the performance of the Defence Force in relation to expected standards of behaviour, in particular leaking and inappropriate use of information by Defence Force personnel

INTRODUCTION

Establishment of review

1 The Minister of Defence and the Chief of Defence Force have each requested, under section 11(4) of the State Sector Act 1988, that the State Services Commissioner "review the performance of the Defence Force in relation to expected standards of behaviour, and in particular the leaking and inappropriate use of information by Defence Force personnel."

2 To meet that request the State Services Commissioner determined to carry out an inquiry defined in the terms of reference set out in Appendix 1 to this report. The Commissioner appointed us, Douglas White QC and Graham Ansell, under s 25(2) of the State Sector Act 1988, as a Review Team to conduct this inquiry.

3 For the purpose of summoning witnesses and receiving evidence, s 25(1) of the State Sector Act gives the State Services Commissioner the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908. While those powers attached to our inquiry, we were not a formal Commission of Inquiry as such nor were we expected to hold formal, public hearings with the involvement of parties, and witnesses being cross-examined by opposing counsel.

Context of the review, and relationship to other reviews

4 The Government's Defence Policy Framework released in June 2000 foreshadowed a "review of accountabilities and structural arrangements between the Ministry of Defence and the New Zealand Defence Force".

5 On 10 September 2001 the Minister of Defence announced a review of the accountabilities and structural arrangements between the Ministry of Defence, the New Zealand Defence Force, and the three Services. The Minister of Defence expects the reviewer to provide an interim report to him by the end of 2001.

6 In addition to its concerns about accountabilities and structural arrangements the Government has expressed increasing disquiet about the handling of Defence documents and information, including 'leaks' to members of the Parliamentary Opposition. The Minister has announced two further reviews as a consequence. The first is the review that is the subject of this report, about the performance of the Defence Force in relation to expected standards of behaviour, and in particular the leaking and inappropriate use of information by Defence Force personnel. This review was originally required to be completed by the end of November 2001, so that the results would be available to the first (accountabilities and structural arrangements) review as soon as possible, but the reporting time was extended when we were requested to direct our attention to the more urgent matter of the allegations by Mr Ron Mark MP about misuse of his Army files. On completion of our report on that matter on 13 December 2001 we resumed our work on this report.

7 The third review, which is intended to address specific concerns about a letter written by an Army officer in March 1997, and an e mail circulated by Navy staff in March 2001, is being conducted under the authority of the Judge Advocate General. The Judge Advocate General was originally expected to report by mid December 2001, but we understand that it is now unlikely that he will do so before the end of January 2002.

8 Our terms of reference note the possibility of overlap between our review and the review being carried out by the Judge Advocate General, and requires appropriate cooperation and consultation between the two.

Nature of Government's concerns

9 Before beginning our inquiry, we were briefed by the Minister of Defence and the Chief of Defence Force on the nature of the concerns which had led to their requesting the State Services Commissioner to initiate the investigation. This was done both orally and by the submission of documents. Their observations covered two broad areas:

9.1 Unauthorised disclosure of official information

9.2 The Minister supplied us with a list of 44 occasions on which unauthorised disclosures may have been made. These fell into several different categories, and were of varying degrees of seriousness, though all had caused embarrassment. In some cases, Defence personnel had spoken openly to media representatives or written letters to newspaper editors about policy issues. In other cases, information had been published by the media without attribution, or at least with no more than a general reference to Service sources. There were a number of instances in which information had apparently been passed, without authority, to Opposition Members of Parliament as background briefing or in the form of copies of official documents. On some occasions, requests for documentation from the media or from Opposition MPs directed under the Official Information Act 1982 or as Parliamentary Questions to the Minister, appeared to have been prompted by sources within the Services. The report from the Chief of Defence Force covered a number of these cases, and some others; and a further list of apparent breaches was later supplied to us by the Chief of the General Staff.

Both officers gave us details of investigations already made, where they had been initiated. We received from both copies of instructions they had issued with the aim of discouraging practices which they held to be unacceptable.

9.3 Standards of Defence Force behaviour

9.4 It was made plain to us that the Government was equally concerned to secure an independent judgement on the standards of behaviour within the Defence Force which had allowed and might have encouraged the spate of unauthorised disclosures. We were asked to endeavour to establish whether within the Force there was a full understanding of the relationship which should properly exist between members of the Force and the Government of the day, and of the need to avoid acting in a way that might suggest disloyalty to Government policies. Reports had reached Ministers and senior officials outside the Defence Force that some members of the Armed Forces believed they had a higher loyalty to the Queen, through the Governor General, who is Commander in Chief which might cause them to work actively against Government policies which seemed to them detrimental to New Zealand defence interests. Essentially, Ministers wished to know whether there had been a breach in the convention of political neutrality within the Defence Force, and if so, what steps the Service Chiefs had taken to remind their subordinates of their obligations and, where necessary, effect a change in attitude.

Our approach and methods

10 At the outset of our review we considered what might be the most appropriate means of making the assessment and answering the questions raised in our terms of reference. We noted that we had not been asked to conduct a formal inquiry into the sources of the unauthorised disclosure of information which had led to our appointment. We were not required to make any findings which might affect the reputation of any identified individual and which might have justified adopting a different approach. We decided that, while under s 25 of the State Sector Act 1988 we had the same powers to summon witnesses and receive evidence as a Commission of Inquiry, the nature of our terms of reference and the need to report expeditiously meant that it would be appropriate and preferable to conduct our review through a series of interviews with persons able to assist us rather than by way of a formal public inquiry. We anticipated that those persons whom we interviewed would be likely to be more forthcoming if we adopted this approach.

11 Statements by the Minister of Defence gave public notice of our review. We believed that anyone who might wish to make a submission to us would have been aware that there was an opportunity to do so. The Minister of Defence also wrote to the members of the Parliamentary Foreign Affairs, Defence and Trade Committee by letter dated 23 October 2001 providing them with a copy of our terms of reference and inviting them to contact us if they wished to contribute to our review. We were not approached by any member of the Committee, although we interviewed Hon. Max Bradford in his capacity as the former Minister of Defence and also Mr Ron Mark MP, the latter primarily in connection with our report on allegations relating to accessing his personal Army files. We received one submission from a member of the public.

12 Having now completed our review, we are satisfied that the process which we adopted was the right one in the circumstances. Since 28 September 2001 we have interviewed a total of 75 people, 5 on more than one occasion. Without exception, everyone interviewed was willing to assist us fully and frankly. Defence personnel had instructions from the Chief of Defence Force to provide us with any information which we sought and they did so. All other persons co-operated fully. A complete list of the persons interviewed appears in Appendix 2 to this report.

On several occasions we were welcomed by those interviewed in the Defence Force as providing an opportunity for them to express views to an independent panel. We record our appreciation of the assistance provided by all those interviewed.

13 In the course of our review we interviewed senior personnel at Defence Headquarters in Wellington and also at the Headquarters of the single Services; Ministry of Defence personnel; heads of other relevant Government departments and persons responsible for security intelligence; staff from the office of the Controller and Auditor-General; as well as a range of others including the former Chief of Defence Force (Lt General Tony Birks), the former Chief of the General Staff (Major General Piers Reid), the former Secretary of Defence (Mr Gerald Hensley) and the former Chair of the Parliamentary Foreign Affairs, Defence and Trade Committee (Hon. Derek Quigley). The questioning of Defence personnel included interviews conducted at Trentham (the Joint Forces Headquarters), Linton Military Camp, Whenuapai Air Force Base and Devonport Naval Base. At each of these places we interviewed commanding officers and groups of mid ranking officers. We found that these interviews gave us a valuable perspective for our review.

14 In addition to conducting the series of interviews, we sought and obtained a substantial amount of documentary material, some of a background nature and some directly relevant to our terms of reference. An index of the key documentary material which we received is contained in Appendix 3 to this report. The directly relevant documentary material included

14.1 Lists of information believed to have been disclosed without authority over the past 2 – 3 years provided to us by the current Minister of Defence, the former Minister of Defence, the Chief of Defence Force, and the Chief of the General Staff. A summary list of unauthorised disclosures is contained in Appendix 4 to this report.

14.2 Comments on these lists provided by the Chief of the Defence Force and the Secretary of Defence.

14.3 Defence Force Orders and memoranda issued by the Chief of the Defence Force and instructions to his Ministry by the Secretary of Defence relating to the areas covered by our terms of reference, including classified information, official information, protected disclosures and the unauthorised disclosure of information.

14.4 A Crown Law Office opinion on the constitutional nature of the relationship between the Defence Force and the Government of the day (sought by the State Services Commission and the Defence Force). A copy of the opinion is contained in Appendix 5 to this report.

15 As already noted, our terms of reference required us to co-operate and consult with the other reviewers. To the extent appropriate, we have been in touch with Mr Don Hunn, who is carrying out the accountabilities review, and Mr Colin Carruthers QC, who is carrying out the review for the Judge Advocate General.

16 As anticipated in our terms of reference, we have in the time available obtained the information which we required to carry out our review without needing to exercise any powers under the Commissions of Inquiry Act 1908.

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Background

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General

17 As our terms of reference state, the object of our review was to make an assessment of standards and behaviour in the Defence Force in the areas of the handling of official information and relations with Government. To carry out this assessment and to answer the specific questions raised in our terms of reference, it has been necessary for us to enhance our understanding of the current constitutional, legislative, political, economic, military and social environment in which the New Zealand Defence Force and the Ministry of Defence are required to function, by further background reading and the interview process. We make the following brief observations.¹

18 In constitutional terms, protecting the security of a nation is generally recognised as one of the principal functions of a Government. The adequate defence of a nation is a critical part of ensuring its security. For that purpose Parliament has empowered the Governor-General to raise and maintain armed forces for the defence of New Zealand: Defence Act 1990, s 5. The Minister of Defence has general responsibility for the defence of New Zealand and, for that purpose, has power to control the New Zealand Defence Force through the Chief of Defence Force: Defence Act 1990, s 7. It is clear from these provisions and the scheme of the Defence Act that the Government of the day has statutory responsibility for determining defence policy and for directing the implementation of that policy through the Defence Force which it has power to control.² The Government's responsibilities and powers are reinforced in practical terms by the obligation for the Government to obtain Parliamentary appropriations for Defence Force operating and capital expenditure budgets. The Chief of Defence Force also receives detailed terms of reference from the Minister of Defence which stipulate the duties and obligations of the Chief of Defence Force and include a purchase agreement which defines the "outputs" the

Government requires from the Defence Force: Defence Act, s 25(2). The role and functions of the Chief of Defence Force and the Chiefs of Staff are plainly subsidiary to the Minister of Defence. In New Zealand there is civilian control of the military.

19 There is a range of legislation which affects the Defence Force and which is relevant to our terms of inquiry. The principal statutes are -

19.1 The Defence Act 1990;

19.2 The Armed Forces Discipline Act 1971;

19.3 The Official Information Act 1982;

19.4 The Protected Disclosures Act 2000.

The effect of this legislation is summarised in the Crown Law Office opinion and we refer to aspects of it in our report. Broadly speaking, all of this legislation applies to Defence Force personnel and affects the way they should behave.

20 In political terms the Government of the day is responsible for determining defence policy, which is invariably concerned primarily with an assessment of risks and consequent funding and equipment issues in the context of an ever changing international scene and of New Zealand's international treaty obligations. During our history defence policy has usually been bipartisan (eg during World Wars and the Cold War), but there have also been occasions when it has been intensely political.³ Over the last 10-15 years defence policy has become increasingly political as Governments and Opposition parties have developed distinct policies based on different assessments of New Zealand's defence interests and equipment priorities, with controversial decisions including the establishment of New Zealand as a nuclear free zone by the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987, the decision to replace the Skyhawks with F-16s, the subsequent reversal of that decision, the decision not to proceed with the Sirius upgrade of the Orions and the priority given to acquisition of new light armoured vehicles for the Army. The advent of MMP with a wider range of views represented in Parliament and the consequential increase in the role of the Parliamentary Foreign Affairs, Defence and Trade Committee have resulted in defence issues receiving a relatively higher public and political profile. The ebb and flow of New Zealand's defence policy over this period is chronicled in the reviews which have been carried out, including the New Zealand Defence Resource Management Review 1988 by Strategos Consulting Ltd; The Defence of New Zealand 1991: A Policy Paper; The Shape of New Zealand's Defence: A White Paper, 1997; the 1999 report of the Foreign Affairs, Defence and Trade Committee, Inquiry into Defence beyond 2000; The Government's Defence Policy Framework - June 2000; and the Government Defence Statement - 8 May 2001.

21 In the context of the Defence Act, the Government of the day, when determining defence policy, is expected to obtain advice from both the Secretary of Defence, who is the principal civilian adviser, and the Chief of Defence Force, who is the principal military adviser: ss 24(2) and 25(1). Furthermore, they are required to consult with each other: s 31(1). Having obtained this advice, the Government of the day has final responsibility for the determination of New Zealand's defence policy. Both the Secretary of Defence and the Chief of Defence Force then have significant responsibilities in respect of the implementation of the Government's defence policies. Major policy shifts, coupled with substantial lead-in times for implementation (eg equipment acquisition), together with close scrutiny from Opposition political parties, defence interest groups such as Just Defence and the Centre for Strategic Studies, and the news media have created tensions within the Defence Force and the three separate Services. Political and interest group scrutiny of defence issues has also been reflected in a significant increase in the number of requests

for information under the Official Information Act and the number of Parliamentary questions. Whether these tensions have affected the political neutrality of the Defence Force, or any component of it, and the level of trust between the Government and the Defence Force are issues which we address later in this report.

22 The economic environment over the last 10-15 years has not encouraged Governments to spend substantial sums on defence. There have been other priorities. The 1999 Report of the Parliamentary Foreign Affairs, Defence and Trade Committee, Inquiry into Defence beyond 2000, stated at p 12 -

"Faced with a declining defence budget, the result has been a dramatic run-down in capabilities, exacerbated by all the disadvantages inherent in the replacement syndrome as NZDF has struggled to upgrade whatever equipment and facilities it can afford to retain."

And the Government Defence Statement of 8 May 2001 states at p 4

"When the government took office in 1999 it inherited a Defence Force suffering from neglect, underfunding, and confused government decision making. Much of its equipment dated from the Vietnam War era. Operational and personnel spending had been cut by almost eighteen per cent in real terms between 1991 and 1997. The previous government's 1997 Defence White Paper was neither funded nor followed through."

The overall reduction in defence spending which occurred during the 1990s had a significant impact on the Defence Force. It no doubt contributed to difficulties within the Defence Force and the Ministry of Defence when significant re equipment decisions were required, and to rivalries between the three Services as they competed, inevitably, for their share of the defence budget. Morale in the Services which believed that their aspirations had not been adequately met was inevitably affected, at least initially.

23 Some of the problems which occurred as a result of these pressures are illustrated by the Report of the Controller and Auditor General dated 22 August 2001 entitled "Ministry of Defence: Acquisition of Light Armoured Vehicles and Light Operational Vehicles". The Report described relationships between the Defence Force, the Ministry of Defence and the Army as "dysfunctional", involving mistrust and confusion: paras 4.18 4.19. The Report recommended that the dysfunctional relationships needed to be corrected and be underpinned by clear accountabilities, a more trusting environment, and more face to face communication.

24 There are aspects of the military environment which are relevant to our assessment of standards of behaviour in the Armed Forces which may not always be fully appreciated by civilians. Members of the Armed Forces have joined up for the purpose of defending their country and in the knowledge that in doing so they may lose their lives or be seriously injured. They are not public servants or covered by the Employment Relations Act 2000. Their commitment is based on an oath of allegiance to the Sovereign: Defence Act, ss 34 and 35. And the Armed Forces operate through a command structure which requires unquestioning implementation of superior orders which may be conveyed orally or by written or electronic directive. The "command" structure is based on the need in a fighting force for hard decisions in difficult situations and short time frames. As the following cartoon from a recent Spectator issue so graphically illustrates, the command structure does not provide an opportunity, in a battle situation, for debate -

25 The command structure is derived from the Crown prerogative and is reflected in the Defence Act, ss 8(3) and 28, as well as the Armed Forces Discipline Act 1971, s 38, which makes it an offence to disobey the lawful command of a superior officer. Under the Defence Act the Chief of Defence Force "commands" the three Services and the joint force "through" their respective commanders: s 8(3). And each Service Chief and the commander of the joint force "command" their respective Services and the joint force: s 28. All members of the Armed Forces are inculcated in

the command structure which permeates all aspects of the military, operational and managerial. It understandably affects all relationships within the Armed Forces and the manner of communication both within and between the respective Services and Defence Headquarters.

26 The Chief of Defence Force also has power to issue and promulgate Defence Force Orders which bind all Defence personnel: Defence Act, s 27. In addition the Chief of Defence Force has power to authorise other persons to issue Defence Force Orders: s 27(2). We understand that this power has been exercised by the Chief of Defence Force in favour of the three Service Chiefs. Defence Force Orders are used for many purposes, including the prescribing of conduct in relation to classified and official information. We discuss the effect of this on our terms of reference further in this report. In the meantime we note that failure to comply with a Defence Force Order may be an offence under the Armed Forces Discipline Act 1971: s 39.

27 The traditional military command structure has come under pressure from changes in New Zealand society which are reflected in the Armed Forces. Defence personnel, especially those of officer rank, are generally well educated and articulate. A number of officers view their military service as one step in a career. They are aware of their rights as citizens as well as their obligations as members of the Armed Forces. They have views on the future of their Services and the role of the Defence Force. They would like to be involved in the formulation of policies which affect them. Once policies have been formulated and are being implemented, they would welcome positive recognition and support for their efforts from the Government and the country. They appreciate comments such as those made in the Report of the Parliamentary Foreign Affairs, Defence and Trade Committee Inquiry into Defence beyond 2000 at p 10

"Lest it be thought that we are denigrating our armed services personnel, the Foreign Affairs, Defence and Trade Committee of Parliament places on record its high regard for the job they are doing in difficult conditions with limited resources. They deserve the respect of all New Zealanders for the contributions they are making to our foreign policy and security interests and in carrying the New Zealand flag so proudly into international peacekeeping operations, so often far from home."

28 Overall we were impressed by the calibre, commitment and professional approach of the Defence personnel whom we met in the course of our review. There was general disapproval of the unauthorised disclosure of information which had led to our review and a concern at the impact of the consequent adverse publicity on the Defence Force. But it was also apparent to us from our interviews that the environmental factors which we have identified set the scene for the unauthorised disclosure of information which we were asked to consider in assessing the standards of behaviour in the Defence Force and the Ministry of Defence.

¹ A more detailed description of some aspects of the background environment may be found in Rolfe, *The Armed Forces of New Zealand*, 1999, Chapter 3 - "The superstructure: command and control".

² The limitation on the power of the Courts to intervene in the carrying out of these statutory responsibilities by the Government is illustrated by the recent decision of Heron J in *Curtis v Minister of Defence*, 20 November 2001, which involved an unsuccessful attempt to review the decision to disband the Air Combat Force. It is understood, however, that this decision is under appeal.

³ For instance, in the late 1930s four senior colonels in the New Zealand Army, with strong connections to the Opposition, spoke out strongly against the Government's policies: see Barber, "The New Zealand Colonels' 'Revolt', 1938" (1977) NZLJ 496.

The Defence structure in New Zealand

29 New Zealand's Defence structure has been designed on the basis of principles widely applied in the State sector reform phase of the 1980s and early 1990s, including the separation of policy and operational functions,⁴ and provision for contestability in advice to Ministers. The structure is understood to have represented a response to concerns held by the Government of the day about the efficient and effective conduct of some aspects of Defence business, including planning for capability to meet the Government's policy goals, and procurement of major equipment items.

30 Broadly, the structure locates responsibility for performance of the functions and duties of the Armed Forces with the Chief of Defence Force, and responsibility for production of defence assessments, procurement of equipment, and audit of defence functions, with the Secretary of Defence. Section 24 of the Defence Act 1990, which sets out the functions of the Secretary of Defence, requires the Secretary to formulate advice on defence policy in consultation with the Chief of Defence Force. This and other provisions appear to reflect a desire by Parliament for effective communication and cooperation between the two institutions, balanced by an element of constructive tension.

31 The three main institutions are the Minister of Defence, the Defence Force, and the Ministry of Defence.

⁴ Ewart and Boston, "The Separation of Policy Advice from Operations: the Case of Defence Restructuring in New Zealand", Australian Journal of Public Administration, Vol. 52, No.2, June 1993, p 223.

The Minister of Defence

32 The Minister of Defence has the power of control of the New Zealand Defence Force, exercised through the Chief of Defence Force under s 7 of the Defence Act 1990.

The New Zealand Defence Force

33 The New Zealand Defence Force is constituted under the Defence Act. It comprises the Armed Forces of New Zealand and the Civil Staff of the Defence Force. It is not a department of the Public Service under the State Sector Act 1988.

34 The Chief of Defence Force is appointed from time to time by the Governor-General in Council under s 8 of the Act. The Chief of Defence Force is the principal military adviser to the Minister of Defence and other Ministers, and is responsible to the Minister for carrying out the functions and duties of the Defence Force, its general conduct, and the efficient, effective and economical management of its activities and resources, among other things.

35 The Chief of Defence Force commands the Navy, Army and Air Force through the Chief of Staff of each of those services. The Chiefs of Staff are appointed from time to time not by the Chief of Defence Force but by the Governor-General in Council under s 28 of the Defence Act. The Chief of Defence Force also commands any joint force either directly through a joint force commander or through any of the Chiefs of Staff.

The Ministry of Defence

36 The Ministry of Defence is a department of the Public Service under s 27 of the State Sector Act 1988. The Secretary of Defence is appointed by the State Services Commissioner under s 35 of the State Sector Act. The Secretary is the principal civilian adviser to the Minister of Defence and other Ministers, and is responsible to the

Minister of Defence for the carrying out of the functions and duties of the department, the general conduct of the department, and the efficient, effective and economical management of the activities of the department, among other things.

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Standards

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Introduction

37 In this section of our report we consider in general terms the standards of behaviour which the Government requires of the Public Service, including the standards relating to the protection and disclosure of official information. These apply formally to staff of the Ministry of Defence but not to members of the Defence Force, although it is plain to us that Ministers expect from the Force standards of conduct similar to those for public servants. We note that in respect of the Civil Staff employed in the Defence Force the Chief of Defence Force has power to issue a code of conduct covering "the minimum standards of integrity and conduct" applicable to them: Defence Act 1990, s 60. We have examined the Civil Staff Code of Conduct issued under this provision in 1997 and comment on it later.

Standards of general behaviour in the Public Service

38 The standards of behaviour which the Government expects of the Public Service are well established. They are set out in Chapter 2 of the Cabinet Manual and the New Zealand Public Service Code of Conduct published by the State Services Commissioner under s 57 of the State Sector Act. A copy of the relevant parts of the Code is in Appendix 6. As both the Cabinet Manual and the Code of Conduct emphasise, the standards are based on the convention of "political neutrality". In Palmer and Palmer, Bridled Power New Zealand Government under MMP, 1997, 85, it is stated -

"The key element running through these obligations [in the Code of Conduct] is that the New Zealand public service is politically neutral - loyal to whatever government is in power at any time."

The purpose of this convention is to ensure that the Public Service gives free and frank advice to the Government of the day while maintaining the ability to give similar advice to future Governments. The Code of Conduct puts it this way -

"Public servants are required to serve the Government of the day. They must act to ensure not only that their department maintains the confidence of its Ministers, but also to ensure that it is able to establish the same professional and impartial relationship with future Ministers. This convention of political neutrality is designed to ensure the Public Service can provide strong support for the good government of New Zealand over the long term."

39 For present purposes the relevant standards may be summarised as follows -

39.1 Public servants are obliged to serve the aims and objectives of the Minister. In this respect they owe a duty of loyalty to their Minister and the Government generally.⁵ They are responsible for providing assistance to their Minister in the development and implementation of policy.

39.2 The advice which public servants give must be honest, impartial and comprehensive. Ministers should be in a position to take decisions based on all the facts and an appreciation of all the options. Public servants should fulfil their lawful obligations with professionalism and integrity.

39.3 Final decisions on policy are the prerogative of Ministers and not public servants. The latter may not withhold relevant information from Ministers or seek to obstruct or delay a decision or attempt to undermine or improperly influence Government policy (for example, by the unauthorised release of official information).

39.4 Once policy decisions have been made by the Government public servants are responsible for implementing those policies within the law and to the best of their abilities.

39.5 Public servants who in conscience oppose policies or find themselves unable to implement a policy decision are required to discuss the circumstances with their manager or chief executive. They are not entitled to do anything to circumvent or undermine the Government's policies.

39.6 Public servants should not normally communicate with Opposition Members of Parliament about matters relating to their official duties without prior Ministerial approval. Chapter 2 of the Cabinet Manual makes it clear that consultation and negotiation between the Government and other political parties is the responsibility of Ministers.

39.7 Public servants must take considerable care when communicating with the news media. While they have the same rights of free speech in relation to their private affairs as members of the public, they should not discuss matters relating to their official duties if to do so would -

- reveal advice given to a Minister;
- use or reveal any information gained in the course of official duties where this was not already known by, or readily available to, the general public;
- criticise, or offer alternatives to, a proposed or actual Ministerial policy or departmental programme;
- purport to express or imply a departmental view, rather than clearly expressing a personal view only;
- give openly partisan support to, or criticism of, a political party;
- constitute a personal attack on a Minister, departmental colleague or other public servants; or

- amount to criticism sufficiently strong and/or persistent so as to call into question the public servant's ability to impartially implement, administer, or advise upon a Government policy.

39.8 Only those public servants authorised to do so should make public statements to the media. In respect of public comment, Chapter 2 of the Cabinet Manual states -

"Where press statements or other public comment are concerned, there should be a clear understanding as to which issues are to be handled by the Minister and which by the department. Official comment on behalf of a department should be made only by those employees authorised to do so."

40 The standards of behaviour of public servants in respect of the handling of official information are affected by the principles and procedures relating to the **authorised** release of information contained in the Official Information Act 1982, other relevant legislation, and specific departmental rules. We refer to the relevant legislation shortly. But at this point we highlight the general obligation on public servants to protect official information from **unauthorised** disclosure. As the Code of Conduct states (p 16)

"It is unacceptable for public servants to make unauthorised use or disclosure of information to which they have official access. Whatever their motives, such employees betray the trust put in them, and undermine the relationship that should exist between Ministers and the Public Service. Depending on the circumstances of the case, the unauthorised disclosure of information may lead to disciplinary action, including dismissal."

41 Public servants who are concerned about suspected departmental wrong doing may report their concerns through their department's normal channels or by following the procedures prescribed by the Protected Disclosures Act 2000 (the "whistle blowing" legislation). The existence of the procedures and protections under this legislation, which provide a legitimate avenue of non public disclosure when justified by concerns of serious wrong doing, also serves to reinforce the obligation on public servants to avoid the unauthorised disclosure of official information.

⁵
 K J Scott, The New Zealand Constitution, 1962, p 140.

The standards governing the handling of official information

42 Our terms of reference require us to assess the standards of behaviour in the Defence Force in relation to the handling of "official information". The expression "official information" is generally understood to encompass all information, whether in documentary or electronic or other form, held by a Government department or a Minister of the Crown in his or her official capacity. The definition of the expression in the Official Information Act 1982 makes it clear that in this context a Government department is a department as defined in Part I of the First Schedule of the Ombudsman Act 1975 which expressly includes the Ministry of Defence and the New Zealand Defence Force. A similar definition of the expression appears in s 78A(2) of the Crimes Act 1961 and that definition is incorporated in s 25 of the Armed Forces Discipline Act 1971 which proscribes the unauthorised disclosure of official information in certain circumstances. We return to these provisions later in our report as they have a special significance in respect of information held by the Ministry of Defence and the New Zealand Defence Force.

43 The object of the Official Information Act, as its long title states, is -

"to make official information more freely available, to provide for proper access by each person to official information relating to that person, to protect official information to the extent consistent with the public interest and the preservation of personal privacy, to establish procedures for the achievement of those purposes, and to

repeal the Official Secrets Act 1951."

44 This object is implemented by provisions which make it plain that the principal purposes of the legislation are -

44.1 To increase progressively the availability of official information to the people of New Zealand;

44.2 To provide for proper access by each person to official information relating to that person;

44.3 To protect official information to the extent consistent with the public interest and the preservation of personal privacy (s 4).

45 The purposes are reinforced by the principle of availability in s 5 of the Act which requires all questions of availability to be determined in accordance with these purposes and the principle that -

"the information shall be made available unless there is good reason for withholding it."

But this approach does not apply where the Act "otherwise expressly requires". This express exception to the application of the principle of availability is particularly significant in the context of our review which is concerned with all official information held by the Ministry of Defence and the New Zealand Defence Force.

46 The Official Information Act spells out plainly the circumstances in which there will be conclusive reasons for withholding official information. Under s 6 of the Act

"Good reason for withholding official information exists, for the purpose of section 5 of this Act, if the making available of that information would be likely -

- (i) The government of any other country or any agency of such a government; or
- (ii) Any international organisation; or
- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by -
- (c) ...
- (d) To endanger the safety of any person ..."

47 The express recognition in s 6(a) and (b) that information should not be made available if it would be likely to prejudice the security or defence of New Zealand or the entrusting of information by a foreign government or an international organisation is consistent with s 25 of the Armed Forces Discipline Act which makes it an offence for any person subject to the Act to disclose such information. ⁶

To similar effect are s 78A of the Crimes Act 1961 and s 20A of the Summary Offences Act 1981. These statutory prohibitions against the unauthorised disclosure of information relating to the security and defence of New Zealand are not surprising. They serve to emphasise for Defence personnel the critical importance of maintaining the highest standards of confidentiality in respect of such information.

48 The Official Information Act contains other provisions relating to the non-disclosure of official information. Under s 9 of the Act there may be good reason for withholding official information where it is necessary to avoid prejudice to the substantial economic interests of New Zealand, or to enable a Minister or department to carry out,

without prejudice or disadvantage, commercial activities, or enable a Minister or department to carry on, without prejudice or disadvantage, commercial negotiations. These provisions are likely to be applicable to the Ministry of Defence in respect of the implementation of Government decisions for the re-equipment of the Defence Force.

49 Notwithstanding the principle of availability underlying the Official Information Act, it is clear that there are categories of official information which will be held by Government departments and Ministers which should not be disclosed. Persons holding and having access to such information need to take special care to ensure that such information is not disclosed. The existence of such information also means that a careful approach is required in respect of all official information. This is reinforced by the Cabinet Manual, Chapter 6, which states -

"The government holds a large quantity of information of all kinds. All government information should be treated with care and protected from unauthorised release" and "Where government documents are sensitive, they may be given a security classification. Classified documents must be handled in accordance with their classification, subject to their release under the Official Information Act or under some other proper authority".

50 The classification of documents for security purposes is carried out as a result of a decision by Cabinet on 18 December 2000.

⁶ These provisions also reflect the traditional judicial restraint when dealing with cases involving national security or international relations: see Eagles, Taggart, Liddell, *Freedom of Information in New Zealand*, 1992, 162 ff.

The security classifications system

51 The security classifications system, which is applicable to official information, has existed for many years. Its classifications and definitions have, in the normal course of events, been revised from time to time. The system in operation through the late 1990s provided three classifications: *Confidential*, covering information or material the unauthorised disclosure of which would have been likely to damage national interests in a significant manner; *Secret*, relating to information or material the unauthorised disclosure of which would have been likely to damage national interests in a serious manner; and *Top Secret*, covering information or material the unauthorised disclosure of which would have been likely to damage national interests in an exceptionally grave manner.

52 The revised system introduced in December 2000 provided an additional national security classification - *Restricted*, where compromise of information would damage national interests in an adverse manner. Two further classifications were also introduced *for public interest or personal privacy reasons*: *Sensitive*, where compromise of information would be likely to damage the interests of the New Zealand Government or endanger the safety of its citizens; and *In Confidence*, where compromise of information would be likely to prejudice the maintenance of law and order, impede the effective conduct of government in New Zealand or affect adversely the privacy of its citizens.

53 The Director of the Domestic and External Security Secretariat has advised us that the Ministry of Defence has updated its departmental security policy to reflect the new system. The policy is published on the Ministry's intranet and all staff have been trained. New staff are trained as part of the induction process. The NZDF has also updated its departmental security policy. Its intranet includes a self administered training module, completion of which is a prerequisite for authority to use the NZDF email system. Security training is also part of the military training system, with courses for officers and NCOs covering the subject at various levels. At this still early stage the new system appears to be bedding in satisfactorily in terms of comprehensibility, implementation and compliance.

54 Chief executives or other officers responsible for each organisation are entitled to make further more detailed rules to facilitate implementation of the classified information system within their own settings.

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03

Findings

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55 We now turn to consider how the standards which we have identified in the preceding section of our report have been applied in practice in the Defence Force and the Ministry of Defence. We address our findings under the following headings -

- (a) Standards governing relationships with and obligations to the Government of the day.
- (b) Training in the application of standards governing senior Service personnel relationships with Government.
- (c) The issue of higher loyalty.
- (d) Standards of behaviour in respect of handling official information.
- (e) The scale of the unauthorised release of official information.
- (f) Action taken by CDF to review leaking and adequacy of his action.
- (g) Action taken by Secretary of Defence to review unauthorised disclosures, and adequacy of his action.
- (h) Why did the unauthorised leaks occur?

(a) Standards governing the relationship of senior Defence personnel with and obligations to the Government of the day

56 As we have already noted, staff of the Ministry of Defence are bound by the provisions of the Public Service Code of Conduct, which is distributed to all staff on taking up appointment. Standards relating to a number of the matters dealt with in the Public Service Code have been incorporated in various documents issued as Defence Force or Service Orders, especially in relation to the handling of official information. The written guidance or standards governing the relationship of Defence Force personnel with the Government is likewise spread across a number of separate documents. We have noted in particular DFO 34 relating to Defence Force Headquarters Organisation which deals with the powers and functions of the principal offices and institutions of State; but this is more a constitutional statement than a ready guide to the standards which should guide the Defence Force's relationship with and loyalty to the Government of the day. We formed the view that, in this area, the guidance available to Defence Force personnel was less comprehensive, less explicit and more fragmented than what has been produced for public servants.

57 Programmes and documents have been developed in the individual Services, to underpin the training that all their members receive in core values. These are intended to reinforce such attributes as respect for the traditions of their parent Service, professionalism, loyalty, discipline and teamwork which are of great importance to effective operation of the Defence Force. Indeed these core values constitute the basic foundation for the effective operation of the Force and it is vital that they be universally respected. But they do not set out to cover in any comprehensive way the proper relationship between Service personnel and the Government of the day. There are some short references to these matters, although the precise sense may not always be clear, as for example in the Army's "Ethos and Values" in describing service to the Crown

"The Armed Forces have a special constitutional position where the members are engaged to serve at the pleasure of the Sovereign. This service is carried out regardless of the political stamp of the Government and is reinforced by the Oath of Allegiance, commissions and warrants."

This may or may not be interpreted as a commitment of loyalty to the Government of the day, although the Chief of General Staff claimed that there is no ambiguity that personnel are on oath to serve the Government of the day.

58 Similar ambiguity characterises the attempt in the Navy's Command Management and Divisional Manual to describe in flow-chart terms the relationship between Government and Defence Force (see Appendix 7). This diagram might well leave the reader with an exaggerated impression of the role of the Governor-General and a diminished view of the relative importance of Cabinet and the Minister of Defence (leaving aside the curious placement of Parliament). We return later to the matter of the Governor-General's role.

59 It was suggested to us by one officer that his commissioning parchment, which absolutely informed his conduct, contained all that was required in the way of directions on his responsibilities to the Government of the day - but this basic document is concerned entirely with respect for the orders of his superior officers, and duties towards subordinates.

60 There seems to us to be a need for a single document, unambiguously expressed, incorporating a code of conduct for distribution to all members of the Defence Force. Such areas as the need for loyalty to the Government, and for political neutrality on the part of Force members, could be given appropriate emphasis. The Public Service Code dealing as it does with general behavioural issues as well as with the proper handling of official information

provides a commendable model. Officers of the Defence Force are not public servants, and we do not see it as desirable that they should be.⁷ But, like all parts of the Public Service, the Defence Force is responsible to a Minister for giving advice and implementing Government decisions. The Government of the day is entitled to expect the same level of honest, impartial and comprehensive advice from the Defence Force as from the public service. And it is entirely appropriate that the same standards of conduct should apply to the Government's principal civilian and military defence advisers (and their subordinates) particularly when they are required to consult with each other in giving advice on major policy issues. We recognise that the State Services Commissioner's document might well need some adaptation to the special requirements of the Defence Force. We suggest in our Conclusions a method by which this might be done.

61 The Civil Staff Code of Conduct issued by the Chief of Defence Force in 1997 contains a number of cogent requirements of acceptable behaviour, but they are expressed as obligations to the Defence Force rather than to the wider context we are addressing. It does not (nor purports to) deal with the basic issues of political neutrality and loyalty to the Government of the day which are properly highlighted in the Public Service Code. There is therefore a gap to be filled and the suggested new Defence Force Code of Conduct, applied to them, would provide this.

(b) Training in the application of standards governing senior Service personnel relationships with Government

62 Senior officers of the Defence Force have normally been exposed to higher levels of training as they pass through the ranks. Such training includes enhancement of understanding of their proper relationship with the Government of the day. We witnessed a slide lecture presentation by the Defence Force Director of Legal Services, regularly given at the RNZAF Staff College at Whenuapai (but open to the other Services). In this example, it was made clear, eg, that -

"The Defence Force and the disposition of those Forces are at the decision [sic] of Her Majesty's Ministers for the time being"

And that

"The Minister of Defence shall have control of the NZDF, which shall be exercised through the Chief of Defence Force."

We were told that these bare statements normally formed the basis for extended discussion.

63 More advanced study of the proper relationship between Government and Armed Forces is included in post-graduate courses undertaken by NZDF officers at staff colleges in a number of overseas countries, as well as New Zealand, and at such institutions as the Massey University Centre for Defence Studies.

64 Since not all officers have access to these levels of training, we see merit in the organisation of special courses of perhaps 1-2 days' duration aimed at expanding understanding of the standards which should govern civilian/military relationships, and especially the convention of political neutrality which should govern the relationships between the Defence Force and the Government of the day. We believe that such a systematic approach would bring considerable benefit, and alleviate any areas of tension and uncertainty. But, as we observe

later, no system of instruction would have prevented the deviant practices which have been the subject of our review: the individuals concerned were generally considered by those who addressed us on the subject to have been fully aware that their activities were in breach of the expected norms of conduct.

65 Our experience in interviewing a number of Army officers in connection with our investigation into Mr Mark's allegations of misuse of his personal files suggested a further area in which training might be enhanced. There are times when Service personnel, who may be of relatively senior rank, are posted to sensitive positions in Service or Defence Force Headquarters immediately following long periods of service in overseas or even remote New Zealand locations. Several of these officers, and others whom we questioned on the point, thought that it would be helpful to them, and to their Services, if their Wellington positions were to be preceded by a short "refresher course" bringing them up to date with a range of pertinent issues outside their immediate professional experience, including some political orientation. We think this suggestion merits further consideration.

(c) The issue of higher loyalty

66 In our preliminary briefing for the review, and in some of our interviews outside the Defence Force, we were told that it was not uncommon for members of the Force to insist that their loyalty was not necessarily to the Government of the day, but to a higher authority – the Sovereign, to whom all Service personnel swear an oath of allegiance; Her Representative in New Zealand who is, by statute, their Commander in Chief; or simply the Nation. This principle was believed to justify efforts to overturn or frustrate the implementation of Government policies seen as inimical to the country's security. None of those who passed these reports to us had had such assertions put to them directly by Defence Force officers; but all had received accounts of conversations in which such claims had been made.

67 In most of our interviews with Defence Force personnel, we asked specifically whether the conduct of they themselves, or, to their knowledge, others in the Force was governed or influenced by the "higher loyalty" principle. In all cases, except for one middle-ranking officer, we received firm denials. There was virtual unanimity that, while their oath of **allegiance** was to the Sovereign, their **loyalty** was solely to the Government of the day. Many seemed bemused that the question should even have been asked, over what they regarded as a non-issue.

68 We do not think there is any doubt that members of the Defence Force know that their loyalty is owed to the Government of the day, and that, once decisions have been taken by that Government, they must be faithfully implemented. That does not seem to us incompatible with the sense of duty to the nation that motivates service men and women to place their lives at the ultimate risk in New Zealand's defence.

69 It was recognised in a number of our conversations that the argument of higher loyalty may well have been deployed as a rationalisation – or, as one interviewee put it, a "refuge" – by some Defence Force officers who embarked on actions they knew to be politically partisan or in defiance of Government policy. But we do not believe that it was a significant element of motivation.

70 Although we do not judge that there is any serious ambiguity in the matter, in our Conclusions we address the statutory role of the Governor-General as Defence Force Commander in Chief. The powers of that office in New Zealand (quite unlike those of, say, the US President as Commander in Chief) are strictly limited in scope. We suggest that clearer statutory definition of the Commander in Chief's role and powers would remove any grounds for misinterpretations, deliberate or otherwise.

(d) Standards of behaviour in respect of handling official information

71 Our terms of reference require us to address three questions under this heading -

71.1 Do senior Defence personnel have clear standards for handling official information?

71.2 How do Defence personnel view the leaking of documents and information?

71.3 Why would Defence personnel leak documents?

We address our findings in respect of each of these questions in turn.

(i) Defence Force standards for handling official information

72 Both the Defence Force and the Ministry of Defence have adopted comprehensive guidelines for handling official information. The Defence Force has a series of Defence Force Orders promulgated by respective Chiefs of Defence Force under s 27 of the Defence Act relating to the handling of official information. For our purposes the relevant Defence Force Orders currently are -

72.1 Defence Force Order 51 relating to Security;

72.2 Defence Force Order 70 relating to Official Information;

72.3 Defence Force Order 5/1999 relating to NZDF External Relations;

72.4 Defence Force Order 20/2000 relating to the Protected Disclosures Act 2000.

73 We have examined the relevant provisions of Defence Force Order 51 relating to Security. We have also referred them to the Director of the New Zealand Security Intelligence Service for comment. Subject to his confirmation that there is nothing in the Order inconsistent with the Security Manual, we are satisfied that Defence Force Order 51 contains clear standards for the handling of official information relating to the security and defence of New Zealand.

74 We have considered whether senior Defence personnel, who have access to official information relating to the security and defence of New Zealand, appreciate the critical importance of compliance with the standards in Defence Force Order 51. We believe that they do, not least because, significantly, as recorded in paragraph 94, none of the unauthorised disclosures of official information which we have been asked to consider relates to such information. We address this important finding further in our report.

75 We have examined the provisions of Defence Force Order 70 relating to Official Information. We have also referred them to the Ombudsmen for comment. Subject to their confirmation, we are satisfied that Defence Force Order 70 contains clear standards for the handling of official information. The introduction to the Defence Force

Order contains a concise and accurate summary of the position

A. publish or disclose in any form whatever outside the New Zealand Defence Force any official information which he or she has acquired or to which he or she has access.

B. use other than in the course of duty any official documents or their contents or any other official information.

- unauthorised disclosure of information.

Section 25 Armed Forces Discipline Act 1971

Section 78 Crimes Act 1961 - espionage.

Section 78A Crimes Act 1961 - wrongful communication, retention, or copying of official information.

Section 105A Crimes Act 1961 - corrupt use of official information.

Section 20A Summary Offences Act 1981 - unauthorised disclosure of certain official information.

- This Manual prescribes the procedures for the handling of official information by all service and civilian personnel within the New Zealand Defence Force. The procedures are designed to provide for the proper implementation of the provisions of the Official Information Act 1982 and to ensure that necessary protection is given to official information.
- Where any request for official information is received from any person, it is to be handled in accordance with the provisions of this Manual.
- Defence Force Orders for the Navy, Army and Air Force prescribe the procedures to be followed for releasing official information to the news media, publishing books and articles, and delivering public speeches, lectures and radio addresses. Personnel are authorised to release official information to the extent authorised and for the purposes specified in those Orders.
- Official reports, correspondence, and documents of whatever description, whether classified or not, are the property of the Crown. The only authorised use which personnel may make of official documents, or information derived from them, is in the performance of their duty.
- Except as authorised in paragraphs 2 - 4 above no service or civilian employee shall:
- All personnel are reminded that there are special provisions in New Zealand law relating to the misuse of information. They are:
- Defence Force Orders for the Navy, Army and Air Force are to draw the attention of all personnel to the provisions of this Manual.

76 The obligation to protect official information from unauthorised disclosure is mandatory⁸ and is also mentioned in paragraph 1101 of the Order and paragraph 8 of Annex A to Chapter 1 of the Order which is required to be placed in unit or branch orders once every three months as a routine order. The prohibition on unauthorised disclosure is reinforced in respect of communications to the news media by Defence Force Order 5/1999 - "NZDF External Relations" - which we refer to later in our report because it was relied on specifically by the Chief of Defence Force.

77 We have examined the Defence Force Orders for the Navy, Army and Air Force referred to in paragraphs 3 and 7 of this introduction. They are based on Defence Force Order 70.

78 We have considered whether senior Defence personnel appreciate the significance of the obligations imposed on them by Defence Force Order 70 in respect of **all** official information. While we are reasonably satisfied that senior Defence personnel are aware in general terms of the nature of the obligation not to disclose official information unless authorised to do so, it is apparent that -

78.1 There has in recent years been a significant increase in the number of unauthorised disclosures of official information relating to the Defence Force;

78.2 The steps taken by the Chief of Defence Force to prevent this from occurring have not been successful; and

78.3 Some Defence personnel are therefore either unaware of the obligation or, notwithstanding the terms of Defence Force Orders 70 and 5/1999, which are explicit, have deliberately breached the directions and have disclosed official information without authority.

79 We discuss the reaction of the Defence Force to these breaches, the reasons for them and the adequacy of the steps taken by the Chief of Defence Force in respect of them later in this report. As we have already noted, unlike the Public Service which has easy access to its Code of Conduct, the Defence Force has not published a simple, straightforward statement of standards in respect of the protection and disclosure of official information. Instead the relevant instructions are contained in Defence Force Order 70 which is one of some 50 volumes of Defence Force Orders published in book form out of a total of some 128 current Defence Force Orders which relate to a wide variety of different subjects of varying degrees of importance. Furthermore, Defence Force Order 70 is concerned primarily with practices and procedures relating to the disclosure of official information under the Official Information Act 1982. The obligation to protect official information from unauthorised disclosure is mentioned in the Defence Force Order, but it is possible that its significance as a stand alone obligation may not be fully appreciated by all members of the Defence Force. They may not understand that breach of the obligation may be an offence under s 39 of the Armed Forces Discipline Act 1971. The sanction for failure to comply with this aspect of the Defence Force Order is not mentioned in the Order. Certainly those who have been guilty of the unauthorised disclosure of official information in the Defence Force were not deterred.

80 Defence Force Order 5/1999 - "NZDF External Relations" - is concerned with unauthorised disclosures of information or news to the media. It does not address the issue of unauthorised disclosure to persons outside the media, such as Opposition members of Parliament. To this extent it might convey the impression that disclosure to such persons is not prohibited.

81 Production of a simple, straightforward statement in booklet form which among other things described clearly the obligation on all Defence personnel to avoid the unauthorised disclosure of official information to anyone, whether or not in the media, would promote understanding of responsibilities. Hence our advocacy of a code on the Public Service model covering both general behavioural issues and the handling of official information.

82 We have examined the provisions of Defence Force Order 20/2000 relating to the Protected Disclosures Act 2000. We are satisfied that it contains appropriate procedures for the implementation of the Act, but we have the following concerns -

82.1 The introduction to the Order does not make it clear that it reinforces the obligation to protect official information from unauthorised disclosure;

82.2 The procedure for making a protected disclosure within the Defence Force may not sit comfortably with the command structure; and Defence personnel may not be aware of its existence and potential significance.

(ii) Ministry of Defence standards for handling official information

83 The Ministry of Defence has issued the following relevant manuals to its staff -

83.1 Security Manual: Policy on Information Security

83.2 Security Manual: Document Security

83.3 Corporate Manual: Ministerial and Information Requests

83.4 Corporate Manual: Official Information Act Procedures

83.5 Legal Compliance Manual: Official Information

83.6 Public Service Code of Conduct

83.7 Human Resources Manual: Code of Conduct

83.8 Corporate Manual: Communication with the news media

83.9 Corporate Manual: Information Technology Management and Security

83.10 Protected Disclosures: Policy and Procedures.

84 We have examined the provisions of these Manuals. We are satisfied that in each case they contain clear standards for the staff of the Ministry. There has been no suggestion that these standards are not understood by Ministry staff.

(e) The scale of the unauthorised release of official information

(i) *Analysis of unauthorised disclosures*

85 We obtained from the Minister, the former Minister, the Chief of Defence Force and the Chief of the General Staff lists of alleged unauthorised disclosures of information. They covered not only the release of documents or the passing of information in briefing the media but also the provision of hints to members of Parliament as to what documents or information might profitably be sought via Parliamentary questions or Official Information Act requests. We referred the lists to the Chief of Defence Force and the Secretary of Defence for comment. Both of them drew our attention to the fact that inappropriate use of official information covers a broad spectrum of actions -

- *Leaking*, i.e. the deliberate and improper covert release of official information to advance a particular agenda or to embarrass.
- *Unauthorised release*, i.e. an intentional overt release of information outside approved guidelines that, because of its content, should not have been released from that organisation or person.
- *Authorised but unwise release*, i.e. release of information within approved guidelines but with the possibility of causing damage or embarrassment.

- *Accidental release*, i.e. the inadvertent release of information through carelessness.

86 We have analysed the list of possible unauthorised disclosures in the light of this approach. Of the 62 disclosures included on the lists provided by the Minister, Hon. Mark Burton (44), Hon. Max Bradford (4), and Major General Dodson as CGS (14, plus three also in Mr Burton's list), covering a period from April 1998 to October this year, 30 may be classified as 'probable leaks' in the terms above: "*the deliberate and improper covert release of official information to advance a particular agenda or embarrass.*" Of the remainder, 15 may be categorised as 'unauthorised releases' (or unauthorised comments) and four as releases or comments that were 'authorised but unwise'. Most of the remaining 13 cases were either properly authorised releases or comments, or what we have termed 'speculative analysis', that is, journalistic or political comment based on a variety of generally legitimate sources - information obtained under the Official Information Act, and from earlier public comment, for example. In one case, pure mischief seems to have been at work.

87 It is the disclosures in the first category, the 30 'probable leaks', that are of most concern. Four of these 'probable leaks' occurred in Mr Bradford's time, three being to do with major impending procurement decisions (the Air Force's F16s, the Army's light armoured vehicles, and the Navy's third ANZAC frigate). The fourth related to the review of Defence real estate, where Mr Bradford noted a certain inevitability of disclosure given the protracted nature of the exercise and the number of people with interests at stake. In one of these cases the Secretary of Defence of the day initiated a Police inquiry, although this was cut short by Police operational requirements with no conclusions being drawn. Mr Bradford made the point that information in respect of at least six other sensitive Defence issues alive in his term as Minister (matters he may have considered potentially 'leak-worthy') was **not** disclosed.

88 The remaining 26 'probable leaks' have occurred during the term of the present Minister. The first significant case occurred in May 2000 and the most recent in October 2001. The first, relating to Project Sirius, prompted the present Secretary of Defence to initiate a formal inquiry. While this inquiry was appropriately comprehensive it did not identify a source. Only a few others have been followed up by a formal investigation, either by CDF or by the Chief of Staff concerned. Most of the 'probable leaks' since January 2000 have occurred since the middle of this year (19 of the 26). Almost all of these have been related to the Army, and/or to the CGS personally. Four earlier 'probable leaks' also related to the Army and/or the CGS.

89 Of the fifteen disclosures we have categorised as 'unauthorised releases/comments', most took place between the middle of last year and the middle of this year. Seven related to the Air Force, focusing mostly on morale and staff retention in the wake of Government decisions about its future role and structure. Some 'unauthorised releases/comments' appear to have been misguided contributions to aspects of the fairly lively public debate about defence matters. In the one case of an 'unauthorised release/comment' involving the Ministry of Defence the Secretary acted promptly and decisively, reprimanding the person concerned and issuing a general warning to his staff.

90 Our analysis of the items on the lists of possible unauthorised disclosures provided to us is summarised in the chart at Appendix 8. This shows the timing of the various disclosures over the last two years. Bearing in mind the definition of 'leaks' we have used ("*...the release of official information to advance a particular agenda or embarrass*"), we have indicated in the chart the institutions or individuals we suspect to have been likely 'targets' of the 'probable leaks'.

(ii) *How Defence personnel view the leaking of documents and information*

91 As we have already noted, the overall impression gained from our interviews was that there was widespread disapproval of the unauthorised disclosure of information which had led to our review. No one sought to argue that any of the leaks were justified. It is appropriate to note here, however, that from a large number of officers we heard the view that the establishment of the Joint Forces Headquarters this year would, by fostering the collaborative working of individuals from all three Services towards a common operational purpose, offer an important new opportunity to widen the understanding of individual officers of the issues facing their counterparts in other Services. If this view is borne out, the effect should be a significant reduction of the "win at all costs" approach to inter Service consideration of major re-equipping requirements, for example, which had sparked much of the aberrant behaviour we have been considering.

(iii) Absence of security leaks

92 Overhanging the emergence of a pattern of unauthorised disclosures plainly intended to advance particular interests within the Defence Forces, or to destabilise or embarrass individuals or embarrass Government itself, is the much more serious issue of national security. At a time when the country is contributing troops to a major international combat operation which involves, among other things, significantly expanded exchanges of highly sensitive information with partner Governments, it is of even greater importance than usual that the integrity of New Zealand's systems for dealing with such material remains beyond reproach.

93 We sought reassurance from all those we interviewed as a principal point of concern that the spate of unauthorised disclosures of recent years had included no information whose release could have prejudiced New Zealand's security or defence interests, or its international relationships, or the Government's capacity to receive information in confidence from other Governments. We paid particular notice to the responses of those who, by virtue of their offices, would have certain knowledge of any such security breaches had they been identified.

94 The unanimous response to our inquiry was that, in these crucial areas, no breach was known to have occurred. We regard this as a most significant finding. The lapses in judgement, discretion and, indeed, loyalty which have been deemed sufficiently serious to justify this review appear to have done no damage to New Zealand's security interests or international relationships.

95 We asked a number of those interviewed if they considered that the evident disregard by some members of the Defence Force of the accepted standards of behaviour, in misusing official information of a domestically sensitive character, might be encouraging a general loosening of discipline in the handling of secure material. Again, the responses were reassuringly negative. It was the general perception that those members of the Defence Force who had been leaking the kind of information which is the cause of this inquiry, and who had done so for a particular purpose in full knowledge that they were acting outside the rules, would nevertheless see it as their duty to continue to treat classified information of a secure character with the respect due to it.

(f) Action taken by CDF to review leaking and adequacy of action

96 We have been asked to describe the action taken by the Chief of Defence Force to review the apparent "leaking" of information by Defence Force personnel and to indicate whether we consider that action was appropriate. In order to carry out this task we referred the lists of information believed to have been disclosed without authority

provided to us by the current Minister of Defence, the former Minister and the Chief of the General Staff to the Chief of Defence Force and asked him to comment on the lists and in particular to advise us of the action taken at the time to review the various incidents.

97 In his response to us CDF stated that he did not consider that all of the incidents listed by the Minister constituted unauthorised disclosure of official information by Defence personnel. Many of the incidents involved speculative reporting based on "information" which could have been obtained from a variety of sources. He did not have the resources to investigate every incident of this nature. Nor did he consider that it would be worthwhile doing so. He will direct an investigation when he believes that there is "sufficient circumstantial evidence" to warrant the application of scarce resources and that such an investigation is likely to meet with a degree of success. Lengthy investigations have been conducted in the past three years, but in each case the outcome has been inconclusive. He considered that there was no reason why all investigations must be directed by him. Each single Service Chief of Staff has the authority to conduct his own investigation, where the "disclosed matter" is related to his Service.

98 CDF told us that he has regularly and formally enforced the standards to be applied to the protection of information and the guidelines for those who have authority to make information public via the media. He did this by way of a series of instructions designed to reinforce the restrictions on communications with the news media referred to in Defence Force Order 5/1999 "NZDF External Relations" which noted the establishment of a formal NZDF public relations structure and which contained explicit warnings about unauthorised communications with the media. Particular attention was drawn to paragraph 8 of the Order which reads

"Because of the potential political consequences of remarks made in the absence of complete knowledge on an issue, NZDF personnel, whether uniformed or civilian, are forbidden to publish in any form whatever, or communicate directly or indirectly to the media or any other external organisation or individual, any Service information, or the individual's views on any Service subject, without specific authority."

99 The steps taken by the Chief of Defence Force to prevent the leaks from occurring and to investigate them subsequently have proved unsuccessful. To that extent they were, by definition, inadequate to ensure either that no breach of the obligation on Defence personnel to protect official information from unauthorised disclosure occurred or that the culprits were identified. But the Chief of Defence Force considers that he took all appropriate steps in the circumstances. And we have a measure of sympathy for his position because at the end of the day if a person is determined deliberately to disclose official information without authority, that person will do so whatever steps are taken.

100 At the same time, however, we consider that the Chief of Defence Force may have been unduly constrained by the command structure and reliance on the existence of Defence Force Orders and instructions, and the authority of the single Service Chiefs to investigate leaks in their own Services. In our view while the command structure is of fundamental importance to the Armed Forces in an operational context it may have its limitations in managerial areas such as enforcement of obligations relating to standards of behaviour or to the investigation of breaches of those obligations. Further steps to reinforce the importance of the obligations appear to be required. Reliance on the existence of Defence Force Orders and instructions - as an element of the command structure - will not suffice. We have already proposed the publication of a simple, straightforward statement along the lines of the New Zealand Public Service Code of Conduct to be made available to all serving personnel as one means of extending the reach of the Orders. But there are other forms of action which might be considered with the aim of enhancing the effectiveness of the command system in non-operational situations.

101 The view of the Chief of Defence Force that it was appropriate to rely on the authority of the single Service Chiefs to investigate leaks in their own Services reflects the constraints which affect the authority of the Chief of Defence Force in respect of the single Service Chiefs. In our preliminary report of 13 December 2001, paras 42 and 43.3, we identified this issue for further consideration. The constraints arise under the Defence Force structure created by the Defence Act 1990 which, in an operational command sense, makes the Chief of Defence Force paramount, but in a managerial sense makes him only first among equals because all are appointed by the Governor-General and the Chief of Defence Force has no authority to remove or suspend a single Service Chief. The Chief of Defence Force does not have the authority of a chief executive in respect of the single Service Chiefs. They are commanders in their own right in respect of their Service. The review being conducted by Mr Hunn provides a timely opportunity to consider how what seem to us to be structural ambiguities should be resolved.

(g) Action taken by Secretary of Defence to review unauthorised disclosures, and adequacy of his action

102 The Secretary of Defence's response to the list of unauthorised disclosures compiled by the Minister, covering the period March 2000 – October 2001, noted that in only two cases were the examples quoted clearly the responsibility of Ministry staff, or involved misuse by others of material originating in the Ministry. On the first, comments intended to expand a journalist's technical understanding of capability were unauthorised. The staff member concerned was reprimanded for lack of judgement and for acting beyond his authority. All staff were reminded of the Ministry's policy on communication with the news media.

103 The second, more serious case concerned public release of confidential information about an acquisition project, provided to Ministers' offices and several Government departments. The Secretary initiated an inquiry into the matter by writing to the heads of the relevant departments, none of whom admitted responsibility. The Secretary does not believe that the information came from his Ministry, which had held it tight before the wider consultation. He has now made it standard practice for all staff members working on acquisitions projects to sign confidentiality agreements.

104 We are satisfied that the steps taken by Mr Fortune in response to these two incidents were appropriate.

(h) Why did the unauthorised leaks occur?

105 The unauthorised release of information, commonly known as "leaking", provided the most obvious evidence of a pattern of unacceptable behaviour within the Defence Force which was of even greater concern than the leaking itself. While leaking of official information had occurred often enough in preceding years - both from the Armed Forces and from other Government agencies, and generally to the media - the pattern during the years 1997-2001, on the part of the Defence Force seems to have been more substantial, more complex in character and range than earlier, and to have raised more troubling concerns about the integrity of members of the Force. Why should this be so?

106 In none of the cases drawn to our notice (other than where the release was not deliberate) has the identity of the individuals responsible been firmly established. We were not constituted as a "leak inquiry", but were charged to examine broad trends in behaviour, as well as the integrity of systems governing the handling of official information within the Defence Force and Ministry of Defence; and we have no independent judgement to offer on the precise origin of the leaks, nor on the motives of those responsible.

107 Moreover, the evidence provided to us during the numerous interviews we conducted was by no means unanimous on either point. Opinions as to the identity and motivations of the miscreants were divided; and conclusions, necessarily speculative but stated by some with assurance, were as confidently contradicted by others spoken to.

108 We must, therefore, acknowledge at the outset that, in the absence of firm evidence of individual culpability, we cannot state with certainty why it was that these breaches of discipline and obligation occurred in such number in the past four years. But although the evidence could not be judged totally conclusive, by the end of our investigation, the weight of opinion appeared to point towards one plausible explanation. The following paragraphs set out our best attempt to chart the course of events and the forces which provoked them. It is to be regarded as an hypothesis rather than a proven diagnosis; but we believe it to lie closely enough to the truth to underpin the conclusions advanced in the final section of our report.

109 The aberrant behaviour manifested in an unacceptable level of unauthorised disclosure of official information during the last four years had its roots in two highly significant trends already touched on in paragraphs 20 22 above. These were the run down in Defence capabilities stemming from a declining Defence budget, and the emergence of clear divisions between the two major political parties as to the purpose and structure of the Defence Forces, and the consequential equipment requirements.

110 For a number of reasons, Defence spending has always been a difficult area for New Zealand Governments, not the least the perceived absence of a clear, direct military threat to the country. Another major challenge has been to accommodate within a limited budget periodic expenditure bulges when very large capital assets, especially for the Navy and Air Force, need to be replaced or upgraded. The period 1997 2001 with which we have been principally concerned saw these difficulties converge, as major re-equipping decisions covering all three Services could not be further postponed. They were dealt with first in the last years of the National Government, then reconsidered by the incoming Labour Government with different priorities.

111 During the first phase, up to late 2000, there was intense competition between the three Services for their share of the funding likely to be forthcoming. This competition was initially expressed within established consultative procedures aimed at identifying an agreed priority for new capital projects; but as the process advanced and a Ministerial view began to take shape, it became apparent which aspirations were most likely to be fulfilled and which, at least initially, must be deferred or only partially met. In particular, there were apprehensions on the part of many Army officers that their Service's legitimate claims would not be fully met in this round. Such foreboding appears to have actuated the letter sent by Lt Col. Gordon, then on the Defence liaison staff in London, to the Deputy Chief of the General Staff Brigadier Ottaway in March 1997. (Appendix 9). It was written about two weeks after a CGS seminar in which working groups of middle level Army officers had canvassed many of the ideas advanced in the letter.

112 The "Gordon letter" is currently the subject of a separate inquiry under the authority of the Judge Advocate General. We content ourselves with noting that a number of the officers we interviewed, while not necessarily aware of the existence of the letter before it was tabled in Parliament in 2001, believe in hindsight that it constituted

a basis from which some of their fellow officers, perhaps with the assistance of certain retired colleagues, did indeed open the "second front" advocated by Col. Gordon. The strategy defined by Gordon was to -

"attain a level of control over NZDF policy making in order to ensure that the capabilities of the NZ Army evolve in such a way as to be able to meet the future challenges likely to be imposed by Government."

This included ensuring that selected individuals supporting the "two fronts" strategy were selected for promotion to key positions, exploiting "the vulnerability of the air strike capability to the Army's advantage, and lobbying Māori MPs, select committee members, academic institutions and the general public."

113 The Judge Advocate General's inquiry will show how far these ideas were disseminated and acted upon within the Army and disclose the available information concerning the source of the leak of the letter. The important point for us is that a number of Army officers at that time strongly disagreed with an approach which advanced public relations activities into unacceptable territory. It is perfectly appropriate and, indeed, desirable that a Service should maintain a public relations programme designed to disseminate information about its activities as an aid to recruitment, and to wider community understanding of its role. But a fine line demarcates this legitimate activity from the active lobbying of politicians and calculated undermining of the aspiration of other Services. In our view and in those of a number of fellow officers this line was plainly crossed in Col. Gordon's blueprint. "Working outside the square" as one senior Army officer put it to us. It is significant that at this time the public relations firm Communications Trumps, which had a substantial role in the process, was described by a former director as having been involved in an "Army rebranding" exercise.

114 The split in opinion within the Army was exacerbated by a further divisive internal argument over the appropriate future strategy and consequential equipment requirements of the land force. The debate appears to have continued well beyond the point at which final decisions on the matter were taken by the Government.

115 The current Government's decision to reverse its predecessor's decisions in a number of respects, most notably in abandoning the air strike capability and investing more heavily in the Army motorisation project, was clearly disappointing to the Air Force and, to a lesser extent, the Navy. Our inquiries did not, however, produce any evidence or even widespread perception that the rising epidemic of unauthorised disclosures were part of a campaign from within those two Services directed at having the decisions reversed, embarrassing the Government or destabilising senior individuals within the Defence Force. Comments made to the media about the state of morale in the Air Force, for example, were acknowledged to be due to efforts by the media to secure stories rather than any pro-active campaign. Middle ranking as well as senior officers of these Services assured us that all personnel saw it as their duty now to work zealously to put the new policies into effect.

116 Over the past year the origin and the target of the heightened level of unauthorised disclosures have clearly changed. Without firm evidence it is impossible to identify the sources of this later unauthorised flow of documents, or information about the content or existence of documents to Opposition Members of Parliament and to a smaller extent the information media. We encountered a view, within as well as outside Army, that the prime culprits were Army officers, whether in the Army itself, or on the staff of Defence Force Headquarters, or perhaps retired. Their motives were said to be various: support for what they saw as a more balanced Defence Force structure; opposition to some aspects of Army's current policies; determination to destabilise Army leadership; dissatisfaction with lack of promotion. ⁹

117 Initially, this view of Army culpability seemed to us too much of a paradox to be taken seriously. But its repetition and the evidence in some cases that leaked material could only have come from Army sources suggested to us that it might well have greater plausibility than any other likely explanation.

118 It would be wrong to see this inference as indicating widespread disloyalty to the Government. Although the disclosures have plainly caused continuing embarrassment to the Government, they appear to have been aimed primarily at destabilisation of individuals within Army, and at influencing the CDF and CGS appointments. As one senior interviewee put it to us, the aim was to ensure that the "right" people would hold the key positions when the next round of major funding and equipment decisions occurred.

119 Moreover, the group of officers orchestrating the disclosures is considered to be small, and the overwhelming majority of Army officers do deplore the tactics employed. Some informants expressed the hope that this group would be identified and dealt with summarily.

120 Our inquiries have then not established any grounds to conclude that there has been a systemic failure in the behavioural standards of the Defence Force. We were impressed by the integrity and commitment of the serving officers we met and their obvious distaste for the aberrant conduct of a few. Loyalty to the Government, for most, is not at issue. It is in everyone's interest that a stronger attempt should now be made by the new leadership to identify those few who have overstepped the mark and neutralise their ability to do further damage. There are also a number of areas in which we believe improvements in the framework governing standards of behaviour and the handling of official information would help to clarify and reinforce the Government's expectations; and these are addressed in the conclusion section which follows.

⁷ The Armed Forces "cannot be regarded as a uniformed version of other departments of state" because of the intensity of personal and hierarchical relationships that are developed to ensure success in operations.

Consequently "loyalties are much sharper than in an administrative department": Thornton LW, "Comment On Major Looparg's Review of Defence Organisation" in Looparg T. "Defence Reorganisation: A New Approach to Change." Public Sector Research Papers Vol.2, No.1, 1981, p 1.

⁸ cf. Defence Force Order 32/1994 - "The Privacy Act 1993 - New Zealand Defence Force Procedure and Practices" - referred to in our report of 13 December 2001, paras 30-31, 41 and 46.1. To the extent that there was some doubt as to whether paragraph 13(a) in that Order was in the requisite mandatory form we recommended that consideration should be given by CDF to amending it to include a clear prohibition on access to or use of personal information unless required for a lawful purpose.

⁹ As Iago put it in *Othello*, Act 1, Scene 1 -

"... 'Tis the curse of service.

Preferment goes by letter and affection.

And not by old gradation, where each second

Stood heir to th' first."

04

Conclusions

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121 In this section of our report we set out the various conclusions which we have reached in the course of making an assessment of standards and behaviour in the Defence Force in the areas of the handling of official information and relations with the Government. As we have discussed with you in the course of our inquiry, our conclusions respond to the specific questions raised in our terms of reference as well as other more general matters which have arisen in the context of making the requisite assessment.

122 On the basis of the more than 70 interviews which we have conducted (see Appendix 2), we are satisfied that in the Defence Force overall standards of integrity, commitment and professionalism are high and that there is general disapproval of the unauthorised disclosure of official information: see paragraphs 28 and 91 above.

123 While we were frequently assured that within the Defence Force there are clear and appropriate standards governing the relationship between the Defence Force and the Government of the day, we believe that the form and content of these standards is by no means as clear, comprehensive or accessible as the situation requires. It should be an early priority to fill this gap: see paragraphs 56-61 above. On the other hand, we found no reason to doubt that officers were generally well aware of their responsibilities and we certainly found no evidence of widespread disloyalty: see paragraphs 67-69 above.

124 At the same time, however, there have been a substantial number of incidents involving the unauthorised disclosure of official information relating to the Defence Force and these incidents constituted breaches of the obligation on Defence personnel not to release such information. We were not asked to identify the individuals responsible for these deliberate "leaks" and, as we have made it plain, there is no clear evidence of culpability. We were guided in most cases by the weight of opinion in the responses to our inquiry. Nevertheless it became

apparent to us that they probably came largely from factions in the Army: see paragraphs 111-117 above. As far as we could tell, there were few, if any, deliberate "leaks" of information from persons in the Navy, the Air Force, the Joint Force or the Ministry of Defence: see paragraphs 102-103 and 115 above.

125 As we have emphasised in our report, none of the "leaks" referred to us involved classified information or information which related to the security or defence of New Zealand: see paragraphs 92-95 above. This conclusion was confirmed by all of those responsible for the protection in New Zealand of such classified information: see paragraphs 93-94 above.

126 It is difficult to escape the conclusion that the "leaks" which occurred were originally designed to advance the interests of the Army, primarily against the interests of the other Services. Subsequently the "leaks" were designed to counter the influence of a faction in the Army by causing personal embarrassment to the CGS. These various leaks also had the consequential result of causing political embarrassment to the Government and the Minister: see paragraph 118 above.

127 In essence, with the qualifications already referred to, it seemed to us that the "leaks" occurred because

127.1 There was widespread concern in the Defence Force, and in the Army in particular, as a result of the run down in Defence capabilities stemming from a declining Defence budget, and the emergence of clear divisions between the two major political parties as to the purpose and structure of the Defence Force, and the consequential equipment requirements: see paragraphs 109 110 above.

127.2 There was intense competition between the three Services for their share of the funding likely to be forthcoming: see paragraph 111 above.

127.3 A group of officers in the Army decided to pursue an active "campaign" designed to ensure that the Army obtained its share of resources. One aspect of this "campaign" involved undermining the claims by the Navy and Air Force for their share of resources. This included the judicious, but deliberate "leaking" of official information to the news media: see paragraphs 112 113 above.

127.4 As a result of the perceived success of the Army "campaign" and those involved with it, another faction in the Army, for a variety of motives, reacted by deliberately "leaking" information to Opposition members of Parliament which led among other things to well directed requests for official information under the Official Information Act and Parliamentary questions which caused considerable personal embarrassment to CGS and consequential political embarrassment to the Government: see paragraph 118 above.

128 These two phases of deliberate "leaking" of official information involving different factions in the Army are not indicative of any widespread malaise either in the Defence Force or indeed in the Army: see paragraph 120 above. They have involved a relatively small number of individuals who misguidedly believed that their breaches were somehow justified: see paragraph 119 above. Some of them may now appreciate that their actions were unwise and not in the best interests of the Army. We found no evidence of any systemic problem underlying the disclosure of official information in the Defence Force.

129 We have set out in our report the steps taken by the Secretary of Defence to investigate the unauthorised disclosure of official information: see paragraphs 102-103 above. We are satisfied that these steps were adequate and appropriate in the circumstances: see paragraph 104 above.

130 We have also set out the steps taken by the Chief of Defence Force to investigate the unauthorised disclosure of official information: see paragraphs 96-98 above. Although the steps taken by the Chief of Defence Force in relation to a much greater number of alleged breaches proved unsuccessful, they appeared adequate and appropriate in the circumstances: see paragraphs 99-101 above.

131 We consider that the Chief of Defence Force was inhibited in successfully investigating the "leaks" by the following factors -

131.1 Reliance on the command structure and on the force of orders in a managerial context. Some individual Army officers were prepared to disregard the orders in a way which would have been unthinkable to them in an operational context: see paragraph 100 above.

131.2 The decision not to investigate "leaks" apparently from the Army on the grounds that the investigation of those "leaks" was the responsibility of the CGS: see paragraph 101 above.

132 Our terms of reference do not require us to make any recommendations. We understand that this is because it is intended to refer our report to Mr Don Hunn to assist him in his major review of the accountabilities and structural arrangements between the Ministry of Defence and the New Zealand Defence Force. Both you and Mr Hunn have suggested, however, that it would be helpful if we were to identify in our conclusions any matters arising from our inquiry which might be taken into account in Mr Hunn's review. This we now do.

133 It seems to us that in the context of the subject matter of our review there is a need for clear and decisive leadership at the top of the Defence Force and the Army to identify and remove or neutralise those individuals responsible for the breach of Defence Force standards and the unauthorised disclosure of official information. The recent appointments to those two positions have provided the Government with an ideal opportunity to ensure that the new leaders are not only of high professional competence but will also deal promptly and effectively with the culprits.

134 The terms of reference to be given by the Minister to the CDF when that officer takes up his appointment should state clearly and prominently that one of his principal responsibilities will be to take decisive steps to end this sorry saga. They must include a vigorous attempt to identify and remove or neutralise that small minority of officers who have participated in it; the expeditious reiteration to all personnel of their responsibilities in this area, and all practical means that can be taken to enhance and preserve respect for the accepted standards of behaviour. It should be made plain to the new CDF that the degree of his success in meeting this explicit requirement will be a major element in judging his performance.

135 In paragraph 101 above we referred to the existence of constraints on the powers of the Chief of Defence Force to carry out his responsibilities in relation to management as distinct from operational functions. In these management areas he has similar accountabilities to the Government as does any Chief Executive in the Public Service. He can, however, only perform this role through the Service Chiefs; yet since he does not appoint those Chiefs he has very limited disciplinary power over them and therefore less authority to ensure that his wishes are carried out. While this may not be a significant problem at times when all the senior officers concerned are working in harmony history has shown that this will not always be the case. It seems to us that this area - of heightening the effectiveness of accountability procedures within the Defence Force - needs to be considered further in the context of Mr Hunn's review.

136 One possible approach might be a change in the way Service Chiefs are appointed. In the latest round of appointments of CDF and Service Chiefs, the State Services Commissioner, with the assistance of an advisory panel, advised the Government of the candidates whom he believed were best qualified for the respective positions. The appointments were then approved by the Governor-General in Council. This procedure, for the first time followed the State Services model, except that whereas the State Services Commissioner formally appoints Departmental Chief Executives, who are then bound in a contractual relationship with him, the appointment of the Service Chiefs has been effected, as required by the Defence Act, through the issue of Warrants by the Governor-General. Consideration might now be given to aligning the two appointment processes a stage further - that, while the Governor-General in Council continues to approve the appointment of Single Service Chiefs, the Defence Act could be changed to provide for the appointment to be formally made by the CDF, bringing the Service Chiefs into the same kind of contractual relationship with CDF as the State Sector Chief Executives have now with the State Services Commissioner.

137 We anticipate that Mr Hunn will consider the need for structural changes at New Zealand Defence Force Headquarters and consequential legislative amendments to the Defence Act 1990. In the course of our inquiry we formed the view that the experience of the last decade indicates that consideration could usefully be given to other amendments of the Act including

137.1 The nature and extent of the powers of the Chief of Defence Force to command all aspects of the Defence Force. (Current ambiguities should be removed).

137.2 The role and functions of the three Service Chiefs now that the Joint Forces Headquarters has been established.

137.3 The effectiveness of the command structure outside operational and related areas.

137.4 A requirement that by the end of a transitional period all appointments to senior positions should have Joint Forces experience.

138 If it is decided to make amendments to the Defence Act 1990, there are a number of further specific points which might be considered

138.1 Clarification of the role of the Governor-General as Commander in Chief: see paragraph 70 above.

138.2 Inclusion of a specific provision requiring political neutrality of the Defence Force and briefing of the Leader of the Opposition to encourage a bipartisan approach to defence issues. There is a precedent for such a provision in the New Zealand Security Intelligence Service Act 1969: see s 4AA.

139 The Defence Force should consider producing a simple, straightforward statement in booklet form describing clearly the obligations of all Defence personnel to observe political neutrality and to avoid the unauthorised disclosure of official information to anyone, whether or not in the media: see paragraphs 60 and 81 above. The Public Service Code of Conduct could be used as a model, but adapted to reflect the unique features of the Defence Force and to include the points made in the introduction to DFO 70. The contents of the booklet might usefully be prepared after consultation with members of the Defence Force using a "bottom up" approach.

140 The Defence Force should consider extending the education and training of its officer corps in all Services to include an appropriate course covering the essential features of the constitutional relationship between civilians and the military: see paragraph 64 above. The course already developed by the Director of Legal Services would be

a valuable starting point. All appointees to New Zealand Defence Force Headquarters should have the benefit of such a course where the nature of their prior experience justified this.

141 The changing principles of Defence Force personnel - better educated, more questioning than their predecessors - suggest to us that there may be a need for some forms of safety valve. At the higher level, these might include a vehicle on the lines of the now discontinued Defence Quarterly which enabled them to advance views publicly in their personal capacity. For lower ranks as well as higher, there would be value in providing full opportunity to advance views on major impending policy issues, and to receive the feedback from their Service which would give those who took advantage of the process a feeling of ownership in the results.

Douglas White QC

Graham Ansell

20 December 2001

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Office of the Inspector-General of Intelligence and Security

Report into the release of information by the New Zealand
Security Intelligence Service in July and August 2011

Public Report

Cheryl Gwyn
Inspector-General of Intelligence and Security

25 November 2014

NOTE ON REPORT

This report is an unclassified version of a report that has been provided to the Prime Minister who was at the relevant times the Minister in Charge of the New Zealand Security Intelligence Service and is now the Minister for National Security and Intelligence; the Minister in Charge of the New Zealand Security Intelligence Service and the Director of the New Zealand Security Intelligence Service.

This version of the report is intended for public release. It omits only information (contained in one Appendix) that would disclose the identity of any person who is or has been an officer, employee, or agent of an intelligence and security agency (other than the chief executive), or any information from which the identity of such a person could reasonably be inferred, as required by s 25A(2)(c) of the Inspector-General of Intelligence and Security Act 1996 (IGIS Act) and s 13A of the New Zealand Security Intelligence Service Act 1969.

Cheryl Gwyn
Inspector-General of Intelligence and Security

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INTRODUCTION

1. In July-August 2011, the New Zealand Security Intelligence Service (NZSIS) disclosed information concerning consultations between the then Director of the NZSIS, Dr Warren Tucker, and the then Leader of the Opposition, the Hon Phil Goff MP. In this inquiry, I have investigated whether the NZSIS acted lawfully and with propriety in relation to those disclosures.

Background to this inquiry

2. In July 2011, the *Southland Times* published allegations that there had been Israeli intelligence activity in Christchurch at the time of the February 2011 earthquake. In response to those allegations, the Prime Minister made a public statement that there had been a thorough investigation of certain suspicious behaviour by Israeli nationals at that time, which had found no evidence of intelligence activity.
3. The then Leader of the Opposition made public statements in which he criticised the government's handling of the allegations, including that he had not been briefed on the issue. In response to a query from the Prime Minister's Office (PMO), the NZSIS advised the Prime Minister that the Leader of the Opposition had been briefed, and the Prime Minister said so publicly on 24 July.
4. The then Leader of the Opposition called a meeting with the Director of the NZSIS and, as a result of that meeting, said on 25 July that he accepted the Director's word that the Director had raised the issue briefly and in passing at a meeting on 14 March. The Leader of the Opposition also stated that while the Director may have had with him an initial briefing paper on the Israeli investigation, he had not seen or read that paper at the meeting.
5. As a result of the Prime Minister's statement on 24 July and the Leader of the Opposition's statement on 25 July, numerous journalists and the prominent blogger Cameron Slater made requests of NZSIS for information and/or comment as to whether and how the Leader of the Opposition had been briefed. Mr Slater was provided with three redacted documents, which he received on 4 August. Media requests were refused until 5 August.
6. The Prime Minister's Office also requested and received further information from the NZSIS from 25 July to 4 August. The Prime Minister and Deputy Prime Minister made statements on the basis of that information, most notably on 4 August. A staff member of the Prime Minister's Office also provided some information to Mr Slater.

Cooperation with the inquiry

7. I have had full cooperation in carrying out the inquiry from the former Director, current Director and current and former Service officers at all levels. The former Director has, from the outset, emphasised his responsibility as chief executive for his actions and for those of his staff. With the benefit of hindsight, the Director and senior staff have accepted that mistakes and some significant errors of judgement had been made, with unanticipated and serious consequences.

8. I have also had full cooperation from the Prime Minister's Office.

SUMMARY OF FINDINGS

Findings in relation to the release of information

9. The NZSIS disclosed incomplete, inaccurate and misleading information in response to the Official Information Act requests by Mr Slater and others. It also provided much the same information, along with some further detail, to the Prime Minister and the Prime Minister's Office. These errors resulted in criticism of the then Leader of the Opposition, not only by Mr Slater and other commentators but also by the news media and others, such as the Public Service Association. The Prime Minister and Deputy Prime Minister made public comments in reliance on information provided by the NZSIS, and that information was at least partially incorrect.
10. The Director and the NZSIS also failed to provide any clarification or correction once the effect of these errors became apparent.
11. The NZSIS also made a significant error in considering information requests by the news media. Such requests were, from 25 July to 5 August, not treated as OIA requests but simply denied. This was in direct contrast to the positive response to the request made by Cameron Slater on 26 July, which resulted in Mr Slater effectively receiving an exclusive news story.
12. The NZSIS process for handling OIA requests proved inadequate. The NZSIS also applied a mistaken understanding of OIA obligations, particularly in relation to the need for consultation with the Leader of the Opposition as to the accuracy of the information to be disclosed and whether and how to release that information.
13. The documents released to Mr Slater and others were not, however, improperly declassified. The NZSIS determined that the unredacted parts of those documents were not of national security concern and I accept that determination.

Political neutrality findings

14. I have not found any partisan political motive on the part of the NZSIS or its Director. I have found, however, that the Director made a number of serious errors of judgement in dealing with the controversy that arose over his consultation with the Leader of the Opposition over the Israeli investigation.
15. Those errors of judgement were the principal reason for the provision of incorrect and incomplete information. Because the information related to the Director's duty to consult the Leader of the Opposition and because of the adverse consequences for the Leader of the Opposition, there was a consequent failure on the part of the Director to take all reasonable steps to safeguard the political neutrality of the NZSIS, as required by s 4AA(1) of the New Zealand Security Intelligence Act 1969. The Director also failed to maintain a relationship of trust and confidence with the Leader of the Opposition, as necessary under s 4AA(3).
16. I also found that the Director and the senior staff of the NZSIS did not appreciate that the obligations under s 4AA on occasion require positive and independent action by the Director to uphold or restore political neutrality. In particular, I found that the Director

and – so far as they were aware of it – the senior staff should have recognised that they had provided incomplete, inaccurate and/or misleading information that caused harm to the Leader of the Opposition and that the Director ought to have acted to correct that error.

17. I have not found any political collusion by or direction of the NZSIS in its disclosure of information, or any unauthorised disclosure of information by NZSIS staff, as had been alleged. I did find that NZSIS information was disclosed by a member of the staff of the PMO to Cameron Slater for political purposes, but that disclosure did not breach any obligations of confidentiality owed to the NZSIS on the part of that PMO staff member.
18. The disclosure did, however, demonstrate that NZSIS had not put in place appropriate processes and protocols for the maintenance of security and political neutrality in its relationship with PMO.

Propriety findings

19. The legal obligations under the Official Information Act and under s 4AA of the NZSIS Act are supplemented by the broad principles of s 4AAA and my jurisdiction to consider the propriety of particular activities of an intelligence and security agency under s 11(1)(ca) of the Inspector-General of Intelligence and Security Act 1996.
20. I have found that the Director and senior staff of the NZSIS failed to act consistently with those requirements by failing to recognise the gravity of the situation and the potential for political exposure and so failing to engage appropriately with the Leader of the Opposition and with the Prime Minister's Office.
21. I would have expected the Director to take a much more rigorous and careful approach to these issues and to seek appropriate advice. I would also have expected staff in such senior roles to recognise the difficult and isolated position of the Director, although I acknowledge that they were hindered in providing advice and assistance to the Director by an absence of complete information.

RECOMMENDATIONS

Official Information

Recommendation 1

NZSIS should work with the Office of the Ombudsman to ensure that relevant NZSIS staff have a full understanding of, and training on, the substantive and procedural requirements of the Official Information Act 1982.

Recommendation 2

NZSIS should review its structures and processes, in consultation with the Office of the Ombudsman and with an opportunity for comment to those individuals and news media organisations who made Official Information Act requests here, to ensure that there is a consistent and workable approach to Official Information Act requests and media inquiries.

Understanding and applying obligations of political neutrality

Recommendation 3

NZSIS should work with the Government Communications Security Bureau, State Services Commission, the Department of the Prime Minister and Cabinet and others, to develop written guidance for ministerial office staff who deal with intelligence and security matters, on issues such as media comment, information security and political neutrality.

Recommendation 4

NZSIS, together with the Government Communications Security Bureau and the Department of the Prime Minister and Cabinet, should consider locating a departmental adviser (representing the Intelligence Community) in the Minister's office and/or in the Policy Advisory Group in the Department of the Prime Minister and Cabinet, to be the principal point of liaison between the Intelligence Community and the Minister's office, and should work with the State Services Commission to develop best practice guidelines for those advisers.

Recommendation 5

The Director should work with the office of the Leader of the Opposition, in consultation with the responsible Minister, to set express expectations for consultation with the Leader of the Opposition. These expectations should include provision for the Leader of the Opposition to have secure access to classified material and for a member of the Leader of the Opposition's staff (with the necessary security clearance) to attend consultation meetings.

Recommendation 6

NZSIS should work with the Government Communications Security Bureau, with such assistance as is appropriate from the State Services Commission, the Department of the Prime Minister and Cabinet and others, to develop published guidance on the political neutrality obligations in s 4AA of the New Zealand Security Intelligence Service Act 1969 and s 8D of the Government Communications Security Bureau Act 2003.

*Promoting wider engagement by the New Zealand Intelligence Community***Recommendation 7**

NZSIS, together with the broader Intelligence Community and the State Services Commission, should consider whether, as part of the Intelligence Community's leadership development, increased opportunities can be identified for secondments of Intelligence Community staff into the wider State Services and vice versa, to facilitate a broader understanding of the state services and of the political environment in which state servants carry out their role.

*Apology***Recommendation 8**

NZSIS should provide an apology to the Hon Phil Goff for failing to adequately consult him in relation to Mr Cameron Slater's Official Information Act request; for releasing incomplete, inaccurate and misleading documents relating to the meeting between Mr Goff and the former Director on 14 March 2011 and for failing to recognise and seek to correct the harm that ensued from those errors.

The Director of the NZSIS has accepted all recommendations.

COMMENCEMENT OF THE INQUIRY

The complaint

1. On 19 August 2014, I received a complaint from Metiria Turei MP, Green Party Co-leader, regarding allegations that NZSIS documents were declassified in order to be used for political purposes. The complaint relied on allegations made in Nicky Hager's book *Dirty Politics*, published on 13 August 2014. Mr Hager had alleged that the NZSIS had acted improperly in releasing information that would not usually have been released in response to an Official Information Act request from Cameron Slater. Ms Turei requested that I investigate the allegations in the book. A copy of the complaint is at [Appendix A](#) to this report.
2. Under section 11(1)(b)(i) of the Inspector-General of Intelligence and Security Act 1996 (IGIS Act) I have jurisdiction to inquire into a complaint by a New Zealand person that that person has or may have been adversely affected by an act, omission, practice, policy, or procedure of an intelligence and security agency. I concluded that the complaint did not, on its face, demonstrate that Ms Turei had been adversely affected by the alleged conduct. However, I was satisfied that there was a sufficient public interest justifying the commencement of an own-motion inquiry into the legality and propriety of the actions raised in Ms Turei's complaint. A copy of my response to Ms Turei is at [Appendix B](#) to this report.

Terms of reference

3. On 20 August 2014, as required by s 19(1)(a) of the IGIS Act, I advised the Director of the NZSIS that I had initiated an inquiry under section 11(1)(a) and (ca) of the Act and that the inquiry would consider whether:
 - the NZSIS acted properly and within the law when it considered and responded to an Official Information Act request from Cameron Slater in July and August 2011;
 - the documents released to Mr Slater were properly declassified;
 - other requests for similar information were treated in a manner consistent with Mr Slater's request; and
 - there is any evidence the NZSIS acted in a manner inconsistent with its obligations of political neutrality.
4. I also published these terms of reference and advised the Prime Minister (as the Minister then in charge of the NZSIS) on 20 August 2014 that the inquiry was being commenced.

Jurisdiction

5. Jurisdiction for the inquiry is contained in s 11 of the IGIS Act. Under s 11(1)(a) I may, of my own motion, inquire into "any matter that relates to the compliance by an intelligence and security agency with the law of New Zealand". Under s 11(1)(ca) I may,

of my own motion, inquire into “the propriety of particular activities of an intelligence and security agency”. The jurisdiction in respect of propriety is qualified by s 11(3), which states that “it shall not be a function of the Inspector-General to inquire into [the propriety of] any action taken by the Minister [in Charge of the New Zealand Security Intelligence Service]”.

6. “Propriety” is not defined in the IGIS Act but s 11 draws a clear and deliberate distinction between “compliance with the law of New Zealand” and “propriety”. If everything that was lawful under the law of New Zealand also was “proper” there would be no need for such a distinction: lawfulness would cover all. Clearly, some actions may be lawful, but still be improper. I have discussed the requirements of propriety in the context of this inquiry at paragraphs 245 to 247.
7. In the course of my inquiry, I considered a submission made by counsel acting for several of the current and former staff of the Prime Minister’s Office (PMO) that the actions of PMO staff in relation to Mr Slater’s OIA request were beyond the jurisdiction of the inquiry, except to the extent that those actions affected or reflected the maintenance, or failure, of political neutrality on the part of the NZSIS.
8. In part the submission relied on s 11(3) of the IGIS Act, noted above. That submission conflated Minister with Minister’s staff and suggested that I could not examine the actions of PMO staff. I do not accept that is a correct interpretation of the provision.
9. Both on the information available to me at the start of this inquiry and, now, after reviewing the totality of the evidence, I conclude that the actions of PMO staff did fall within the issues before this inquiry in three respects.
 - The first relates to the maintenance, or failure to maintain, political neutrality on the part of the NZSIS. The then Deputy Chief of Staff in the PMO, Philip de Joux, was the principal point of liaison between the Prime Minister and the Director of the NZSIS and other NZSIS staff. In that role, he was regularly briefed by the Director and by NZSIS staff and had substantial discussions with them, including discussions that bore on the OIA request and the subsequent release of information. At the same time, in his role as a senior political adviser in the PMO, Mr de Joux was involved in the political management of these events. Information which he received from the NZSIS was used by Jason Ede, a senior adviser within PMO, to assist Mr Slater in making the OIA request. In both of these roles, Mr de Joux’s actions had the potential to affect the maintenance or failure of political neutrality by the NZSIS.
 - The second connection between the actions of PMO staff and the issues before this inquiry relates to the disclosure of NZSIS information through the OIA request. It had been alleged by commentators that the OIA request by Mr Slater was instigated, or materially assisted, by the provision to him of some details of the relevant NZSIS documents prior to their declassification and release. Mr Slater himself had also made the allegation publicly and in evidence before this inquiry that he was contacted by an NZSIS officer directly in relation to this issue. In order to determine whether an NZSIS official had acted unlawfully, improperly and/or for a political purpose, it was necessary to determine whether Mr Slater

had received such details and from whom. Those details were known to only a small number of NZSIS officials and to PMO, such that it was necessary to investigate both.

- Last, release of information by NZSIS extended to the provision of some information to PMO. That was material both because of the potential impact of that information upon political neutrality and because as it transpired, some information provided by NZSIS to PMO was also inaccurate.
10. All three points raised questions of whether NZSIS had acted consistently with its duty of political neutrality.

Procedure

11. I issued summonses under s 23 of the IGIS Act to 22 individuals, requiring them to appear and answer questions under oath or affirmation. A list of witnesses is at Appendix C to this report and a copy of the form of the summons is at Appendix D. I also issued summonses requiring production of documents, including telephone and email records of specified individuals.
12. On 20 August 2014, I wrote to NZSIS Director Rebecca Kitteridge requiring her to produce the following:
- Copies of all requests for information received between 19 July and 8 August 2011 (inclusive) by any person, including news media and private citizens, in respect of NZSIS briefings to Mr Goff about Israelis in Christchurch, whether formally conveyed as requests under the Official Information Act or otherwise;
 - All internal NZSIS correspondence (including emails, notes of phone conversations, records of any meeting, general guidance for responding to media enquiries) in respect of those requests;
 - The response by NZSIS to those requests;
 - All correspondence between NZSIS and Cameron Slater and/or the Office of the Prime Minister between 19 July and 8 August (inclusive) in respect of those requests;
 - All internal policies and procedures applicable to the “declassification” of documents at that time, and any evidence of their application to the documents released to Mr Slater; and
 - Dates of and notes from any oral briefings provided to the Prime Minister (or Prime Minister’s Office) between 19 July and 8 August 2011 (inclusive) on the subject of Mr Goff’s March 2011 meeting with the NZSIS Director, including a list of all persons present for any briefing.
13. The NZSIS routinely recorded all incoming and outgoing telephone calls for security purposes and sometimes transcribed those calls. My inquiry benefited from the production of relevant transcripts which had been prepared in 2011. A practice of

routine recording is not unusual, but I recognise that in this context the recording and transcription of telephone calls involving the Prime Minister's Office and Leader of the Opposition may raise questions. It was not within the parameters of my inquiry to investigate whether there were appropriate policies, safeguards and notifications in place to regulate the process, but I will discuss that question with the Director separately from this inquiry.

14. Following the initial production of documents, my staff worked with the current Director to refine and expand search parameters to include detailed searches of emails and phone records in respect of particular staff involved, and included correspondence through to the end of December 2011. As Mr Slater made allegations that NZSIS staff had contacted him directly about the issue, searches were conducted of phone records of staff with knowledge of and access to particular information pertinent to this inquiry. My staff also retrieved and reviewed further paper files.
15. I also made a production order to the Chief Executive of the Department of Internal Affairs (DIA). DIA provided the information technology and telephone systems for the Prime Minister's Office during the relevant period. I required the Chief Executive to produce all relevant emails, electronic documents, and telephone logs for the staff in the Prime Minister's Office. This order was executed in consultation with the Speaker, the Parliamentary Service, and the Office of the Clerk, and with notification provided to the Prime Minister, in accordance with the protocol set out in the Privileges Committee report on *Questions of privilege regarding use of intrusive powers within the parliamentary precinct*.
16. Witnesses appearing before this inquiry also produced documents. Documents were provided voluntarily by Mr Hager and Mr Slater. I issued a production order to Mr Ede in respect of his personal email accounts after it became apparent from evidence, including evidence provided directly by Mr Ede, that some of the correspondence pertinent to this inquiry was conducted from non-official email accounts. Upon receipt of the production order, Mr Ede provided a supplementary written statement to the inquiry in which he advised that the emails had been permanently deleted prior to the commencement of the inquiry and could not be recovered. I made my own enquiries and confirmed this was the case. Mr Slater was, however, able to provide the inquiry with some of the relevant correspondence. I also issued production orders to telecommunications providers in respect of particular phone records.
17. The inquiry benefited from a full and substantial documentary record. However, I was concerned to discover the use of personal email and telephone accounts by Mr Ede for some of his PMO work and indications that he did so in order to avoid any public record. Whether or not it is in general permissible for political advisers such as Mr Ede to adopt such practices, I observe that:
 - The use of personal accounts meant that some records of Mr Ede's actions in relation to NZSIS information were not readily available, as noted above. It was possible to reconstruct those actions, including through other records and through Mr Ede's own evidence, but had others adopted similar practices, my

inquiry would have required far more extensive investigations and could even have been denied material information.

- The use of such personal accounts in relation to NZSIS information poses significant risks for information security. While the information dealt with by Mr Ede was not classified security information, there would have been serious consequences had it been. I have made a recommendation in this report that staff in Mr Ede's position should in future receive express guidance in relation to security information and related matters, and this should include information on the use of unofficial means of communication.

18. Each witness (and legal counsel, where the witness was represented) was subject to a Confidentiality Order which required that the witness and counsel not disclose the content of the examination before the Inspector-General until further notice from me. I decided such an order was necessary to ensure that the inquiry was conducted with fairness and integrity, that the privacy of witnesses was not compromised and to give effect to the requirements of privacy and non-disclosure under ss 19(6) and 29 of the IGIS Act. A copy of the Confidentiality Order is at Appendix E to this report. Those witnesses and counsel who were required to sight classified documents during the course of the examination and who did not have the requisite security clearance were also required to sign a Deed of Emergency Access to Classified Material.
19. All witness interviews were conducted under oath or affirmation by me, the Deputy Inspector-General Ben Keith and a Senior Investigating Officer in my office.
20. I provided the Director with a draft report and offered her the opportunity to make submissions to me about matters of which I was likely to be expressly or impliedly critical and to comment on my draft report and recommendations, in accordance with s 19(7) of the IGIS Act. I have taken the Director's comments into account in finalising this report.
21. I also provided witnesses who might be adversely affected by the report with a copy of the draft report and offered each of them the opportunity to correct matters of fact and make any comment, in accordance with s 19(7) of the IGIS Act. I have taken those comments into account in finalising this report. As a result of that process, I also took further evidence.

Chronology, March-August 2011

This chronology is drawn from the evidence and documents presented to the inquiry.

Tues 8 March	NZSIS prepares initial Security Intelligence Report (SIR) on Israeli issue Director's meeting with Prime Minister; SIR included in Director's agenda.
Mon 14 March	Director's meeting with Leader of the Opposition; SIR included in Director's agenda.
Wed 20 July	<i>Southland Times</i> article alleging Israeli intelligence activity following the Christchurch earthquake. Prime Minister initially refuses any media comment, then states that NZSIS had thoroughly investigated and found no evidence of intelligence activity. Leader of the Opposition makes media statement criticising government handling of the Israeli issue and comments that he had not been briefed on the investigation.
Fri 22 July	Prime Minister's Office (PMO) query to NZSIS whether Leader of the Opposition briefed; NZSIS advises that Director's records show SIR on March meeting agenda. Director advises Prime Minister directly that Leader of the Opposition received the same briefing that he had had.
Sun 24 July	Prime Minister makes media comment that Leader of the Opposition received the same briefing; Leader of the Opposition contacts Director seeking clarification.
Mon 25 July	First requests for information/comment on Leader of the Opposition briefing made to NZSIS (Felix Marwick (Newstalk ZB) and Jessica Mutch (TVNZ)); all media requests declined until 5 August. Director's meeting with Leader of the Opposition, followed by Leader of the Opposition press conference at which he states that he accepts the Director's assurance that the Israeli issue was raised in passing but did not see or read the SIR. PMO discusses Leader of the Opposition statements with Director; Director states that he gave the Leader of the Opposition the SIR and spoke briefly to it. PMO staff member gives details of NZSIS briefing record to Cameron Slater.
Tues 26 July	Cameron Slater OIA request received by NZSIS; Director decides to release copies of his meeting agendas and the SIR; NZSIS prepares response and redacts the documents.
Wed 27 July	Director discusses response with PMO and with Leader of the Opposition. Leader of the Opposition requests copies of proposed response and, when declined, requests time to seek advice; Director agrees to a few days delay. Leader of the Opposition later makes his own urgent OIA request for the same information.

Mon 1 August	OIA response sent to Leader of the Opposition and PMO.
Tue 2 August	OIA response sent to Mr Slater.
Thu 4 August	Mr Slater receives OIA response and releases it in a series of blog posts and in conjunction with TV3 news. Leader of the Opposition media comment that Director's briefing record, as released, mistaken and wrong. PMO seeks comment from NZSIS/Director; Prime Minister and Deputy Prime Minister make media comments defending the Director's integrity.
Fri 5 August	NZSIS begins responding to media requests for information.

The inquiry scrutinised these events with three broad questions in mind:

- Was there a breach of the Official Information Act by the NZSIS?
- Was there a breach of the obligation to be politically neutral by the NZSIS?
- Even if neutral, were the actions of the NZSIS improper?

Some events were relevant to more than one of these questions and are therefore examined in several parts of the report.

THE OFFICIAL INFORMATION ACT REQUESTS

Issues arising under the Official Information Act

22. This inquiry encompasses two decisions made by the NZSIS under the Official Information Act 1982 (OIA):
- The request made by Cameron Slater on 26 July 2011 for certain records of any briefing given by the Director to the Leader of the Opposition on the Israeli investigation in March 2011, and the release to Mr Slater of three heavily redacted documents; and
 - The decision by NZSIS to decline numerous news media requests, made from 25 July onwards, for various information related to any such briefing. Some information was provided to news media from 5 August onwards.

Information provided by NZSIS on consultation with the Leader of the Opposition

23. As part of the provision for political neutrality in s 4AA of the NZSIS Act, the Director of the NZSIS is required under s 4AA(3) to consult with the Leader of the Opposition for the purpose of keeping him or her informed on matters of national security. I have discussed the function of that requirement as a means of safeguarding political neutrality and its practical implications for the Director in the next section.
24. Here, the release of information by NZSIS concerning whether and how the then Director, Dr Tucker, did consult with the then Leader of the Opposition, Mr Goff, arose in response to the 20 July 2011 *Southland Times* article concerning an NZSIS investigation of suspicious activity by Israeli nationals in Christchurch following the 8 February 2011 earthquake. In response to the article, the Prime Minister had (as Minister responsible for the NZSIS) initially declined to comment, citing national security concerns. Later that day he provided substantive comments in which he stated that there had been a thorough security intelligence investigation of that suspicious activity and that no evidence of intelligence activity had been found.
25. In response to the Prime Minister's statements, Mr Goff made a number of public statements, such as in the following interview:¹

PG [The Prime Minister initially said] that he wouldn't comment and it wasn't in the national interest to do so. What people understandably took from that was [that] he didn't want to comment on it, because obviously there was substance to the allegations and it was an intelligence matter. Now he has a totally different story, 12 hours later, saying it has been fully investigated and no evidence. God knows why he didn't say that at the start of the day, and by not saying that at the start of the day, many people will still feel "are we even now being told the truth?" It has been badly handled.

Q Another claim - that the investigations are ongoing. If the SIS is still investigating this matter, would you as Leader of the Opposition and being on the committee that oversees the SIS expect to be told?

¹ Interview by Mary Wilson, Radio New Zealand, 20 July 2011; accessible at <http://www.radionz.co.nz>.

PG I would, actually. I get briefed, regularly, by the Security Intelligence Service and sit on the Committee that oversees the Security Intelligence Service. We maintain confidentiality around those briefings, but we do so on the basis that the Government will be quite full and frank with us, and we will maintain confidentiality where that is required in the national interest. This hasn't come before the select committee. It's not been part of any briefing to me.

26. Mr Goff's statements concerning whether the Director had consulted with him led to requests for information by the Prime Minister to the NZSIS Director on 22 July, by PMO from 22 July onwards and by requesters under the Official Information Act from 25 July.
27. The NZSIS responded to these requests for information as follows:

Date	Source and recipient	Summary of information provided/disclosed
22 July	DDROC ² to PMO	Advice that NZSIS had a document that recorded the Leader of the Opposition (LO) having been briefed in their 14 March meeting
	Director to PM	Advice that LO "received the same briefing" as PM
25 July	Director to PMO	Advice that NZSIS had a document that recorded the LO having been briefed in their 14 March meeting
	Director to PMO	Advice that: - LO had been given an NZSIS report ("the 8 March SIR") and had held it while the Director spoke to it at the 14 March meeting; and - The LO had made incorrect statements in his media conference earlier that day.
25 July – 4 August	NZSIS to media	Requests for information refused / no comment provided
27 July	Director to PMO	Advice that: - The NZSIS held, and would shortly release, a document recording that the 8 March SIR had been "read by/discussed with" LO; and - The document would show the LO to "have credibility problems".
1 August	NZSIS to PMO	Copy of OIA release: - Annotated/redacted copy of 8 March SIR; - Two redacted agenda documents; and - Accompanying letter from the Director.
2 August	NZSIS to Mr Slater	OIA release (as above) sent to Mr Slater and

² Deputy-Director - Relationships, Outputs and Communications, NZSIS.

4 August	Director/NZSIS to PMO	received 4 August Advice that the LO's public statements that "read by/discussed with" document wrong/mistaken were false and amounted to an attack on the Director's integrity
5 August	NZSIS to various media/others	OIA releases (as above) to other requesters

28. The disclosures under the Official Information Act are discussed in this section. The other responses, parts of which became public through ministerial comment and also when provided by Mr Ede to Mr Slater, are discussed in the following section.

The statutory framework

29. The NZSIS is an "organisation" subject to the OIA.³ Several aspects of that Act are material here.

30. Decisions to release information are governed by the principle of availability set out in section 5 of the Act:

The question whether any official information is to be made available ... shall be determined ... in accordance with the purposes of this Act and the principle that the information shall be made available *unless there is good reason for withholding it*. (emphasis added)

31. The OIA encompasses all information held by NZSIS and is not limited to written documents.
32. Every department, Minister of the Crown and organisation has a duty to give reasonable assistance to a person who wishes to make a request under s 12,⁴ or to a person who is making a request under s 12 but has not made it in accordance with that section.⁵ A request for information, including a request from news media, that is not specifically framed in terms of the OIA, shall nevertheless be treated as an OIA request. The key test is whether there is a request for information.⁶
33. Sections 6 and 9 of the OIA set out reasons to withhold information. Section 6 provides for non-disclosure of information on grounds that include national security; section 9 provides for presumptive non-disclosure on various grounds, including maintenance of political neutrality of officials, the confidentiality of officials' advice and the maintenance of the effective conduct of public affairs through the free and frank expressions of opinions.
34. There is a duty to make a decision on a request, and communicate that decision to the requester, as soon as reasonably practicable and in any event no later than 20 working

³ Section 2 and Schedule 1, Official Information Act 1982.

⁴ Section 13(a), Official Information Act 1982.

⁵ Section 13(b), Official Information Act 1982.

⁶ "How the official information legislation works", Office of the Ombudsman, 26 October 2012 (www.ombudsman.parliament.nz/resources-and-publications/guides/official-information).

days after the date on which the request is received.⁷ If the decision is to release information, the information must be provided to the requester without undue delay.

35. Once it is decided that some or all of the information requested should be released, there are a number of different ways in which the agency can make the information available, ranging from release of the information in its entirety to, for example, partial disclosure with an accompanying contextual statement. The Ombudsmen provide guidance on this question.⁸
36. Where information requested under the OIA concerns the actions of a named individual it is good practice to consult that individual to ascertain any relevant view on whether and in what terms to release that information. While the practice of consultation is strongest where there is, for instance, a privacy or commercial interest, it is also usual practice for a department or agency answering an OIA request that encompasses information relating to another department or agency to consult that department or agency. That practice serves to ensure that the agency answering the request makes a fully informed decision as to both the content of the information and any relevant considerations in favour of release or withholding any part of the information.

NZSIS practice for handling official information requests

37. During the relevant period, OIA requests were dealt with by two distinct sections of the NZSIS:
 - Requests for information identified as coming from the news media were usually received by NZSIS communications staff, who reported to the Deputy Director, Outputs, Relationships and Communications (DDROC). The communications staff also administered a general inquiries email address, but forwarded on any non-media request received by email.
 - Non-media requests for the release of information were dealt with by the NZSIS OIA/Archives Officer, who reported to the Deputy Director, Resources and Capability (DDRC).
38. It was explained by several NZSIS staff in evidence that the handling of media queries by the communications staff was intended to enable the provision of a rapid reply, where possible, while the separate non-media OIA process was more deliberate but also slower.
39. NZSIS had instituted a standard and documented procedure for OIA requests, based on an “action sheet” signed off by the relevant managers, with the decision and the substantive response ultimately approved by the Director.
40. It is important to note that although the NZSIS was and is subject to the Official Information Act, it operates in a covert environment which necessarily impacts on what information can properly be released. At this time the NZSIS was in a state of evolution as Dr Tucker sought to move from a culture of “no comment” to a more open and

⁷ Section 15(1), Official Information Act 1982.

⁸ “How the official information legislation works”, Office of the Ombudsman, 26 October 2012, pp 10 and 11.

transparent approach and greater public engagement. The tensions caused by that evolution are reflected in these events.

News media requests for information concerning the Israeli briefing issue

41. The question of whether the Leader of the Opposition had received a briefing on the Israeli investigation was first raised by Mr Goff's statement on 20 July that he had not been briefed. That statement was then contradicted by the Prime Minister in a television interview broadcast on 24 July, in which the Prime Minister said that the Director had told him the Leader of the Opposition had received the same briefing that he, the Prime Minister, had received.
42. From the morning of 25 July onwards, the NZSIS received many news media enquiries on this point. While many enquiries were requests for interviews or comment, some were requests for specific information:

From: Jessica Mutch
Sent: Monday, 25 July 2011 8:57 a.m.
To: Enquires@nzsis.govt.nz
Subject: TVNZ enquiry

Good morning.

I want to confirm whether Phil Goff was briefed on the investigation into Israeli nationals in Christchurch? From The Dominion Post article I understand Warren Tucker gave the briefing.

What date was the briefing?
- What was the nature of that briefing? (was it a report, verbal briefing etc)

I understand the sensitivity of the issue and am not asking for any details about the content of the briefing, just whether it took place.

From: Felix Marwick
Sent: 25 July 2011 9:01 a.m.
To: enquiries
Subject: Goff briefing

To whom it may concern,

I would very much appreciate your help in clearing up apparent conflicting stories around a briefing for the Leader of the opposition regarding suspected Israeli activities in Christchurch following the earthquake of February 22nd.

Labour Leader Phil Goff has told us on two separate occasions that he has never been briefed about the incident. However Prime Minister John Key tells us that Mr Goff did in fact receive a briefing.

I would be most grateful if the SIS could tell me if in fact Mr Goff was briefed, when it happened, and what form the briefing took (i.e. verbal, via phone, via document etc).

Thank you for your assistance

43. The Mutch and Marwick requests were both received by the Assistant Communications Advisor. He immediately referred both requests to Dr Tucker's office at 09:08 on 25 July. The Head of the Director's Office (HDO) responded at 09:14 "Warren will not be saying anything (his words)." The Assistant Communications Advisor conveyed a "no comment" response to both requestors.
44. Following Mr Goff's meeting with Dr Tucker on the morning of 25 July and his subsequent press conference, at which he set out what he said that Dr Tucker had said at that meeting (see paragraphs 73 and 89) specific requests were received for confirmation of that detail. These were again referred to Dr Tucker and declined by him.

45. Further requests were received from news media over the next eleven days, and all were met with a “no comment” response.
46. Both Mr Marwick and Television New Zealand (on behalf of Ms Mutch) later queried the treatment of their requests. The NZSIS sought to explain the distinction between media enquiries and OIA requests and also noted that the requestors had not referred to the OIA or “official information” in their requests. Mr Marwick also complained to the Ombudsman and the then Inspector-General in relation to the matter. It was found the NZSIS had not properly treated his inquiry as a request under the OIA because of the separate procedures for media and OIA queries. The NZSIS accepted that its approach was incorrect. The wider scope of this inquiry allowed me to take this point further.
47. While I accept there was an institutional weakness and that was a contributory factor, in this specific case it does not provide a satisfactory explanation for differential treatment. The request by Mr Slater was sent to the same email address (enquiries@nzsis.govt.nz) as the media enquiries. All of these queries were referred to the Director’s office and all were also known to the DDROC and/or his staff. It is clear Dr Tucker and the DDROC in particular had knowledge of both Mr Slater’s request and the media enquiries, but the anomaly created by declining media enquiries while providing information to Mr Slater did not occur to them.
48. The inconsistency in approach led, shortly after the release of documents to Mr Slater, to inferences of political partisanship. I have seen no evidence to support this, and accept it was a result of poor judgement and process, inadequate resources, and lack of political awareness.
49. I have also found that the inconsistency on the part of the NZSIS caused material disadvantage. Two journalists who had made substantively similar requests to that made by Mr Slater, but the day before, were effectively denied a fair opportunity to advance the same news story.
50. I took evidence from both journalists:
- Mr Marwick explained that while he understood that often the NZSIS would not be able to provide information, he did expect to be treated fairly and that the NZSIS had failed to do so.
 - Ms Mutch said all media expect is to be treated “fairly and equally” but that did not occur.

Receipt of Mr Slater’s OIA request

51. Mr Slater’s OIA request was received by the NZSIS public enquiries email address at 10:12am on Tuesday 26 July 2011. Because Mr Slater was not obviously a member of the news media, the request was referred to the OIA Officer. As with all queries at that time related to the Israeli issue, a copy of the request was also forwarded to the Director’s office.
52. The request was then dealt with by both the OIA Officer and the Director himself. The OIA Officer advised the Assistant Communications Advisor to send Mr Slater a standard

acknowledgement saying that the Service anticipated responding to the request within the statutory 20 working day timeframe. He then started a standard OIA action sheet and, after considering the request, drafted a response declining it on the basis of protection of confidentiality of advice tendered by officials (s 9(2)(f)(iv) OIA) and prejudice to the security of New Zealand (s 6(a) OIA).

53. The OIA Officer also explained in evidence that, to his knowledge, there was no precedent for releasing briefing material provided to the Prime Minister or the Leader of the Opposition. He noted by analogy that, in the past, post-election OIA requests for the NZSIS Briefing to Incoming Minister (BIM) had been refused, and so he felt that the information should be withheld on the confidentiality and security grounds. The request, action sheet and draft response were then sent to the NZSIS legal staff.
54. At the same time, the Director had himself considered the request and believes that he had discussed it briefly with the NZSIS General Counsel (DGC) and/or the DDRC. The Assistant Communications Advisor then indicated that “Dr Tucker’s thoughts [were] that [NZSIS] might release the information.” The Director annotated a printed copy of Mr Slater’s request and forwarded it to the DDRC and the DGC for their consideration and action, leading to the preparation of a response releasing the three redacted documents, as described below. The Director also had a copy of the request sent to Mr de Joux.

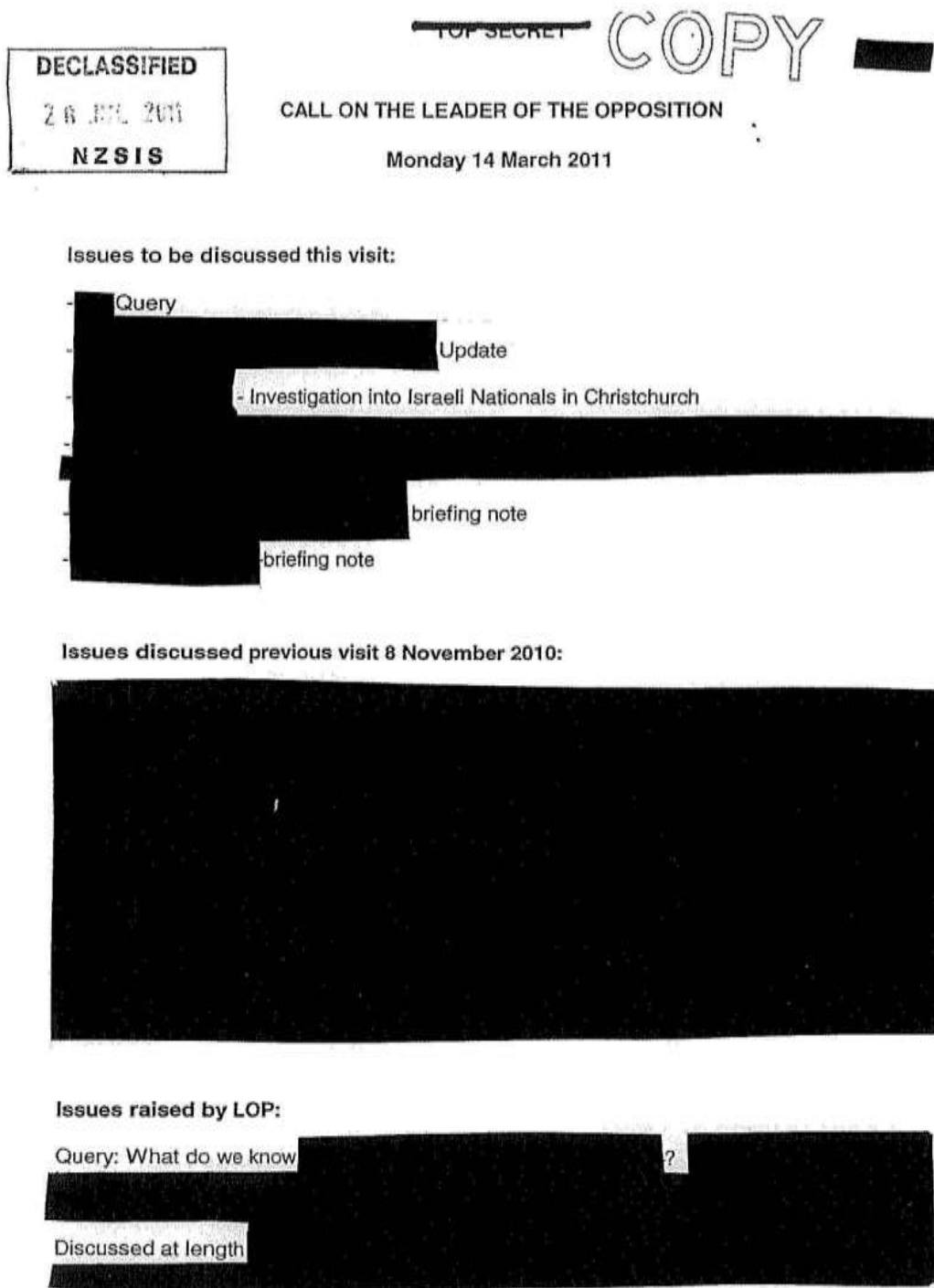
Coordination of issues

55. At no point did the Director assign responsibility for management of all the issues raised, including responses to the OIA requests and media enquiries and media monitoring. No one person assumed responsibility for that management. Given this was a high profile and politically sensitive issue I would have expected a coordinated approach of this kind.

Was the information disclosed under the OIA inaccurate, incomplete and/or misleading?

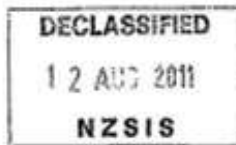
Redaction of agenda notes

56. The Director's 14 March agenda note was disclosed in redacted form. The redacted document was as follows:



57. The Director's accompanying letter explained that information had been withheld both for reasons of national security and where not relevant to the request. However, only one line of the agenda document related to the Israeli issue. The agenda note was not correctly redacted for relevance. Had it been, it would have resembled the agenda note

later released from the Director's meeting with the Prime Minister, which also had listed the Israeli issue:

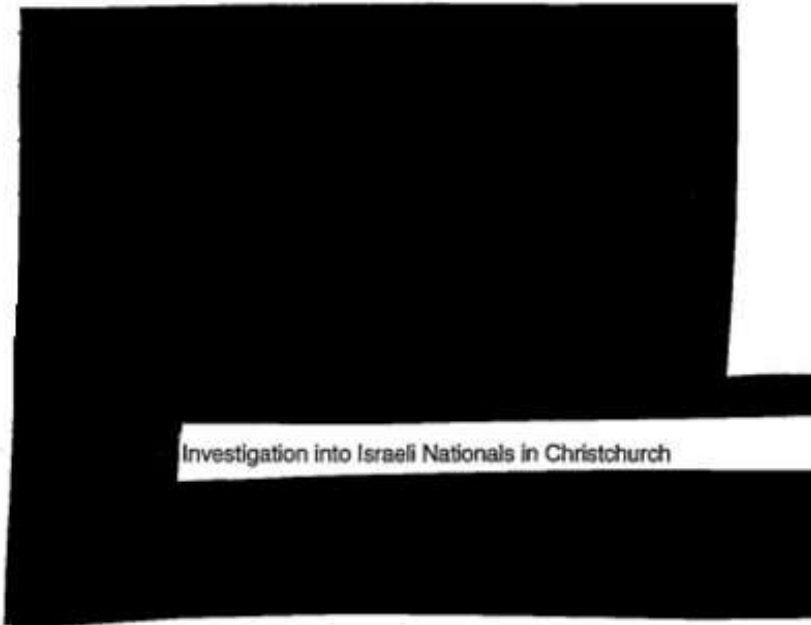


~~TOP SECRET~~

D's CALL ON THE PRIME MINISTER

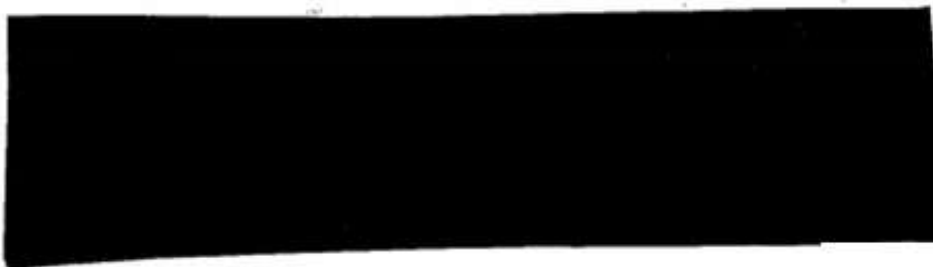
Tuesday 8 March 2011

Issues to be discussed this visit:



Investigation into Israeli Nationals in Christchurch

Issues discussed on previous visit: 22 February 2011



Issues raised by the Prime Minister this visit:

58. The then DGC explained to me that the irrelevant words had been retained to show the overall shape of the 14 March meeting – that is, that other issues were discussed. However, the agenda note as redacted did not adequately meet that purpose either. Other words, which would have shown the shape of the meeting and that were not of security concern, were still redacted. That can be seen in this fuller but still redacted version, prepared solely for the purpose of this inquiry:

Lack of necessary context for agenda notes

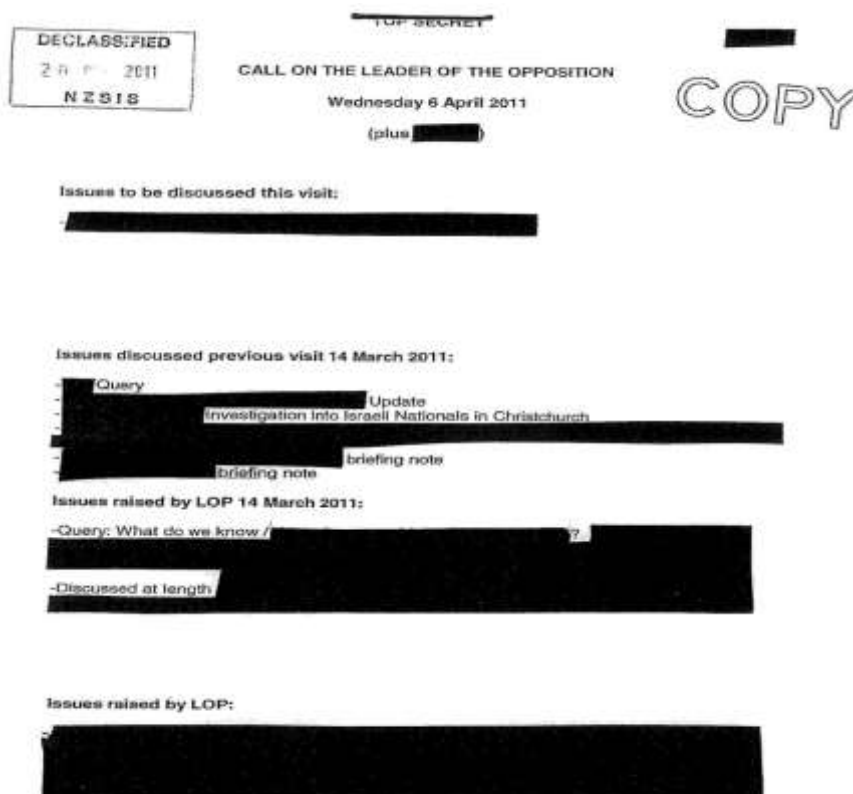
62. The March and April agenda notes also lacked the explanations necessary to understand their nature and purpose:

- The agenda notes were not, as they would appear, an agenda in the conventional sense of a document provided, possibly in advance, to all participants. Instead, the notes were a form of record used by the Director during and after such meetings and were not shown at any point to the Leader of the Opposition.
- It was not explained that these agenda notes were not, in contrast to the practice at the time for meetings with the Prime Minister, ticked off and countersigned at the meeting. The Prime Minister himself was evidently not aware of that difference, as illustrated by his own comment on the point at the time of this controversy:⁹

“[Dr Tucker] is meticulous in the way he operates. He always runs an agenda and ticks it off in front of you. I have to sign the documentation when it’s finished.”

Instead, the Director made short notations on individual briefing documents only after the meeting, in this instance the following day: see, further, paragraph 68 below.

- Similarly, the list of “[i]ssues discussed previous visit”, as here in the 6 April agenda note:



⁹ See, for example, Dominion Post, 6 August 2011.

was not a form of summary record of that discussion. Instead, such listing occurred by default, with the list of issues for discussion from the previous meeting simply transposed to the next meeting's agenda note, whether or not a given issue had in fact been discussed.

63. Two points arise from the lack of explanation of the content:

- The first is that the form of the agenda notes was open to misinterpretation. The notes could reasonably be understood, and were understood by the press¹⁰ and also by the Prime Minister,¹¹ as a record that the issue had been discussed and as indicating that the record was prepared in the presence of the Leader of the Opposition. Neither of these points was correct.
- Second, even leaving aside how the documents could be and were understood, it was necessary to explain that the disclosed agenda documents did not correspond directly to the categories of document sought in Mr Slater's OIA request. The agenda notes were not a "briefing [note] and/or [document] given and/or shown to The Leader of the Opposition", a "diary [note]" or an "acknowledgement by the Leader of the Opposition". Because of the terms of the request and the lack of explanation the documents were susceptible to misunderstanding.

Annotated SIR

64. The third document released in response to OIA requests was a copy of the 8 March SIR paper, with Dr Tucker's handwritten annotation "Read by/discussed with Mr Goff".



65. As outlined more fully in the following chapter, this annotation became the focus of the public controversy involving Mr Goff and Dr Tucker:

- Mr Goff had, following his 25 July meeting with Dr Tucker, said to news media that while he did not doubt Dr Tucker's assurance that he had "flicked" the Israeli issue past him, he not read or seen the document:

¹⁰ See below at paragraph 234.

¹¹ See above at paragraph 62.

Q: [W]ere you briefed about the Israeli nationals issue?

PG: No, not as such. It was alleged by Mr Key that I had received a document. I called Mr Tucker in this morning to raise questions about that. He showed me a document which I had never seen before. There [were] three documents that have been produced by the intelligence service. I haven't seen any one of those three.

[Dr Tucker] said that he had flicked the issue past me and mentioned it in passing but there wasn't much to it. I don't recall that comment but I am not questioning his integrity in saying that. But there was no briefing per se.

... I don't recall at all seeing the document. I asked to see the document today. I saw it. I have no recollection of seeing it. Three documents were produced. Two ... never came near my office. One the Director may have had with him but I did not see it at the time, no. ...

Q: Mr Tucker obviously briefed the Prime Minister and told him that you had been briefed on this issue. Was he simply mistaken in your opinion?

PG: He said that he hadn't briefed the Prime Minister personally, his office had briefed the Prime Minister. We agreed that I had not seen the document. He said that he had flicked the issue past me in the midst of other issues, saying that he had not dwelt on it and that there was probably nothing to it. I don't even recall those comments but I'm not questioning Mr Tucker's integrity in saying what he did. ...

... The briefing contained probably about a dozen items. We focused on two of them. Mr Tucker cannot say for certain that I saw the document. I can most certainly say for sure that I didn't. And he said, as I said before, he flicked the issue past me, saying that there was probably no substance and didn't dwell on it.

- Dr Tucker recognised, prior to its release, that the annotation contradicted Mr Goff's public statement and advised PMO of that contradiction: see paragraph 193 below;
- Once the documents were publicly released, Mr Goff made press statements in which he said that the annotation was wrong and mistaken:

"The head of the SIS, Warren Tucker, has released a note under the Official Information Act ... that has a notation on it showing he believes he showed me a document relating to the investigation during one of our regular meetings.

I was not shown the document. I never read that document. Warren Tucker is wrong. He may have brought the document to the meeting but he never showed it to me. Mr Tucker acknowledges that I was never briefed on or shown two other documents the SIS compiled on the issue ...

He has since shown me the first document and I know I have never seen it before. ...

I was never 'briefed' by the SIS. When asked to explain, Warren Tucker says he 'flicked' over the issue during a regular meeting with me but 'didn't dwell on it'. He says he probably suggested to me that it was not significant. That is not a briefing or a discussion. ...

I will not stand by and have my credibility questioned over this issue.”

- In response to those press statements, Dr Tucker asked PMO to emphasise his integrity, suggesting that Mr Goff’s comment on the annotation had impugned Dr Tucker’s honesty: see paragraphs 200 and 207 below.

66. Mr Goff’s evidence to this inquiry was that:

- He was emphatic that he did not ever read or even register the 8 March SIR. He commented that he was quite certain that, other than being shown the document by the Director at their 25 July meeting, he had never seen it;
- He accepted, however, that it was possible that Dr Tucker had mentioned the SIR in passing and may have handed the SIR to him or put it on a table in front of him; and
- Mr Goff also commented that he was quite sure that he would have recalled the document, given his extensive involvement as Minister of Foreign Affairs with other allegations of Israeli intelligence activity in 2004-2005, involving the conviction of Israeli nationals for passport fraud, an incident which led to the suspension of high level diplomatic relations and eventually to an Israeli government apology.¹² Mr Goff considered that, had there been any substance to the 2011 allegations, that would have been particularly serious as it would have undermined the earlier apology.

67. Dr Tucker stated to the inquiry that:

- He sincerely believed, and continues to believe, that Mr Goff read the front page summary of the 8 March SIR. In particular, he believed that he had seen Mr Goff’s eyes “move over” the front page of the SIR;
- However, he accepted that Mr Goff could at the most have read only the first page;
- Dr Tucker explained in evidence, and I accept, that the words “Read by/discussed with” were his own private notation or *aide memoire* and meant simply that he had provided the document and spoken to it. He accepted that the words “shown to” would have been more accurate than “read by”;
- He recalled that Mr Goff did continue speaking on another topic at the same time that Dr Tucker raised the SIR, but he attributed that to Mr Goff “multi-tracking”; and
- He explained that the words “discussed with” meant that he had spoken briefly to the key points in the summary and did not mean that Mr Goff had made any comment, asked any question or otherwise reacted to the document.

68. The relevant file and other information concerning the meeting indicated that:

¹² See, for example, F O’Sullivan “Passport to a World of Trouble” *New Zealand Herald*, 21 September 2004, A16-A17.

- Six written documents, totalling approximately thirty pages, were prepared for discussion at the 14 March meeting, alongside other issues;
 - Those two other issues occupied approximately three-quarters of the 14 March meeting, leaving approximately 7-8 minutes to discuss the six documents; and
 - Of the six, two were subsequently annotated by Dr Tucker as having been “noted” and the other four “read by/discussed with Mr Goff”.
69. As reflected by the emphatic evidence from Mr Goff and Dr Tucker and as also reflected in the conflicting statements summarised at paragraph 65 above, the question of whether the words “Read by/discussed with” were accurate was, and remains, central to the controversy that surrounded these events. At this remove, however, it may not be possible to resolve the apparent dispute between the two witnesses and it is not necessary to do so.
70. Leaving aside the narrow point that the two accounts are not necessarily in conflict – Mr Goff may well not have read the SIR notwithstanding Dr Tucker’s sincere belief, while that belief could be sincere, even if mistaken – this inquiry is concerned with the compliance by Dr Tucker and the NZSIS with obligations under the Official Information Act and under s 4AA of the NZSIS Act. In that regard, it is undisputed that:
- Dr Tucker made the written annotation “read by” meaning only “shown to” and, even then, only the first page;
 - There were, notwithstanding Dr Tucker’s sincere belief that Mr Goff had in fact read the SIR, objective indicia that he might well not have done so: see paragraph 67 above, as well as Mr Goff’s unequivocal statements that he had not read the document, made both to Dr Tucker and in a public statement immediately after their 25 July meeting. Mr Goff was also known to Dr Tucker as a senior politician with significant prior experience in intelligence matters;
 - Dr Tucker made the written annotation “discussed with” meaning only that he had spoken briefly to the summary points, not that there had been any discussion between himself and Mr Goff; and
 - Dr Tucker was aware that the annotation contradicted Mr Goff’s public remarks made following their meeting and that its release would undermine Mr Goff’s credibility.
71. The result was that the annotation, as released to PMO and publicly, was incorrect. While Dr Tucker stated that he had explained to PMO that he had shown Mr Goff the front page summary while speaking briefly to it, that explanation did not cover all of these necessary corrections and qualifications. That explanation does not in any case appear to have registered with PMO and was not provided to the public as part of the OIA release.

Non-disclosure of 25 July meeting note and Dr Tucker's annotation on it

72. By the time of the Slater OIA request and the preparation of a response, Dr Tucker also had a copy of a handwritten note prepared by Mr Goff at the conclusion of their meeting on 25 July, which Dr Tucker had subsequently annotated as "our agreed position". The note and annotation were also recorded in Dr Tucker's typed agenda note from the 25 July meeting. The meeting itself is discussed in the following section at paragraphs 161 - 167.
73. The handwritten note is reproduced here and transcribed below:¹³



Note made by
Mr Goff during our
meeting on 25 July
This is our agreed
position. Lc
25 July

Mon (11) March.
14 March 2011

Report 8 March 2011.

Mr T. Recollected - flicked thru a number of issues which included looking at Israelis in Chch at time of EQ but not dwelt on it.

Mr Tucker said he had a report on the Israelis but having now looked at it I am certain I had never read it.

It was an initial report dated 8 March which was inconclusive about the activities at that stage of the investigation.

I have not seen nor been offered the subsequent reports on the matter.

¹³ Note made by Mr Goff during our meeting on 25 July 11. This is our agreed position. WT, 25 July.

Monday 11 March

14 March 2011

Report 18 March 2011

Mr T Recollected – flicked thru a number of issues which included looking at Israelis in Chch at time of EQ but not dwelt on it. Mr Tucker said he had a report on the Israelis but having now looked at it I am certain I had never read it. It was an initial report dated 8 March which was inconclusive about the activities at that stage of the investigation. I have not seen nor been offered the subsequent reports on the matter.

74. The agenda note from the 25 July meeting referred to the handwritten note and the annotation as follows:¹⁴

CALL ON THE LEADER OF THE OPPOSITION

Monday 25 July 2011

Issues to be discussed this visit:

-Operation [REDACTED] *See handwritten note by Mr Goff attached. This is our agreed position in regard to the meeting on 14 March 2011.*

75. The question of whether these documents should have been considered for release under the OIA is discussed below at paragraph 88.

Other relevant context to 8 March SIR

76. Three further contextual points were also relevant to the release of the 8 March SIR but not disclosed:
- Dr Tucker had agreed at their 25 July meeting that Mr Goff had not received a “briefing as such”: the Israeli issue had been raised only in passing, as one of a large number of agenda items canvassed in a short space of time, and not dwelt upon.
 - The 8 March SIR was only a preliminary document, and that fact was material in two respects. First, and consistent with comments by Mr Goff such as that set out at paragraph 65 above, any reference to that SIR by Dr Tucker at the 14 March meeting may well have been in terms that there was little or nothing to be said at that stage.
 - The preliminary nature of the SIR and the timing of the 14 March meeting also meant that the further information concerning the Israeli issue, as disclosed in the Prime Minister’s statements on 20 July, had not been available to the Leader of the Opposition when he said (in response to the Prime Minister’s statements) that he had not been briefed. He had not received that further information, that there had been an extensive investigation that had clarified some of the matters later raised by the *Southland Times* and that had found no evidence of Israeli intelligence activity.
77. Had they been disclosed as part of the OIA release, all three points would have contributed to a more accurate explanation of what the Director had and had not done at the March meeting.

¹⁴ The same statement was also recorded on the Director’s next agenda note for his 19 September 2011 meeting with the Leader of the Opposition as part of an “[issue] discussed previous visit”.

Overall conclusions on whether information disclosed under the OIA was inaccurate, incomplete or misleading

78. The information disclosed or omitted under the OIA can be summarised as follows:

8 March SIR, including annotation

Annotation incorrect:

- “read by” meant at most “read first page” and/or “shown first page”;
- “discussed with” meant briefly mentioned by Director without response; and
- no reference to contradiction by Leader of the Opposition or accepted plausible grounds for that contradiction.

Potentially misleading, because only a preliminary paper, which did not contain conclusions or other details as released by PM on 20 July, and not a “briefing as such”.

14 March agenda note

Misleading because of:

- unexplained retention of irrelevant passages;
- related lack of explanation that Israeli issue one of numerous topics raised in a few minutes; and
- lack of necessary context to understand the nature of the document.

8 April agenda note

Misleading, as above and also because record of “issues discussed at previous meeting” not in fact a record of that.

25 July meeting note, including annotation, and 25 July typed agenda note (not disclosed)

Omission meant that OIA response was incomplete:

- Both documents were a record of the 14 March meeting;
- The meeting note was an acknowledgement of the Israeli issue having been raised and recorded Mr Goff’s statement that he had not read the SIR; and
- The events of the 25 July meeting were necessary context.

79. I have found the redactions to be objectively misleading. The reasons given by the NZSIS staff for the redactions are discussed below at paragraphs 100-106. The reasons for the

other shortcomings, which largely turn upon information and actions known only to the Director, are discussed in the following section.

Decision to release the redacted documents

80. Other than the annotations on the Director's printed copy of Mr Slater's request and drafts of the OIA response, NZSIS did not have a contemporaneous record of the process followed or reasoning relied upon in the decision to release the redacted documents. I would have expected such a record, given the significance of the decision.
81. The Director reached his initial view that redacted copies of the three documents should be released because the fact of the briefing to the Leader of the Opposition on the Israeli investigation was in the public domain following the media statements by the Leader of the Opposition and the Prime Minister, noted at paragraph 41 above. For that reason, he concluded the documents could not be withheld. It is possible, but could not be confirmed, that the Director reached that view following discussion with the DGC on the morning the request was received (26 July). The Director was then out of Wellington on NZSIS business for the remainder of the day.
82. Later on that day, the request was discussed between the DDRC and the DGC. The DGC amended the draft response forwarded by the OIA Officer to provide for release of the three documents. The three documents themselves, which had been retrieved by staff in the Director's office, were provided to the DGC. The DGC made the decision about how the documents were to be redacted (see paragraphs 100-105 below) and the physical removal of redacted passages from the documents and the marking of the redacted documents as declassified was undertaken by the OIA Officer.
83. The draft response, as amended by the DGC, and the redacted documents were considered by the Director on the morning of 27 July. The Director believed that, as the response had been completed, it should be released immediately. He briefly mentioned the request and his intention to release the response immediately at a scheduled meeting with DPMC and then notified the Leader of the Opposition and Mr de Joux by phone. The Leader of the Opposition expressed a number of concerns about the proposed release and asked first for a copy of the proposed release, which the Director declined to provide, and then for a few days in which to seek advice, to which the Director agreed: see paragraphs 95-99. The response was then posted to Mr Slater on 2 August and received by him on 4 August. A copy of the release was also urgently requested under the OIA by the Leader of the Opposition and was provided to him, with a further copy provided to PMO, on 1 August.
84. There were some concerns expressed within the NZSIS over aspects of the release to Mr Slater:
- On becoming aware of the Director's initial view that the documents should be released, the OIA Officer expressed two concerns about release, commenting to the DGC and the DDROC by email that:

"... it would set a precedent that we might not wish to follow in many cases, and would need to be run past Mr Goff."

There was no response to the email. It appears it was simply overlooked by DDROC, but DGC dismissed the concerns as unduly conservative and believed that consultation with Mr Goff would not have been politically neutral.

- The DDRC expressed some concern that the speed of the preparation of the response might be perceived as not politically neutral. However, the DGC indicated that, in her view, the NZSIS should continue to process the request (given progress was already advanced), regardless of the potential political outcomes as this was the best way to stay truly neutral.
- The DGC advised against also publishing the release on the NZSIS website, as occurred for some high profile OIA releases. The DGC considered that such publication was inappropriate in this instance because of the political nature of the controversy.
- The Director himself was uncertain about the process to follow with the Leader of the Opposition. In particular (see paragraphs 92-99 below), the Director did not recognise that he was obliged to consult Mr Goff about the proposed release, rather than simply notify him. For that reason, when Mr Goff requested some delay in the OIA process to seek advice on the proposed release, the Director perceived the request as simply allowing Mr Goff some time to manage the political consequences of the release.

Identification of information relevant to requests

85. Mr Slater's request sought:

"Copies of briefing notes and/or documents given and/or shown to The Leader of the Opposition during any briefing held in March 2011 regarding Israeli nationals.

Copies of diary notes made at the time or subsequent to the March briefings to The Leader of the Opposition.

Details of any acknowledgement by The Leader of the Opposition of having read or received any of the aforementioned briefing notes and/or documents.

[and] a list of [any] documents withheld."

86. The documents released were heavily redacted copies of:

- The Director's agenda note for his meeting with the Leader of the Opposition on 14 March 2011, which listed the Israeli investigation as an issue to discuss;
- The Director's agenda note for his subsequent meeting with the Leader of the Opposition on 6 April 2011, which listed the Israeli investigation as an "[Issue] discussed previous visit"; and
- The first page of a five page NZSIS report, "Investigation into Israeli nationals in Christchurch" dated 8 March 2011 and annotated by the Director as "[r]ead by/discussed with Mr Goff 14 Mar 11."

87. It appears that these three documents were identified by the Director's office on 25 July, in his absence from the office, in order for the Director to confirm to PMO that

he had a record of having briefed Mr Goff. There was no further assessment of whether that information corresponded to the terms of Mr Slater's request or any attempt to locate, compile and consider for release all relevant information held by NZSIS.

88. The 25 July written note and the typed agenda note were not compiled or considered in the course of preparing the response to Mr Slater. Both were, however, within the scope of Mr Slater's request: the 25 July note was Mr Goff's record of that day's discussion about the March briefing and was annotated by Dr Tucker, although his evidence was that it did not in fact represent an "agreed position". These records were also not considered in relation to later requests.

89. The failure to release or even acknowledge the 25 July written note and the Director's annotation that this was an "agreed position" – which was recorded only on his own copy – was also significant because the Leader of the Opposition's public statements, later on 25 July and on 4 August, were made in terms of the position set out in the note:

"We agreed that I had not seen the document. He said that he had flicked the issue past me in the midst of other issues saying that he had not dwelt on it and there was probably nothing to it. ... I don't even recall those comments but I'm not questioning Dr Tucker's integrity in saying what he did."

90. The result of the release of the redacted documents, including the "Read by/discussed with" annotation, and the failure to release or acknowledge the position as recorded in the 25 July written note was that:

- The "Read by/discussed with" annotation was taken as accurate, even though the Director knew Mr Goff disputed having read it and there had been no discussion in the usual sense of the word; and
- Later public statements by the Leader of the Opposition, although consistent with the 25 July written note, were taken to contradict the Director and to amount to an attack on the Director's integrity: see further, paragraphs 199-201.

91. I asked the Director why the 25 July written note and the typed agenda note were not considered for disclosure:

- His evidence was that he simply did not consider the documents, while the DGC and others do not appear to have known that the 25 July note existed. Dr Tucker did comment that he would in any case have been reluctant to release the document out of concern to keep the confidence of Mr Goff, but that seems an unconvincing argument in light of two factors. First, Dr Tucker was releasing other material relating to his briefing of Mr Goff. Second, Mr Goff had in effect made the content of this note public in his press conference on 25 July.
- The Director also commented in evidence that, had he had the file copy of the 8 March written report, with his "Read by/discussed with Mr Goff" annotation, with him at the 25 July meeting with Mr Goff, he might have been firmer in saying that he thought Mr Goff had in fact read the briefing paper.

Pre-release notification to, and lack of consultation with, the Leader of the Opposition

92. The Director called the Leader of the Opposition twice on Wednesday 27 July to advise him of the forthcoming release of the redacted documents.
93. As noted above (paragraph 36), consultation in this situation was appropriate. It would have afforded some safeguard against the errors already outlined. It would also have reflected and supported the critical relationship between the Director and the Leader of the Opposition, acknowledged by the Director to be dependent upon mutual trust and confidence, under s 4AA(3) of the NZSIS Act.
94. As noted above, the NZSIS OIA Officer had expressed a view that any release of records from consultations with the Leader of the Opposition “would need to be run past” the Leader. However, DGC’s view at the time was that notification only, rather than consultation, was appropriate, because consultation with Mr Goff may have exposed the Director to allegations of political partiality or lack of neutrality. The Director’s view was that he need only inform the Leader of the Opposition of the request and response.
95. As a result, the Leader of the Opposition was told of the proposed release in two calls to him on his mobile phone on 27 July, when he was out of Wellington and away from an office. The Director told Mr Goff that he would be releasing the three documents later that day:
- The Director attempted to describe the documents concerning the March meeting that were to be released – two of which Mr Goff had never seen and the third of which he either had not seen or seen only in passing four months earlier. Mr Goff requested a copy of the information proposed to be released, but the Director declined, apparently in the belief that to provide it would be inconsistent with the OIA;
 - The Leader of the Opposition expressed significant concerns over the lack of precedent for the release of such documents, the likelihood of misinterpretation of the documents and the adverse effect of such release upon future consultation between Directors and Leaders of the Opposition. He asked the Director to delay the response for a short time to allow him to obtain his own legal advice and also to give the Director an opportunity to consider the issue further.
96. The Director appears to have regarded that request simply as a means of delaying the release and allowing Mr Goff some time to resolve the issue, although he did agree to a few days delay.
97. On 30 July, not having heard further from the Director, the Leader of the Opposition made his own urgent request for release of the information that would be provided to Mr Slater. This was provided on 1 August.
98. For the reasons already given, I consider that the Director and the DGC made an error in concluding it was not appropriate to consult the Leader of the Opposition before making a decision on the release of information. As part of that consultation:

- The Director should have offered, and should not have refused to provide, access to a copy of all of the relevant documents both in unredacted and redacted form. The attempt to describe the documents to Mr Goff on a call to his mobile phone was, patently, inadequate;
- The Director should have accepted that the Leader of the Opposition was entitled to seek advice, including taking reasonable time to do so; and
- The Director should himself have given thorough consideration to the serious points raised by Mr Goff, and possibly sought further comment and advice on the issue.

99. I note that commentators, including Mr Slater, have subsequently suggested that Mr Goff acted improperly or unlawfully in requesting that release to Mr Slater be deferred so that he could take advice. That suggestion is not correct.

The redaction of the documents

100. The documents released were heavily, but in the case of the two agenda documents, selectively redacted: see paragraphs 56 to 59.

101. The decision to retain parts of six wholly unrelated items in the redactions is also striking when compared to the redaction of the Prime Minister's equivalent briefing (see paragraph 57), which was released in response to other OIA requests only two weeks later.

102. I considered it critical to ascertain how and why the decision to retain these words in the redacted document was made. Some of the NZSIS staff involved in the release of the document said that they would have been concerned about compliance with their legal obligations under the OIA, which, in their view, provided no basis to withhold the various retained words. They considered that to do so would only result in an adverse decision by the Ombudsmen. That would not have been a valid reason:

- The words were not relevant to the request made, and could therefore be properly withheld as not within the scope of the request;
- The middle section "Issues discussed previous visit 8 November 2010" was completely redacted, yet there were words or phrases in that section that ought to have been retained on that reasoning; and
- The approach to the redaction of this document was inconsistent with that taken to the 8 March written report, which was comprehensively redacted despite being concerned wholly with the Israeli issue, and with the record of the Prime Minister's equivalent meeting, reproduced above.

103. The DGC made the decision about how the documents would be redacted. She recalled that, having concluded that there was no proper basis for withholding the documents, her overriding concern was to "do the right thing" by accurately reflecting the overall content of the 14 March meeting as far as possible. Her evidence was that she was

aware that Mr Goff had said publicly that Dr Tucker had only “flicked the issue past him” and she intended to reflect that in the redactions.

104. The DGC concluded that as many of the other agenda items as possible should be left in the redacted document, with some relevant text where possible. Her aim was to show that matters other than the Israeli investigation were discussed. “Discussed at length”, for example, was retained to show that the matters under the heading “Issues raised by LOP:” were the focus of the meeting for Mr Goff.
105. The DGC recalls that she did discuss this approach with the Director but that discussion probably did not occur until after the documents were actually redacted on 26 July. The Director could not specifically recall how the redaction decision was made, but also suggested in evidence that the intention may have been to provide context to show that there were other issues discussed.
106. That explanation is consistent with Dr Tucker’s call to Mr Goff on 27 July to notify him of the release, for which I was able to obtain a transcript. The transcript records Dr Tucker appearing to describe the redacted 14 March document:

TUCKER: There’s no subject matter. There is an outline of, you know, a query, an update, a briefing note, issues raised completely blanked-out, issues raised by you, query, what do we know, question mark and then discussed at length blanked out, so that’s all that been covered ...

GOFF: That meeting was a half hour meeting I think we had ..

TUCKER: It went a bit over that, but not a huge amount. It was a particular (sic) fulsome meeting ... discussed at length that [issue] you had raised, so that, I think adds credence to the point you’ve raised. That’s why I wanted to get that clear.

GOFF: No, that’s not how it will be interpreted at all.

8 March SIR

107. The final document was the NZSIS detailed report into the investigation into Israeli nationals in Christchurch. Of the five page report only the first page was released, in a heavily redacted form.
108. The substantive content of the report is fully redacted on national security grounds, and there was a proper basis for that redaction. There was, as a result, an appearance of inconsistency between the retention of numerous fragmentary words and phrases in the two agenda notes and the complete redaction of the report. I accept that that difference reflects the intention to use the agenda note redactions to show the overall context of the meeting, though that should have been explained.

Comment on the redactions

109. I have established that the documents in relation to Mr Slater’s OIA request were dealt with at various points by the Director and a small number of the senior staff of the NZSIS – it appears the DDRC, the DDROC, the DGC and the Head of the Director’s Office. It is clear from the documentary record that DDROC was not included or consulted on the

OIA process. The physical redaction of the documents was carried out by the OIA Officer, the DGC having decided which words to leave in and which to redact.

110. I accept that the DGC acted in good faith and did not have an improper purpose in redacting the documents as she did. I also acknowledge that her decisions were made under some time pressure and without knowledge of the full context (which was known only to the Director). Despite those factors, I do not think it was a sound or prudent approach and did not reflect good practice:

- The decisions to redact and retain particular passages in the two agenda documents were unusual and were not reflective of standard NZSIS practice under the OIA.
- The risk of misinterpretation was increased by a failure to follow good practice in redacting documents for release, under which redacted documents are annotated to show the ground(s) on which each redaction was made. Had each redaction been marked either with “s6(a) of the OIA”, or “not in scope/ not relevant”, that would have given some indication that the various extraneous words were not relevant to the request. The NZSIS OIA Officer – who did not make any decision concerning the redactions - explained that such annotation was often done for NZSIS OIA responses. The DGC accepted that it should have been done here but did not recall why it had not been.
- The reasons for, and legal advice supporting, the redaction decision was not properly documented at any time.

111. Overall, although well-intended, the redactions were, on their face, misleading. Taken together with the Director’s failure to explain the “Read by/discussed with Mr Goff” annotation on the SIR, the complete omission of reference to the 25 July handwritten note and the reference in the covering letter to Mr Slater to redactions for relevance, they led to a damaging and misleading interpretation of the information released by the NZSIS.

Failure to follow good practice

112. The coordination of the response to this OIA request by the NZSIS was poor. Important information was compartmentalised and not appropriately shared within the senior leadership. This was a high profile and politically sensitive issue. I would have expected a coordinated approach with leadership of the substantive issue assigned to a designated individual within the leadership team. A number of decisions were taken with respect to the release of the documents that departed from usual practice, particularly the decision to leave irrelevant information to provide “shape” to assist Mr Goff’s version of events. The reasons and legal advice for these decisions should have been properly documented at the time. In the end, the response to the OIA request was poorly executed, completed with undue haste, and without proper care.

Declassification

113. One of the questions for the inquiry related to the “declassification” of classified information released to Mr Slater. The documents released to him were stamped “declassified” on 26 July.
114. The use of the “declassification” stamp does not mean a decision was taken to release classified national security information. Within the NZSIS and wider New Zealand government, documents are given a national security classification in the header and footer. The classification is derived from the most classified piece of information in the document, and in some cases this may be only one or two sentences contained within a document.
115. A “declassified” marking was stamped on the documents by the NZSIS OIA officer. This is standard NZSIS practice, and can be considered akin to “Released under the Official Information Act” watermarks used by some government departments. The purpose is to provide an official NZSIS marking that the documents released were not leaked and that, despite the classified marking, no classified information remains in the documents. Based on the evidence before me, I accept that no classified information was contained in the redacted documents released to Mr Slater.
116. Accordingly, I find that the documents released to Mr Slater were not improperly declassified.

POLITICAL NEUTRALITY

117. The further question for this inquiry is whether the NZSIS acted consistently with its duty of political neutrality in dealing with the OIA requests made by Mr Slater and others and, in providing information to PMO in respect of consultations between the Director of the NZSIS and the then Leader of the Opposition.

The statutory framework

118. All public servants are required to act in the course of their duties in a politically neutral manner. Political neutrality is one of the established constitutional conventions in New Zealand.¹⁵

“Officials must perform their job professionally, without bias towards one political party or another. Employees in the state sector are expected to act in such a way that their agency maintains the confidence of its current Minister and of future Ministers. This principle is a key element of impartial conduct. It provides the basis on which officials support the continuing process of government by successive administrations”.

119. The NZSIS, while not a department of the Public Service, is part of the State services¹⁶ and the general obligation of political neutrality applies to NZSIS staff.

120. In addition to that general obligation, section 4AA of the NZSIS Act applies. Section 4AA is headed “Political Neutrality of New Zealand Security Intelligence Service” and imposes duties on both the Director and the Minister to ensure that the Service is not used for political purposes:

Political neutrality of New Zealand Security Intelligence Service

- (1) The Director must take all reasonable steps to ensure that –
 - (a) the activities of the Security Intelligence Service are limited to those that are relevant to the discharge of its functions:
 - (b) the Security Intelligence Service is kept free from any influence or consideration that is not relevant to its functions:
 - (c) the Security Intelligence Service does not take any action for the purpose of furthering or harming the interests of any political party.
- (2) The Minister may not direct the Security Intelligence Service to institute the surveillance of any person or entity or any class of person or entity within New Zealand.
- (3) The Director must consult regularly with the Leader of the Opposition for the purpose of keeping him or her informed about matters relating to security.

...

121. Section 4AA was inserted by s 4 of the New Zealand Security Intelligence Service Amendment Act (No. 2) 1999, passed with multi-party support. The Rt Hon Sir Douglas

¹⁵ Cabinet Manual, 3.51. The obligation is reflected in the *Code of Conduct for State Services*: public servants must “maintain the political neutrality required to enable us to work with current and future governments”) and in the *Political Neutrality Guidance* issued by SSC: “New Zealand’s state sector is founded on the principle of political neutrality.”

¹⁶ State Sector Act 1988, s 2.

Graham, the then Attorney-General, said in the Parliament when considering the Report of the Intelligence and Security Committee on the Amendment Bill:¹⁷

“New section 4AA is designed to highlight the political neutrality of the Security Intelligence Service. The original draft legislation stated that ‘the Security Intelligence Service is not to further the interests of any political party’. That requirement has now been widened and the director is also required to take all steps to ensure that the service does not take action for the purpose of harming any political party.

“The section also includes the requirement that the Minister may not direct the service to institute the surveillance of any person or entity or class of person or entity within New Zealand. As a further issue in political neutrality, the director is required to consult with the Leader of the Opposition, to keep him or her informed about matters relating to security. I should note that such consultation already takes place and has done for many years. The new Bill will make what is already a matter of practice a matter of law.”

122. The obligation is unique in its terms in New Zealand, although a similar obligation applies to the Government Communications Security Bureau.¹⁸ The essence of the obligation of political neutrality is that the NZSIS should not promote or damage the interests of particular political groups, use its intrusive powers to target lawful political activity, or act in a politically partisan way.
123. Section 4AA is consistent with international best practice: see for example the *Compilation of Good Practices on Legal and Institutional Frameworks for Intelligence Services and their Oversight*,¹⁹ particularly Practices 11, 12 and 13.
124. The particular requirements in s 4AA reinforce the broader principles in s 4AAA of the Act, that the NZSIS is to act independently and impartially, with integrity and professionalism and in a manner that facilitates effective democratic oversight.
125. This inquiry focused on three aspects of the political neutrality obligation:
 - The specific requirement that the Director consult regularly with the Leader of the Opposition “for the purpose of keeping him or her informed about matters relating to security”;²⁰
 - The obligation of the Director to take all reasonable steps to ensure that the Service not take any action for the purpose of furthering or harming the interests of any political party;²¹ and
 - How, in its relationship with PMO and with the Leader of the Opposition, the NZSIS did or did not safeguard its political neutrality.

¹⁷ (24 August 1999) NZPD 18744.

¹⁸ Government Communications Security Bureau Act 2003, s 8D.

¹⁹ Geneva Centre for the Democratic Control of Armed Forces (DCAF), “Report to the UN Human Rights Council by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism”, 2011 (www.dcaf.ch/content/download/73465/1123242/version/1/file/A_HRC_14_46_english.pdf).

²⁰ NZSIS Act 1969, s 4AA(3).

²¹ NZSIS Act 1969, s 4AA(1)(c).

Consultation with the Leader of the Opposition

126. Consultation between the Director and the Leader of the Opposition is an important safeguard for the work of the NZSIS as a security and intelligence agency in a free and democratic society. A bipartisan approach to security and intelligence is more likely to be maintained if leading opposition parliamentarians do not feel that they have been wholly excluded from security and intelligence matters. Australian intelligence legislation similarly includes a provision requiring the Director-General of the Australian Secret Intelligence Service to consult regularly with the Leader of the Opposition.²²
127. As the former Director noted in his evidence to this inquiry, the obligation is about keeping the Leader of the Opposition “broadly comfortable” with the competence and activities of the NZSIS. The regular meetings which are held between the Director and the Leader are a vehicle for building a relationship of trust and confidence with the Leader and his or her party as a “government in waiting.”²³
128. Such consultation serves three important purposes:
- A direct check against any misuse of the considerable powers and resources of the NZSIS;
 - Maintenance of the principle that matters of national security should, so far as possible and appropriate, be non-partisan; and
 - Political accountability in security and intelligence matters (along with oversight by responsible Ministers and by the Intelligence and Security Committee).
129. These purposes are also reflected in the special status of the Leader of the Opposition in other intelligence and security matters. He or she is always a member of the Intelligence and Security Committee.²⁴ The Leader of the Opposition must also be advised by the Prime Minister and the Attorney-General whenever an entity has been or is to be designated as a terrorist entity and must, if he or she requests it, be briefed on the factual basis for the designation.²⁵
130. The Director’s obligation to consult regularly with the Leader of the Opposition requires more than the mere provision of information or briefing by the Director: there must be a genuine openness on the Director’s part to engage with questions or concerns that he or she may have. The effective discharge of the obligation of consultation is also dependent upon the maintenance by the Director of a relationship of trust, confidence and candour. Mutual trust and confidence is important so that the Director can disclose very sensitive information and so that the Leader of the Opposition feels able to raise all matters of potential concern and to discuss those matters candidly. It is important for the Director to recognise the inherent imbalance between him or herself and the Leader of the Opposition: the Leader of the Opposition does not know the full range of national security matters and is dependent upon the Director to identify those issues. More concretely, the Leader of the Opposition does not keep or have access to any record of

²² Intelligence Services Act 2001 (Aust), s 19.

²³ McGee, “Parliamentary Practice in New Zealand” (3rd Edition, Government Printer, Wellington), p 85.

²⁴ Intelligence and Security Committee Act 1996, s 7(1)(b).

²⁵ Terrorism Suppression Act 2002, s 20(5).

briefings or have access to independent expert advice, but must depend upon the Director for both.

131. The result is that the obligation to consult, together with the overarching s 4AA(1) obligation on the Director to take all reasonable steps to maintain political neutrality, entails more than restraint on the part of the Director from politically partisan actions or mechanical even-handedness. As the former Director accepted in evidence, those obligations will on occasion require the Director to take some positive and independent steps to ensure that the consultative relationship, and the wider neutrality of the NZSIS, is maintained.

Director/Leader of the Opposition consultation in practice

132. There is no express policy or formal description of the practice of consultation in this context and there is next to no commentary or other public information on how it works in practice. However, the evidence given by those involved in the events in issue in this inquiry, together with meeting records held by NZSIS, indicate that at that time:

- Consultation meetings occurred, on average, every two-to-three months. The meetings were sometimes general briefings, sometimes about specific issues and could be arranged at short notice where necessary, for example where there was a particularly pressing issue that could not wait or a particular issue that required more time. Meetings were usually arranged at the Director's initiative but could also be convened at the request of the Leader of the Opposition or by referral by the Prime Minister, should the Prime Minister consider that a particular issue warranted consultation.
- Meetings usually covered a number of issues identified by the Director, together with any additional issues raised by the Leader of the Opposition. Leaving aside issues raised by the Leader of the Opposition or referred by the Prime Minister, the identification of issues by the Director was based upon the Director's assessment of whether an issue was potentially controversial or otherwise significant.
- Meetings were usually attended only by the Director and the Leader of the Opposition. The Director was on occasion accompanied by relevant NZSIS staff where specialist knowledge was required. Meetings were usually a half hour long.
- An agenda note and supporting documents were brought to each meeting by the Director. The agenda comprised issues to be discussed together with a record of issues discussed at the previous meeting. A short record of any additional issues raised by the Leader of the Opposition was added afterwards by the Director and the Director also, on occasion, annotated copies of supporting documents after the meeting as a record of discussion. The Director's office maintained a dedicated file, with very limited access within NZSIS, for all records of meetings with the Leader of the Opposition.

- Because of the security classification of material covered in meetings and the unavailability of any appropriately secure storage, the Leader of the Opposition was not permitted to take notes or retain any other record. Neither the agenda, the added record of issues raised nor any supporting documents or annotations were provided before or after meetings. The Director sometimes provided a copy of a supporting document for the Leader of the Opposition to read at the meeting. The agenda was not shown to the Leader of the Opposition.
133. There also appears to have been mutual acceptance by the then Director and the then Leader of the Opposition that either could contact the other informally if warranted.
134. Both Dr Tucker and Mr Goff saw consultation with the Leader of the Opposition as promoting the bipartisan and/or apolitical nature of NZSIS matters in two particular respects, beyond those already noted:
- Consultation ensured that the Leader of the Opposition was aware of potentially controversial or otherwise sensitive issues and adequately informed about them, so that the confidentiality of NZSIS matters did not lead to undue controversy or speculation by the Opposition; and
 - Consultation ensured that in the event of the Leader of the Opposition becoming Prime Minister, he or she would already be engaged with critical NZSIS matters.
135. The then Director and the then Leader of the Opposition both indicated that they saw the discussion in such meetings as confidential, not only because of the classified nature of the matters covered, but also because they recognised that the relationship required mutual trust and confidence.
136. Following the events considered in this inquiry, consultation meetings changed in two respects.
- First, NZSIS instituted a practice of annotating the agenda document itself to record whether issues had or had not been discussed (this was the practice that was already followed at the Director's meetings with the Prime Minister). It was also suggested that the Leader of the Opposition should be asked to countersign the agenda document, but it is not clear whether that suggestion was ever taken up.
 - Second, at the request of Mr Goff, with the agreement of NZSIS, the Leader of the Opposition was thereafter accompanied by a second senior opposition MP.

Wider structure and content of the relationship between NZSIS and PMO

137. Before considering specific issues relating to political neutrality, it is necessary to set out the wider structure of the relationship between NZSIS and PMO. The primary point of contact between the Director and the NZSIS and the Prime Minister at relevant times was Philip de Joux, the Prime Minister's Deputy Chief of Staff. His primary employment relationship was with the Department of Internal Affairs as a political adviser to the Prime Minister, but he was also employed by the Parliamentary Service to cover his

work on Leader's Office matters. Mr de Joux effectively also had a third role as the staff liaison between the NZSIS and the Prime Minister.

138. The nature of the relationship between PMO staff and the Director and other responsible NZSIS staff changed with the change of government in 2008-2009. Under previous administrations, the relationship between the NZSIS and the Prime Minister was conducted almost exclusively between the Prime Minister and the Director, with very little involvement by officials or advisers. After the change of government, the contact between the Service and the Prime Minister's Office became more diffuse and Service staff engaged directly with political advisers in PMO.
139. This was a significant change, but there was no guidance given to Mr de Joux or other PMO staff concerning their interactions with the NZSIS, other than a brief induction for the specialist press staff, or to the Director and NZSIS staff concerning their interaction with PMO. It appears that, in general, there was only infrequent contact.
140. There was no departmental secondee from the NZSIS or the GCSB in the Prime Minister's office or in DPMC before or after the change of government.

Status of personal appointees/political advisers

141. Personal appointees in Ministers' offices generally have a primary employment relationship with the Ministerial Services branch of the Department of Internal Affairs under the State Sector Act 1988, but may also, in the case of staff in the Prime Minister's office, have an employment relationship with the Parliamentary Service to cover, for example, work in the Leader's Office. The personal appointee is not subject to the direction of the Secretary of Internal Affairs, as a departmental secondee in a Minister's office is subject to the direction of that department's chief executive. Nor is the personal appointee subject to the principles of loyalty, neutrality and anonymity as the secondee is. The personal appointee works directly to the commands of the Minister, either as a special policy adviser or as a political adviser and agent or both.²⁶
142. The important role that personal appointees play is recognised in the Cabinet Manual, which also emphasises the importance of the Minister and the chief executive establishing a clear understanding to ensure that departmental officials know the extent of the political advisers' authority.²⁷ New Zealand does not have written guidance for officials and political advisers on this question, unlike the United Kingdom where there is a Code of Conduct for Special Advisers.²⁸ That Code sets out the kind of work special advisers may do if their minister wants it, and their relationship with the permanent Civil Service, including that special advisers must not ask civil servants to do anything that is inconsistent with their obligations under the *Civil Service Code*.
143. The distinct role and status of political advisers in this instance had three material consequences:

²⁶ Colin James, *The Tie that Binds: The Relationship between Ministers and Chief Executives*, Institute of Policy Studies & the New Zealand Centre for Public Law, 2002, at p 60.

²⁷ *Cabinet Manual 2008*, 3.19 & 3.20.

²⁸ Cabinet Office, June 2010, made pursuant to the Constitutional Reform and Governance Act 2012 (ss 8 & 15) (www.gov.uk/government/publications/special-advisers-code-of-conduct). The Code includes, eg that special advisers "...should not, without authority, disclose official information..."

- First, Mr de Joux was not – and would not have been expected to be – politically neutral.
- Second, as part of his role as Deputy Chief of Staff, Mr de Joux was involved in the media work of PMO, as was Mr Ede, who was also a political adviser. Consistent with those roles, Mr de Joux and Mr Ede treated information that they were given as available for release for political purposes unless they had been advised otherwise. This was contrary to the assumption by NZSIS that the information that it provided would be held in confidence unless expressly approved for release. There is evidence that, during this period, Mr de Joux did receive at least one classified briefing, for which he held the necessary security clearance, understood that he could not disclose that information and did not disclose it. In respect of the particular information in issue here - the 22 July confirmation that the Leader of the Opposition had been briefed on the Israeli issue and the description of the records said to substantiate that confirmation – NZSIS did not indicate that the information was classified or otherwise should not be released. In fact, NZSIS did not consider it classified information.
- As a result, neither Mr de Joux nor Mr Ede acted inconsistently with any obligation to the NZSIS when Mr Ede disclosed this information to Mr Slater for political purposes after being told it by Mr de Joux.

144. The events in issue in this inquiry do, however, demonstrate the lack of any steps by the NZSIS to ensure that its reporting relationship to the Prime Minister was consistent both with the requirements of security and with its obligations of political neutrality. In particular:

- Leaving aside specific classified briefings, the NZSIS did not communicate to PMO its overall expectations as to the confidentiality of information that it provided; and
- The Director and the other responsible NZSIS officials did not appear to appreciate that Mr de Joux had a political role that could, potentially, create some difficulty in maintaining political neutrality (as for instance in his 27 July conversation with the Director, at paragraphs 193-194).

Comment on NZSIS/PMO current arrangements

145. Liaison between NZSIS and PMO is still managed, on behalf of PMO, by a senior member of the Prime Minister's staff. There is now greater clarity about what PMO can and cannot do with information provided by the Service. The evidence before me was that the relationship is managed carefully and, in a day to day sense, has worked well to ensure that NZSIS has a single identified point of contact and the Prime Minister has a consistent and experienced conduit for information and advice from both NZSIS and the GCSB.

146. Three wider changes have occurred since 2011. First, the New Zealand Intelligence Community (NZIC) now operates in a more coordinated fashion. Second, the role of the DPMC within the NZIC has been enhanced, with the appointment of a Deputy Chief

Executive Department of the Prime Minister and Cabinet, Security and Intelligence (DCE). The DCE, and the Security and Intelligence Group he heads, provide leadership on strategies, policies and operations for strengthening national security and provide a degree of coordination and liaison between PMO and the intelligence and security agencies. The DCE is also available as a sounding board for both Directors, including in relation to OIA requests. Third, after the commencement of this inquiry, the Prime Minister created a new ministerial portfolio called the Minister for National Security and Intelligence. The Prime Minister has assumed that portfolio and the Hon Christopher Finlayson MP has become the Minister in Charge of the New Zealand Security Intelligence Service and Minister Responsible for the Government Communications Security Bureau.

147. Although the current arrangement between NZSIS and PMO appears to work satisfactorily, without more structure and guidance it still leaves the PMO (or other ministerial office) staff member and NZSIS officers in a potentially vulnerable position.
148. In addition to documenting a protocol which clarifies the respective responsibilities and authorities of NZSIS and PMO/Minister's Office staff, I have recommended that NZSIS consult with the Government Communications Security Bureau about appointing a departmental adviser or advisers (to represent the Intelligence Community) to the Minister's office and/or located in the Policy Advisory Group (PAG) within DPMC, possibly co-located there with the adviser from the Ministry of Foreign Affairs and Trade.
149. The number and location of such advisers will need to reflect the new ministerial responsibilities. The creation of this position or positions would have a number of potential benefits: it would ensure greater clarity about the respective roles of NZSIS and the Minister's office; provide a technically expert and politically neutral link between Ministers and the NZIC; provide a development opportunity for NZIC staff and, over time, create a layer of staff within the NZIC with broader experience of the public sector and the political environment. It would also support the NZIC's plan to develop one coordinated workforce.

14 March briefing and subsequent events

150. I have set out the events of the 14 March 2011 meeting, including findings on the question of whether and to what extent the Israeli issue was discussed in the previous section.

July 20-22 briefings in response to allegations of Israeli intelligence activity in the Southland Times

151. Following the publication of the *Southland Times* article on 20 July, NZSIS worked with officials of several other agencies and staff of the PMO to provide several substantive briefings to the Prime Minister and PMO staff in response to that article.
152. Despite the high level of public controversy, there was no consideration of whether the Leader of the Opposition should receive a briefing at that time and none was given. The NZSIS staff interviewed during this inquiry were also unaware of the statement made by

Mr Goff later on 20 July that he had not received any briefing on the issue until that statement was raised by PMO on the afternoon of 22 July.

July 22 queries by PMO/Prime Minister concerning briefings to the Leader of the Opposition

153. The question of whether the Leader of the Opposition was briefed was raised by PMO with the DDROC on the afternoon of Friday 22 July and then by the Prime Minister directly with the Director later that day.
154. Following a detailed briefing on 22 July, Mr de Joux contacted DDROC to note Mr Goff's public statement that he had not been briefed on the alleged Israeli intelligence activity and to ask whether any briefing had taken place and, if so, whether there was a record of it.
155. The DDROC asked NZSIS staff to retrieve the relevant file and located at least one document that appeared to indicate that such a briefing had occurred in March. However, the DDROC was concerned that the question was potentially political in nature and raised it with the Acting Director. The DDROC and the Acting Director decided to call the Director, who had returned from overseas and was on leave at home. The Director decided that because Mr de Joux was asking a factual question on behalf of the Prime Minister, it was appropriate for NZSIS to answer that question.
156. The DDROC then conveyed the available information to Mr de Joux, explaining in response to several questions from him that there had been a briefing given and that there was a written record to that effect. The date and overall format of the written record was explained to Mr de Joux either at this time or in a telephone conversation between Mr de Joux and the Director on Monday 25 July.
157. The Prime Minister, who was travelling overseas on official business, later spoke to the Director by telephone and asked whether the Leader of the Opposition had received a briefing. The Director said that he had received the same briefing as the Prime Minister.
158. Neither the DDROC nor the Director gave any indication to PMO or to the Prime Minister as to whether the information about the briefing could be publicly disclosed. There was also no indication given that the question raised an issue of political neutrality or possible sensitivity. The Prime Minister later stated in a television interview, broadcast on 24 July, that the Director had told him that the Leader of the Opposition had been briefed and had been "shown the same note and report" as the Prime Minister.
159. In evidence before me the DDROC said he expected that any information provided by NZSIS to Mr de Joux would be treated in confidence and would not be publicly disclosed without first being discussed with NZSIS. Other NZSIS officials, including DDRC and DGC, expressed similar expectations about information provided by NZSIS. It was accepted, however, that NZSIS had not explained that to PMO either at this time or at any time before. The Director said that he was "taken aback" by the Prime Minister's statement, but he explained that was not because the information was classified but because he saw the statement as continuing a public controversy over the issue.

160. There was no consideration by NZSIS of whether the Leader of the Opposition should be told of the query or of the response given by NZSIS. Mr Goff became aware that NZSIS had briefed the Prime Minister and PMO only through the Prime Minister's statement in the television interview.

July 25 meeting between the Director and the Leader of the Opposition

161. The Leader of the Opposition contacted the Director shortly after the broadcast of the Prime Minister's statement on 24 July and the Director arranged a meeting for the morning of Monday 25 July. Mr Goff's written note of the meeting is set out above at paragraph 73.

162. In evidence to this inquiry, Dr Tucker explained that he believed that the 25 July meeting had broadly resolved the controversy. Dr Tucker also described the willingness of the Leader of the Opposition to prepare and provide the written note as reflecting that resolution. He also said, however, that he had not had the annotated SIR with him at the time of the meeting and that, had he done so, he might have been "firmer" with Mr Goff about whether the latter had read the SIR.

163. Mr Goff proceeded to give a press conference in the course of which he set out the conclusions that he had reached with Dr Tucker, including the following comments:

Q: ... were you briefed about the Israeli nationals issue?

GOFF: No, not as such. It was alleged by Mr Key that I had received a document. I called Mr Tucker in this morning to raise questions about that. ... He said that he had flicked the issue past me and mentioned it in passing but there wasn't much to it. I don't recall that comment but I am not questioning his integrity in saying that. But there was no briefing per se. ...

Q: Mr Tucker obviously briefed the Prime Minister and told him that you had been briefed on this issue. Was he simply mistaken in your opinion?

GOFF: ... We agreed that I had not seen the document. He said that he had flicked the issue past me in the midst of other issues, ... he had not dwelt on it and said that there was nothing to it. I don't even recall those comments but I'm not questioning Mr Tucker's integrity in saying what he did.

164. In evidence before me Dr Tucker agreed that Mr Goff's remarks at the press conference were consistent, other than in some limited passages, with the conclusions reached at the meeting.

165. However, in submissions to this inquiry on the draft report, Dr Tucker sought to clarify the meaning of both his annotation and the note:

- He explained that, although he had annotated the 25 July meeting note as an "agreed position", that annotation did not mean that he accepted Mr Goff's statement that he had not read the 8 March SIR. Instead, Dr Tucker explained that he maintained his belief that Mr Goff had read the first page of the SIR and that he had agreed only with Mr Goff's statement that Dr Tucker "flicked" the

issue past him. The meeting and the note were only an “agreement to disagree”; and

- Dr Tucker suggested that the note was a document prepared by Mr Goff for his own purposes, rather than reflecting an overall resolution.

166. This was not entirely consistent with Dr Tucker’s earlier description of the 25 July meeting and the note as having resolved the controversy with Mr Goff. That said, I accept that Dr Tucker made his annotation on the note and the typed agenda note for his own purpose, not anticipating publication of it to others.

167. As to Dr Tucker’s obligations under s 4AA:

- As set out above, it is unclear whether Dr Tucker did seek to reach or did in fact reach a mutually acceptable resolution of the controversy at the 25 July meeting. If he did so, that effort was consistent with the obligations and purpose of s 4AA;
- The willingness of the Leader of the Opposition to make a public statement that he accepted Dr Tucker’s word that the Israeli issue had been raised was consistent with the purpose of s 4AA;
- In making that and other public statements, the Leader of the Opposition was reliant upon Dr Tucker’s advice and acceptance. Mr Goff made numerous and detailed references to points as set out in the handwritten note – including the statements positive to Dr Tucker – and which he described as having been accepted by Dr Tucker. Mr Goff had told Dr Tucker at the meeting that he was intending to make media comment immediately afterwards. Mr Goff would not have made such statements had he thought that Dr Tucker might later contradict them either publicly or in his advice to PMO; but
- Dr Tucker did not disclose to PMO that there had been any level of agreement at the 25 July meeting or that Mr Goff had made his public statements in reliance on his note prepared at that meeting, despite having annotated that note as stating – even if only in part – an agreed position.

Discussions between the Director and DPMC officials, 25 July

168. The Director discussed the question of the March briefing with DPMC on two occasions. He spoke to Roy Ferguson, the Director of the Intelligence Coordination Group, on 25 July shortly before his meeting with Mr Goff. In that conversation, Dr Tucker advised that he was to meet with Mr Goff in response to Mr Goff’s query sent the previous day. Dr Tucker indicated to Mr Ferguson that it could well have been that Mr Goff had not registered the Israeli issue because of the other issues under discussion and the “low key” nature of the information available at that time. Dr Tucker did not seek any advice from DPMC and none was given.

25 July discussions between the Director/NZSIS and PMO officials

169. Dr Tucker spoke to Mr de Joux by telephone three times on 25 July. In the first call, Dr Tucker advised Mr de Joux of the meeting he was about to have with Mr Goff. Mr de

Joux sought confirmation that Mr Goff had seen the 8 March SIR, and explained that he had checked that point repeatedly with NZSIS staff on 22 July. Dr Tucker confirmed that point.

170. Dr Tucker indicated to Mr de Joux that he didn't know what they would do if Mr Goff did not accept that he had received a briefing, including the March SIR and that it might well be that he, Dr Tucker, would simply have to "wear" the allegation. Mr de Joux told Dr Tucker that because there was a written record of the briefing having occurred and because it was a matter of Dr Tucker's statutory responsibility, PMO and/or the Prime Minister would not let that happen.
171. Dr Tucker indicated that he did not propose to make any media comment, and Mr de Joux commented that they would need to work through how to handle media issues. Mr de Joux asked for an update following the meeting with Mr Goff. Mr de Joux also expressed concern over the Director's intention to release the information immediately but stressed to Dr Tucker that that was his decision.
172. The second and third conversations followed Mr Goff's press conference, as noted at paragraph 65 above, and Mr de Joux forwarded an audio recording of the press conference to Dr Tucker. While neither Dr Tucker nor Mr de Joux could recall the content of these conversations in any detail, Dr Tucker believes that there would have been some thorough discussion of Mr Goff's remarks and accepted that there was an apparent inconsistency between the response that he and NZSIS had provided to PMO and the Prime Minister on Friday 22 July and the remarks by Mr Goff. He did not, however, mention any agreement or resolution reached with Mr Goff at the 25 July meeting or explain that Mr Goff had made some of his remarks on the basis of that resolution.

Mr Slater's 26 July OIA request and political neutrality

173. The question of whether the NZSIS complied with its duty of political neutrality under s 4AA and with the s4AAA principles raises issues of both the content of the information disclosed and the process followed by the Director and the NZSIS in making that disclosure.
174. The serious shortcomings in the identification, redaction and release of information by the NZSIS are described in the previous section on the Official Information Act requests.
175. The process followed in receiving and responding to Mr Slater's request is also discussed in detail in that section. Several aspects of that process raise questions in respect of political neutrality.
176. As already noted, management of the Israeli issue and the OIA was poorly coordinated and unnecessarily compartmentalised, with no one senior NZSIS officer having responsibility or knowledge of the issues as a whole.
177. As a result, the Director acted with only very limited advice, given in haste and without senior staff having all relevant information. The DGC provided legal advice to the Director and also had specific responsibility for the OIA response, but the Director had not advised her of the outcome of his meeting with the Leader of the Opposition only

the day before, the existence of the handwritten note and the Director's annotation on it or any of the other additional information outlined above. Her advice and the work on the OIA response were undermined by that omitted information.

178. As discussed more fully at paragraphs 54 and 81, the Director almost immediately gave his preliminary view that the request should be granted and the response was then finalised within the next 24 hours.
179. The Director was, unavoidably, making a decision in his own case: the suggestion by the Leader of the Opposition that he had not been briefed reflected on the Director's discharge of his duties and was also viewed by the Director as a personal criticism of his own honesty and integrity. Properly informed and considered advice from senior NZSIS staff, or external sources, would have given the Director greater assurance and perspective.
180. The Director and DGC were acutely aware of their obligation of political neutrality but took a formal and restrictive approach to what it required of them. There was a failure to recognise that the OIA response could damage the political neutrality of the NZSIS and so to take appropriate additional steps to manage that risk. The OIA Officer, the DDROC and the Leader of the Opposition all raised concerns that the release of documents from meetings with the Leader of the Opposition was unprecedented and/or could cause lasting difficulties. Despite those warnings and the obvious gravity of the issue, the obligations and the risks involved were not adequately considered.
181. Similarly, while it was recognised that the speed of the response might itself create a perception of partiality, there was no effort to address that perception or any recognition that it was inconsistent with the refusal to respond to materially identical requests made by numerous media organisations.
182. A further issue of potential concern from the perspective of political neutrality was Mr Slater's own political motivation. Several NZSIS staff were aware of Mr Slater's work as a prominent political blogger, although both the Director and the DDROC, who had responsibility for the communications team, were not. Nor was the DGC at the time she drafted the response to Mr Slater. The Director was given some indication of Mr Slater's work in internal discussion of Mr Slater's OIA request on 26-27 July and a fuller indication, and expression of concern, by the Leader of the Opposition on 27 July.
183. While Mr Slater's identity was not relevant to the question of whether information should be released to him, it should have led to some consideration of how that released information would be presented by others. At the very least, NZSIS should have recognised that the provision of information to Mr Slater at the same time that news media requests were being denied outright would be readily perceived as partisan.
184. These issues were not addressed further and no one within the NZSIS appears to have considered how Mr Slater would present the information disclosed to him or to have registered, once it was disclosed, how that information was interpreted.

Director's notification to DPMC

185. In a meeting on 27 July (called for another purpose) with Maarten Wevers (now Sir Maarten), the then Chief Executive of DPMC, and Mr Ferguson, Dr Tucker mentioned Mr Slater's OIA request and indicated his intention to respond to the request expeditiously. The request was not discussed in any detail. Dr Tucker did not specifically seek any advice, but explained to me that he was confident that Mr Wevers and Mr Ferguson would have taken his reference to the request as an opportunity to raise any objection or concern. Dr Tucker inferred that they agreed with his intention to respond to the request expeditiously.

Discussions with the Leader of the Opposition arising from Mr Slater's OIA request, 27 July

186. On 27 July, as discussed above at paragraphs 92-99, the Director called the Leader of the Opposition to inform him of the OIA request by Mr Slater and the response by NZSIS. The issue of political neutrality arises in respect of four aspects of that discussion.
187. First, the discussions proceeded on the assumption by the Director that he need only inform the Leader of the Opposition of the request and response. Further, the Director does not appear to have considered there to be any material question under s 4AA.
188. Second, as detailed at paragraphs 92-99 above, the Director engaged with the Leader of the Opposition in a functionally inadequate way.
189. Third, the Director indicated to the Leader of the Opposition that he understood Mr Slater to be a "private individual" and, while Mr Goff explained that Mr Slater was a prolific and politically active blogger who was pursuing the issue for a political purpose, the Director did not act on that information. If he had done so:
- it would have indicated that Mr Slater was either part of or closely engaged with the news media, and that would have been a further cause to question the differential treatment of media inquiries and Mr Slater's request;
 - the knowledge that Mr Slater was likely to be pursuing political purposes would have provided a further cause to question whether he and/or the NZSIS might need to take steps to maintain the political neutrality of the NZSIS.
190. The Director ought then to have recognised that it would not be consistent with political neutrality to give Mr Slater what was in effect an exclusive story while denying a large number of parallel news media requests.
191. The Director ought also to have responded to the Leader of the Opposition's concern that the information to be released would be misinterpreted. The Director said that he thought at the time that Mr Goff's concern was "fanciful". That was not a sound conclusion when the information is considered objectively. Dr Tucker did not check the point after the conversation or ask any of his staff to do so. No advice or further inquiry – such as reading the blog posts that Mr Slater had already made in respect of Mr Goff – was made.

192. Finally, the Leader of the Opposition raised the concern that the disclosure of details of a meeting between himself and the Director would be without precedent and, given the differences in their recollections of that meeting, would be damaging both specifically and to the overall practice of such meetings. This was not considered further in any way by the Director, despite the obvious gravity of the issue.

Further discussion with PMO

193. Following his conversation with the Leader of the Opposition, the Director advised Mr de Joux of the delay in the OIA release to Mr Slater and went on to discuss the wider context of that release. I was able to obtain a transcript of that conversation:

TUCKER: [Mr Goff] said 'Can I have a few days, please, to think about it?' I said, 'Well, I could give you a couple of days' ...

DE JOUX: Look, Warren, I think we should give him some space.

TUCKER: Well, what I said was ... 'I wouldn't want to leave it much beyond about close of play Monday, but let's do that. I'll hold it until then.' So, I've agreed to do that, I wanted to inform you about that.

DE JOUX: Ok.

TUCKER: ... He's going to consult with his own team. I think what it does mean, though, is that he is clearly very nervous about where this puts him.

DE JOUX: Well, he shouldn't have lied.

TUCKER: No, no, I know, but now he's in a hole. Anyway, but what it does mean is he will call off the Annette Kings and Marian Streets ... (sic)

DE JOUX: He's going to have to.

TUCKER: And he won't be using it politically in the House, either – parliamentary questions – so, I think, part of his you know, can I have a few days please, gives him order to, sort of, reign (sic) in his own ...

DE JOUX: Absolutely but he will have wider problems.

TUCKER: Yeah, he will in terms of overall credibility. ... But anyway, I have agreed to hold it till Monday, and if he still needs another day or two, I will do that, but I don't want to leave it ... Are you happy with that?

DE JOUX: Yeah, I am happy with that.

TUCKER: Very good. Thanks, Phil.

194. I have discussed the specific point of the delay above at paragraphs 95-99. Two further significant points arise from the standpoint of political neutrality:

- Again, the Director did not mention the apparent resolution at the 25 July meeting with Mr Goff or that Mr Goff's public remarks were consistent with the outcome of that meeting. He also did not contradict Mr de Joux's description of Mr Goff as having "lied". The published comments by Maryan Street MP, to which Dr Tucker refers, were also consistent with the outcome of the 25 July

meeting, including comments that she too did not question Dr Tucker's word that the Israeli issue had been raised at the 14 March meeting.

- Dr Tucker went on to comment specifically that Mr Goff would have problems "in terms of wider credibility", that he would now be unable to pursue the Israeli point in the House and that he would need to "call off" and "rein in" Ms Street and the Hon Annette King MP.

195. I address the appropriateness of these remarks at paragraph 247.

Engagement between NZSIS and PMO following OIA release

196. Similar issues arise in the further engagement between NZSIS and PMO in the aftermath of the release of documents to Mr Slater on 4 August.

197. Mr Slater's initial blog posts following his receipt of the OIA request prompted the Leader of the Opposition to issue a preemptive press release early on the afternoon of 4 August, in which he stated that the indication in the documents that he had read the written SIR document at the March meeting was wrong.

198. The Director indicated in evidence that he had seen that press release as an escalation of Mr Goff's earlier position and as a personal criticism. However, the press release (see above at paragraph 65) was in large part consistent with the outcome as understood by Mr Goff following the 25 July meeting and as publicly stated by him in his press conference after that meeting.

199. The discussion by the Director and also by the DDROC, acting at the Director's request, of press remarks by the Prime Minister and the Deputy Prime Minister also reflected the Director's perception that Mr Goff was personally criticizing him. The Deputy Prime Minister, following the advice provided by NZSIS, commented that he thought that:

"the Leader of the Opposition is going too far in questioning the integrity of a senior and respected civil servant ... If you were given the choice, I think you would take a senior civil servant ... a man of integrity, I'd believe him."

200. The DDROC discussed that comment with Mr de Joux, as follows:

DDROC: ... is the PM gonna come out in support of Warren, or is what Mr English has said [it]?

DE JOUX: I understand the PM has done media ... he has done TV3 ... So yeah, Bill [English] has done that on the House run. That will be what most media use ... And I would have thought ... I had a chat to Warren before and he wants ... the word integrity to be in, and I would thought that line ... 'senior civil servant ... a man of integrity. I believe him.'

DDROC: ...That's lovely. That's really good. Ok – that's great. Thanks.

201. The Director had released the annotated SIR without any explanation or qualification even though the annotation was accepted by him to be at least partly incorrect and there was a reasonable basis on which the Leader of the Opposition could describe it as entirely incorrect. The Director nonetheless characterised Mr Goff's criticism as a

matter of personal integrity and credibility and advised PMO accordingly, leading to statements in those terms by the Deputy Prime Minister and the Prime Minister.

Was the information provided to PMO and/or to the Prime Minister inaccurate, incomplete or misleading and, if so, why?

202. The further information provided to the Prime Minister and to PMO can be summarised and described as follows:

Date	Source and recipient	Summary of information provided/disclosed	Whether inaccurate, incomplete or misleading
22 July	DDROC to PMO (with Director approval)	Advice that NZSIS had a document that recorded the LO having been briefed in their 14 March meeting	Unintentionally inaccurate: advice was based on literal wording of agenda notes and/or annotated SIR in Director's file, reviewed while Director on leave.
	Director to PM	Advice that LO "received the same briefing" as PM	No , but open to misinterpretation because of lack of context – see paragraphs 62 and 67-68.
25 July	Director to PMO (prior to meeting with LO)	Advice that NZSIS had a document that recorded the LO having been briefed in their 14 March meeting	Unintentionally inaccurate: advice based on 22 July statement (see above) and given before retrieving and reviewed Director's file and discussion with LO.
	Director to PMO (following meeting with LO and LO press statements)	Advice that: - LO had been given an NZSIS report ("the 8 March SIR") and had held it while the Director spoke to it at the 14 March meeting; and - The LO had made incorrect statements in his media conference earlier that day.	Incomplete: no mention of LO's statements that he had not read or registered the SIR or of the accepted reasons why those statements might well be correct: see paragraph 70. Incomplete: no mention of any agreement reached on any points at 25 July meeting or of LO's reliance upon the outcome of the meeting in his media remarks: see paragraph 167.
27 July	Director to PMO	Advice that: - The NZSIS held, and would shortly release, a document recording that the 8 March SIR had been "read by/discussed with" LO; and	Incorrect: see paragraph 70.

		- The document would show the LO to “have credibility problems”; failure to contradict PMO belief that LO had “lied”.	At least partly inaccurate: see paragraphs 70 and 167.
1 August	NZSIS to PMO (with Director approval)	Copy of OIA release: - Annotated/redacted copy of 8 March SIR; - Two redacted agenda documents; and - Accompanying letter from the Director.	At least partly inaccurate, incomplete and misleading: see previous chapter.
4 August	Director/NZSIS to PMO	Advice that the LO’s 4 August public statements that “read by/discussed with” annotation wrong/mistaken were false and amounted to an attack on the Director’s integrity	At least partly inaccurate: see paragraphs 198 & 207.

203. Leaving aside the unintentional errors on 22 July and the misleading character of the redactions, which I accept as unintentional although unsound,²⁹ the decisions to provide information that was inaccurate, incomplete and/or misleading both here and under the OIA rested almost entirely with the Director:

- Only the Director knew of the outcome of his meeting with the Leader of the Opposition on 25 July and of Mr Goff’s reliance on that outcome in his media remarks later that day;
- Only the Director knew of the reasons that Mr Goff’s statements that he had not read the 8 March SIR might well be correct; and
- Only the Director knew that his annotation “Read by/discussed with Mr Goff” was at least partly incorrect.

204. I explored the reasons for these decisions with the Director in his evidence and submissions before this inquiry. I have found that there were three material reasons:

- The Director characterised the requests for information from PMO – and also the OIA requests – as concerned principally with the question of whether he had met his obligation under s 4AA(3) by “briefing” the Leader of the Opposition on the Israeli issue. The Leader of the Opposition had accepted, publicly and in positive terms towards Dr Tucker, that the issue had been raised in passing. But Dr Tucker’s responses to the information requests were still focused on addressing any doubt about whether he had properly carried out his briefing responsibility,

²⁹ See paragraph 111.

even though that was not in issue from 25 July onwards and the various information requested and provided went well beyond that simple point.

- Secondly, the Director did not at the time consider – but in part accepted in submissions to the inquiry – that it was appropriate to include necessary contextual or explanatory information. For example, while the Director accepted that it was not appropriate to disclose the agenda notes without the necessary explanation, he did not accept that it was necessary to explain that his use of the words “discussed with” did not mean, in the ordinary sense of the words, that there had been a discussion between himself and Mr Goff.
- The last and predominant reason for these decisions was the Director’s continuing belief that the Leader of the Opposition had in fact read the SIR, albeit only the front page summary. That belief appears to have been the reason that the Director was not prepared to acknowledge the contrary statements by the Leader of the Opposition or to recognise that those statements might well have been correct.

205. The Director’s continued reliance on his own belief about what Mr Goff had read or not read at the 14 March meeting effectively undermined his ability to comply with the obligations under the OIA and with the duties of political neutrality under s 4AA.

206. I acknowledge that, at the point of his 25 July meeting with the Leader of the Opposition, the Director may have sought to resolve the controversy over the Israeli issue. I also acknowledge that the Director did evidently struggle with what he saw as a contradiction between his obligation to provide information to PMO and under the OIA and the damage that he could see that information causing to Mr Goff and to the s 4AA(3) relationship. As the issue progressed, the Director also increasingly viewed Mr Goff’s statements as an attack on his own credibility.

207. However, as I have found:

- There was no necessary contradiction between Mr Goff’s statements that he had not read the SIR and Dr Tucker’s belief that he had. It was quite possible that Dr Tucker was honestly mistaken.
- Similarly, it was accepted by Dr Tucker – at least in part – that documents that he had released required explanation to provide an accurate account. For example, while I have found that Dr Tucker’s annotation “Read by/discussed with Mr Goff” was not literally accurate, I could also accept that Dr Tucker made that annotation with a particular, personal meaning and without any dishonest purpose. The problem was that that personal meaning was not conveyed and the objective meaning of the words was not accurate.
- There was also no necessary contradiction between Mr Goff’s statements and Dr Tucker’s belief that he had complied with his s 4AA duty to consult. As Dr Tucker acknowledged at the 25 July meeting and in evidence, he had addressed the Israeli issue only in passing. While Mr Goff could, reasonably, have raised the

further question of whether that had been sufficient, that did not raise a question of Dr Tucker's personal integrity or credibility.

208. However, Dr Tucker was not able to recognise or countenance that his belief might be honestly mistaken or that his personal integrity was not being questioned. That inability led to the provision of the inaccurate and incomplete information that is described above. It also reflected a failure to take a measured and objective approach to his obligations under s 4AA.

Allegations of unauthorised disclosure by the NZSIS

209. In response to Mr Hager's published allegations concerning the release of information by NZSIS to Mr Slater:
- Mr Slater alleged that he had been assisted in requesting the information by a telephone call from an anonymous source whom he believed to be an NZSIS staff member seeking to embarrass Mr Goff and/or defend Dr Tucker.
 - There were a number of allegations that the NZSIS had released the information either in collusion with or at the direction of the Prime Minister or the Prime Minister's Office.
210. The allegation that an NZSIS officer made such an unauthorised disclosure is very serious and one I was obliged to investigate thoroughly. It would represent a serious undermining of political neutrality of the NZSIS, and would also raise serious disciplinary and potential criminal consequences for any officer concerned.³⁰
211. I put the allegation under oath or affirmation to every NZSIS staff member who could be identified as having had access to the relevant records, which were under narrowly restricted access. All denied having made or having any knowledge of such disclosure and they, along with a number of other witnesses, gave their view that it was extremely unlikely that a leak could have occurred as alleged, given the commitment of NZSIS staff to information security and the personal consequences of disclosure.
212. I also undertook thorough searches of landline and mobile phones of all persons with knowledge of the documents relating to Dr Tucker's meeting with Mr Goff and also notified the current Director of the alleged disclosure. I found no evidence of the alleged disclosure to Mr Slater by NZSIS staff.
213. I did, however, find that Mr Ede had provided the details of the relevant documents to Mr Slater and was in fact speaking to Mr Slater by phone at the exact time that Mr Slater submitted his OIA request.
214. Mr Slater also later provided a series of emails to and from Mr Ede, in which Mr Ede expressed his concern that he "might be in the shit" over his use of the NZSIS information. Mr de Joux explained to the inquiry he was not happy Mr Ede had chosen

³⁰ See *State Services Code of Conduct* and NZSIS Act 1969, s 12A(1): "An officer or employee of the Security Intelligence Service, or a former officer or employee of the Service, shall not disclose or use any information gained by or conveyed to him through this connection with the Service otherwise than in the strict course of his official duties or as authorised by the Minister."

to work through Mr Slater rather than mainstream media because it would create an unhelpful perception. Mr Slater's email reply to Mr Ede was that he would simply state that he had an NZSIS source. In the context of Mr Ede's evidence, I interpreted that email to mean that Mr Slater would claim to have an NZSIS source in order to protect Mr Ede.

215. While it is possible that an NZSIS officer could also have disclosed the same information to Mr Slater using an unmonitored phone, I do not believe that an NZSIS officer made any unauthorised disclosure to Mr Slater.

Allegation of collusion by or political direction of the NZSIS

216. The further allegation was that aspects of these events – the specificity of Mr Slater's request, the speed with which that request was answered, and the decision to disclose the redacted meeting documents at all and/or initially only to Mr Slater – must have been the result of collusion by the NZSIS with PMO staff and/or must have occurred at the direction of the Prime Minister.

217. These allegations raised serious questions under s 4AA(1), as well under the State Sector *Code of Conduct*. While the allegations were made on the basis of reasoned conjecture – that is, that collusion or direction was the only plausible explanation for these events – rather than any specific evidence, I nonetheless considered the allegations required thorough investigation as part of this inquiry. To that end:

- I reviewed all available records of meetings, landline and mobile telephone conversations and emails between the NZSIS and PMO.
- I reviewed all NZSIS records relating to the OIA request and release.
- I examined under oath or affirmation all staff of NZSIS and PMO who were aware of the OIA request, including the Prime Minister's Chief of Staff and other current and former staff, and also the then Chief Executive of the Department of the Prime Minister and Cabinet and the then Director of the Intelligence Coordination Group, who had been informed of the request by the then Director.

218. From those inquiries, and the wider investigation that I undertook of the actions of NZSIS and PMO, I found the following:

- The Acting Director and the Director each briefed the Prime Minister on the Israeli allegations by telephone on 21 and 22 July respectively. The Prime Minister was, on those dates and until 30 July, in the United States. The Director, as part of the 22 July briefing, advised the Prime Minister that the Leader of the Opposition had received a briefing on the Israeli allegations. The Prime Minister made a public comment that the Leader of the Opposition had been briefed on the Q&A programme broadcast on 24 July.
- Mr de Joux had also sought confirmation of that point and was given that confirmation, including a description of the briefing documents and the date of those documents, by the DDROC on 22 July. He confirmed that point again with the Director on 25 July. On the same day, Mr de Joux provided that information

to Mr Ede with the suggestion that it might prompt an OIA request for those documents. Mr Ede then provided that information to Mr Slater, discussed the terms of the OIA request with Mr Slater and provided Mr Slater with draft blog posts concerning the issue.

- After receiving that information, Mr Slater published a blog post that commented “[a]ll someone has to do now is ask Warren Tucker to produce the briefing notes and [Mr] Goff is a goner”. Mr Slater emphasised that he had decided to make the OIA request himself but that he was assisted by NZSIS information provided to him. As noted above, I have accepted the evidence from Mr de Joux and Mr Ede that it was Mr Ede who provided that information.

219. Mr Slater proceeded to make an OIA request on 26 July. The speed of the NZSIS response, which was all but finalised on that same day, was unusual and has been viewed as suspect. The response to the request was able to be compiled on the same day for three reasons:

- Because the request concerned the Director’s consultation with the Leader of the Opposition, it was immediately drawn to the attention of the Director, who referred it to the DDRC and the DGC;
- The Director considered that the request covered the documents concerning his March meeting with the Leader of the Opposition that had already been retrieved from his safe the previous day and that the relevant information could be disclosed without causing any national security concern, and so could be answered relatively easily. The Director’s notes from the time also suggest that he, and possibly the DPMC officials too, saw it as appropriate, given the controversy, to release the documents sooner rather than later; and
- The DGC dealt with the detail of the request later that day, both because it appeared straightforward and because of other forthcoming commitments, allowing the formal declassification and processing to be done at the end of that day.

220. On 27 July, the Director mentioned the proposed release of information at a meeting with the Chief Executive of the Department of the Prime Minister and Cabinet and the Director of the Intelligence Coordination Group, and then contacted both the Leader of the Opposition and Mr de Joux to advise them of the proposed release. The Director agreed to a request by the Leader of the Opposition to delay the release to allow him time to seek advice. As I have found at paragraphs 95-99, that request was not improper and the Director ought to have sought and considered the view of the Leader of the Opposition before deciding to release the redacted meeting documents. The Director advised Mr de Joux of the delay and that information was then given to Mr Slater through Mr Ede.

221. The released documents were then given to the Leader of the Opposition, in response to an urgent request by him, on 1 August and sent to Mr Slater by post on 2 August.

222. Had it been necessary, I should also have sought the Prime Minister's appearance before the inquiry. However, I have found that the Prime Minister's involvement in these particular events was limited to a briefing given by the Director to the Prime Minister by phone on 22 July, advice of the OIA request and response given only after that response was prepared and sent, and media comments by the Prime Minister published on 24 July and on 4-6 August. There was no disputed factual issue related to those events.
223. It follows from these events and findings that Mr Slater's OIA request for the March meeting documents was instigated or, at least, assisted by Mr Ede's description of those documents given on 25-26 July to Mr Slater. That description was, in turn, provided by Mr de Joux from the information given to him by NZSIS on 22 and 25 July.
224. The decision to release redacted copies of the meeting documents, the timing of the release and the decision to release information solely to Mr Slater were all made by NZSIS. While NZSIS frequently does decline OIA requests or take some time to determine them, it was not unreasonable or inexplicable for NZSIS to deal with this request promptly (provided it did so accurately and comprehensively).
225. I did not find any indication of collusion by or direction to NZSIS over the request. I also observe that, having established the actions of the NZSIS, Mr de Joux and Mr Ede, such collusion or direction appears inherently unlikely to have occurred, for two reasons. First, it was not necessary, as Mr Ede and Mr Slater were able to compile the request from briefing information provided by NZSIS. Second, while I should have expected any collusion or direction to have occurred with some degree of secrecy, I found to the contrary that the provision of the necessary information to PMO was openly discussed and recorded within NZSIS.

Lack of proactive response

226. Further questions of the maintenance of political neutrality arise from the aftermath of the request by Mr Slater and the response by NZSIS.
227. The Director and the NZSIS did not respond at all to the misinterpretation of the released documents, which arose from the misleading way in which the documents were redacted and the failure to provide necessary contextual information. The Director's evidence was that he contemplated a press release that would set out his version of what happened during his briefing of Mr Goff on 14 March, but he was persuaded by the DGC that to do so would be "buying a public fight" with Mr Goff. The DGC confirms her advice was not to make a public statement, but rather to release the relevant information in response to the other OIA request. In any event, a press release in the terms contemplated by the Director would not have clarified the misunderstandings generated by the documents as released.
228. While the NZSIS did respond to further OIA requests, some wider in their terms, it did not ever release the various omitted information set out in the previous section and did not, in particular, disclose that:
- The annotation "Read by/discussed with Mr Goff" was substantially incorrect;
 - Some irrelevant material was retained in the redacted documents;

- The released information omitted other necessary context; and
 - Many of the remarks by the Leader of the Opposition, which had been characterised as dishonest by the Director, by Ministers acting on the Director's advice and by many others – including the Public Service Association – were made by the Leader of the Opposition as a result of his 25 July meeting and at least partial agreement with the Director and those remarks had a plausible factual basis.
229. The failure to release such information appears to have followed the Director's reasons outlined at paragraph 204 and occurred notwithstanding that:
- The information was within the scope of both Mr Slater's own request and the subsequent requests and was necessary to ensure that the information disclosed by the NZSIS was not inaccurate;
 - The NZSIS was aware, at least by this point, that its obligations under the OIA extended to, for example, the Director's recollections of the content of the March meeting; and
 - The NZSIS was, or should have been, aware that the documents as released had been misinterpreted.

Awareness of media and political context

230. Part of the explanation for the lack of engagement by the NZSIS with the media requests and then with the media coverage of the documents released to Mr Slater appears to have been an acute lack of media awareness and varying levels of understanding of the political context on the part of the Director and the NZSIS senior leadership. While media advice and some reporting of news coverage of NZSIS matters was undertaken by the two NZSIS communications staff in the normal course, both of those staff were unavailable during this period and no alternative source of advice or information was put in place.
231. Nor did the Director seek advice from the wider public service, for example from DPMC, the Cabinet Office or the State Services Commission. While he did notify DPMC of his meeting with the Leader of the Opposition and, later, of the OIA release, neither of these were framed as a request for advice.
232. The Director did, in a limited sense, receive some media and/or political advice in his successive conversations with Mr de Joux, but that gave rise to a tension between Mr de Joux's role as a political appointee and the Director's duty of political neutrality.
233. In particular, I find it surprising that the Director thought it appropriate to discuss his conversations with the Leader of the Opposition, in respect of whom he had significant responsibilities under s 4AA(1) and (3), with a political adviser without considering the conflict that that entailed. I consider that the Director ought instead – at least following the serious concerns raised by the Leader of the Opposition – to have sought thorough and fully informed advice, either internally or from DPMC, the Cabinet Office, the State Services Commission and/or the Solicitor-General.

234. It is also of concern that having taken the decision to release the material to Mr Slater, there was no media strategy or communications plan to follow the release. Having searched all relevant NZSIS files and emails, it is clear the NZSIS did not monitor what Mr Slater and other media did with the information once it was released, notwithstanding their acknowledgement that this was a politically sensitive issue. I showed Dr Tucker and other NZSIS witnesses *Whaleoil* posts following the release of the documents, and all said they were unaware of how Mr Slater had interpreted the documents released to him. As noted earlier, the interpretations were entirely reasonable based on the information released. They were shared by other media.³¹ Had NZSIS taken any reasonable steps to monitor the media coverage on this issue, it would have been clear that information released by the NZSIS was being misinterpreted in such a way as to damage the Leader of the Opposition and NZSIS could have taken some steps to address this.
235. The Director and the NZSIS were however aware of criticisms made of them over the refusal of media requests for information and proceeded as far as consideration of a press release to rebut that criticism. Given that the Director and the NZSIS were able to recognise and consider proactive steps to address this less substantive issue, they ought also have been able to recognise or address the wider misunderstanding of the information released by the NZSIS.

Was there a breach of the obligation of political neutrality?

236. The Director knew that the Israeli allegations had been, at most, touched on briefly at the March meeting with the Leader of the Opposition and that the relevant briefing paper had been available but, the Leader of the Opposition contended, not read or discussed.
237. However, the Director asserted to PMO, the Prime Minister, Mr Slater and other requesters that the briefing had been read and discussed. They were all given an incomplete and incorrect account. The errors of judgement by the Director over the two week period demonstrated an ongoing failure to meet the s 4AA obligations.
238. In addition, the Director and others did not have adequate regard to the importance and sensitivity of the relationship between the Director and the Leader of the Opposition, as reflected in s 4AA(3) of the NZSIS Act. In particular, as discussed above:
- The Director's meeting with the Leader of the Opposition on 25 July had the potential to resolve the overall controversy and to safeguard that important relationship but that did not occur.
 - The Director's engagement with the Leader of the Opposition over the OIA request and the intended response to that request was inadequate. The Director did not appreciate that consultation was required, whether under s 4AA or under the OIA.

³¹ See, for example: "Editorial: Going into battles that we just can't win", Nelson Mail, 6 August 2011, www.stuff.co.nz/nelson-mail/opinion/editorial/5402083/Editorial-Going-into-battles-that-we-just-can-t-win; David Farrar, "The SIS Document", Kiwiblog, 4 August 2011 www.kiwiblog.co.nz/2011/08/the_sis_document.html; Matthew Hooten, "Goff safe as leader despite no credibility on SIS issue" 5 August 2011, www.electionresults.co.nz/opinion/politicians/goff-safe-leader-despite-no-credibility-sis-issue.

- When the released documents were misinterpreted and caused political harm, the Director and/or the NZSIS do not appear to have registered those events and did not attempt to remedy them.
239. I consider that the series of errors made by the Director and by the NZSIS, the missed opportunities to prevent, correct or redress those errors and the lack of systemic protections for political neutrality demonstrated a failure on the part of the Director to take all reasonable steps to ensure that neutrality.
240. In particular, the Director did not take all reasonable steps to ensure that the information provided to PMO and in the NZSIS responses to OIA requests was accurate and complete. Had reasonable steps been taken in that regard it is likely that the release of inaccurate and incomplete information, and the consequent harm to the Leader of the Opposition, would have been averted.
241. The Director also did not take all reasonable steps to ensure political neutrality once it became apparent that the form of those redactions had led Mr Slater, the news media and others to a mistaken and adverse understanding of the actions and statements of the Leader of the Opposition. Whether or not the Director was in fact aware of how the release of documents had been interpreted and the role of the particular redactions, the error could again have been readily remedied had NZSIS taken any step to monitor reaction to the OIA release and responded to the misunderstanding.
242. I also consider that the failure to engage effectively with the Leader of the Opposition or to address the risks posed by the partial release of information were inconsistent with the Director's duty towards the Leader of the Opposition under s 4AA(3). While s 4AA(3) provides only that the Director "must consult ... for the purpose of keeping [the Leader of the Opposition] informed", it follows from that duty of consultation that the Director must maintain the confidence of the Leader of the Opposition, so far as possible, and must not undermine the consultation process through unwarranted or inaccurate disclosures. The series of errors by the Director and by the NZSIS, which caused avoidable harm to the Leader of the Opposition, and the shortcomings in the Director's engagement with him were, I conclude, inconsistent with the s 4AA(3) duty.
243. As addressed above, these deficiencies are not only the individual responsibility of the then Director. While the Director was himself primarily responsible for the shortcomings in the provision of information to PMO, as he conducted those discussions himself, he ought to have been able to rely upon the relevant senior staff to take the necessary steps to complete the OIA responses to Mr Slater and others consistently, in accordance with best practice and mindful of the consequences; provide advice and assistance in respect of media queries and media coverage; and identify and engage more constructively with the political sensitivities and risks involved.
244. Notwithstanding those failures, I have not found any partisan political purpose on the part of the Director and/or the NZSIS. The decision to release information to Mr Slater, and the related actions of the Director and of the NZSIS, were based on an incorrect understanding of the NZSIS' obligations, under both the OIA and the NZSIS Act, incomplete or unsound factual understandings and in the case of the Director, significant errors of judgement. I conclude that those reasons were nonetheless sincere.

PROPRIETY

245. A further question for this inquiry was whether the NZSIS acted with propriety. The standard of propriety is not defined. The value of the propriety standard is that it can allow a broader inquiry that goes beyond specific questions of legality. Here it encompasses whether the NZSIS acted in a way that a fully informed and objective observer would consider appropriate and justifiable in the circumstances. For the NZSIS, that standard is in part clarified by the principles set out in s 4AAA of the NZSIS Act.

246. In the circumstances of this inquiry, four broad principles of propriety are relevant:

- The principles of acting with integrity and professionalism in s 4AAA(1)(c)(iii);
- The principle of acting in a way that facilitates effective democratic oversight in s 4AAA(1)(c)(iv);
- The duty to avoid the appearance of partiality, as well as actual partiality; and
- The requirement of natural justice, as it applies to decisions concerning the disclosure of information to ensure accuracy, proportionality and overall fairness to those affected.

247. Applying these broad principles I conclude that:

- The disclosure of incomplete, inaccurate and misleading information concerning the Leader of the Opposition lacked due professionalism, risked the appearance of partiality and detracted from due democratic oversight of the NZSIS. Although not intended, it had a politically partisan effect. I have already canvassed the substantive and procedural failings that led to that disclosure, but it is also appropriate to stress that, where the NZSIS deals with the disclosure of sensitive information, it must do so with scrupulous care and demonstrable integrity. That did not occur here.
- The form of the Director's engagement with the Leader of the Opposition was also unprofessional and unfair. I have canvassed that issue in terms of compliance with s 4AA(1) and with the OIA, but the wider point is that that engagement did not occur in an appropriately rigorous manner and failed to reflect the seriousness of the issue and the gravity of the Director's obligations towards the Leader of the Opposition. The Director also ought to have acted to assess the serious and, as it transpires, justified concerns that Mr Goff raised but he did not.
- The engagement by the Director with PMO was not consistent with standards of professionalism in the State service. While it may have been understandable that PMO staff commented critically on the Leader of the Opposition, given the limited information provided to them and the political nature of their roles, the Director did to some degree engage with those criticisms. That was not appropriate.

- I have found that the Director dealt with these events with only limited recourse to advice or assistance from his senior staff or others. These events were inherently difficult for several reasons: the Israeli issue and the question around consultation with the Leader of the Opposition were both controversial, the disclosure of consultation records was unprecedented and the issue was (mistakenly) perceived by the Director as turning on his own personal credibility. There were also resource and workload constraints. However, the Director sought only very limited advice or assistance and, critically, did not disclose all relevant information to those advising him.
- Further, I would have expected those in senior roles to have recognised and sought to assist with those difficulties, although I acknowledge that some advice was given, notably by the DGC, and that senior staff were hindered in providing advice or assistance because they did not have some relevant information. However, even such limited steps as undertaking a thorough review of potentially relevant documents for the OIA requests or drawing the Director's attention to the difficulties arising from disparate treatment of those requests could have averted many of the shortcomings that I have identified.

ABOUT THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

Who is the Inspector-General of Intelligence and Security?

The Inspector-General is an independent statutory officer, appointed by the Governor-General on the recommendation of the Prime Minister and following consultation with the Intelligence and Security Committee.

The Inspector-General is not part of the New Zealand Security Intelligence Service (NZSIS) or the Government Communications Security Bureau (GCSB). The current Inspector-General is Cheryl Gwyn and the Deputy Inspector-General is Ben Keith. A two member advisory panel, to provide advice to the Inspector-General, was appointed in October 2014. The panel members are Chris Hodson QC (Chair) and Angela Foulkes.

Being independent means that the Inspector-General makes his or her own findings based on the facts and the law. He or she does not answer to the NZSIS or GCSB and must ensure that complaints about those agencies are independently investigated.

What are the Inspector-General's functions?

Under the Inspector-General of Intelligence and Security Act 1996, the Inspector-General:

- receives and investigates complaints about acts, omissions, practices, policies or procedures of the NZSIS or GCSB
- undertakes inquiries (at his or her own initiative or at the request of the Minister) into compliance with the law by the NZSIS or GCSB, or the propriety of particular activities of those agencies
- regularly reviews and inspects the NZSIS and GCSB to assess the effectiveness of their procedures and compliance systems and, on an annual basis, certifies the extent to which each agency's compliance systems are sound

On completion of an inquiry into a complaint, or an own-motion or Ministerially-requested inquiry, the Inspector-General must prepare a written report containing his or her conclusions and recommendations. The report is provided to the Minister and the chief executive of the intelligence and security agency to which the inquiry relates and must be published on the Inspector-General's website (www.igis.govt.nz).



Metiria Turei and Russel Norman
Green Party Co-Leaders



Green
Green Party of Aotearoa New Zealand

14 August 2014

The Inspector-General
c/- The Registrar of the High Court at Wellington
DX SX 11199
Wellington



Dear Inspector-General,

I wish to lay a complaint with your office regarding allegations that New Zealand Security Intelligence Service (NZSIS) documents were declassified in order to be used for political purposes.

In Nicky Hager's book *Dirty Politics*, published on 13 August 2014, it is alleged that the NZSIS released information that would not have usually been released, after receiving an Official Information Act request from Cameron Slater.

The book alleges that *"Someone had overruled the usual practice and then fast-tracked the release. The released documents were stamped as being declassified on 26 July 2011, the same day that Slater sent off his request."*

The book also alleges that *"...someone had told Slater that his request would be processed, signed off and sent to him in just a few days. It also seems that Slater had some advance knowledge of what the information said."*

Correspondence between Mr Slater and an associate includes statements that imply this advance knowledge of both the content of the information and the process being used for it to be released, such as *"...it has been expedited, in the public interest. It is devastating for Goff I am told."*

The book states that documents such as NZSIS briefing notes are not usually released to the public. It also states that the information was received by Mr Slater seven working days after the request was lodged.

If these allegations are true, I find it deeply concerning that classified documents could be deliberately declassified for the express purpose of releasing to a prearranged source as part of an orchestrated political attack.

It is also of great concern that Mr Slater appeared to have knowledge of the information and process, both of which should have only been available to those within the NZSIS and the office of the Minister in Charge of the New Zealand Security Intelligence Service.

PO Box 18888 Wellington 6011
Metiria: 04 817 6796
metiria.turei@parliament.govt.nz
Russel: 04 817 6700
russel.norman@parliament.govt.nz
www.greens.org.nz

Authorised by Russel Norman and Metiria Turei, Parliament Buildings, Wellington





Metiria Turei and Russel Norman
Green Party Co-Leaders



As the officer responsible for ensuring that the NZSIS acts lawfully and with propriety, as well as for reviewing the NZSIS's compliance procedures and systems, I request that your office investigate the allegations laid out in this book.

I urge you to undertake an inquiry into this matter. Oversight of our intelligence agencies is vital to ensure public confidence in the work that these agencies do, and I feel that the allegations in this book threaten to undermine this confidence.

Queries may be directed to my staff, either Maggie Tait (04) 817-6710 or Holly Donald (04) 817-6606.

Yours faithfully,

Metiria Turei
Green Party Co-leader

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Authorised by Russel Norman and Metiria Turei, Parliament Buildings, Wellington



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

20 August 2014

Hon Metiria Turei MP
Green Party Co-leader
P O Box 18888
WELLINGTON 6011

By email: metiria.turei@parliament.govt.nz

Dear Ms Turei

I have received your complaint of 14 August 2014 concerning allegations that New Zealand Security Intelligence Service (NZSIS) documents were declassified in order to be used for political purposes. The complaint was received in my office on 19 August.

It is a function of my Office to inquire into complaints under section 11(1)(b) of the Inspector-General of Intelligence and Security Act 1996 (the "Act") where a person has or may have been adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency. I also have authority to commence an inquiry on my own motion into the legality and propriety of a particular activity of an intelligence and security agency under sections 11(1)(a) and (ca) of the Act. For inquiries concerning propriety, it is not within my functions to inquire into any action taken by the Minister responsible for the relevant intelligence and security agency.

The information provided with your complaint does not on its face demonstrate that you have been personally affected by the alleged conduct, and therefore I cannot address the matter under my complaints jurisdiction. However, I am satisfied that there is a sufficient public interest justifying the commencement of an own-motion inquiry by my Office into the substance of the issues raised in your complaint.

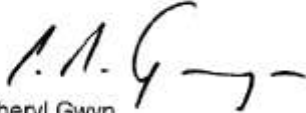
Accordingly, pursuant to section 19 of the Act, I have informed the Director of Security and the Prime Minister that I am commencing an inquiry in accordance with sections 11(1)(a) and (ca) of the Act into the legality and propriety of the release of information by the NZSIS in this case, including allegations that NZSIS documents were declassified in order to be used for political purposes.

Please let me know if you have any further information, including documents, which you would wish me to consider in the course of my inquiry. Please contact my office if you wish to discuss this matter further.

Freyberg House, 2 Altken Street, Wellington, New Zealand
P O Box 5609, Wellington 6145
Phone: (04) 439 6721

I will advise you once my inquiry is concluded and the results of the inquiry will be published in due course on the IGIS website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Gwyn', with a stylized flourish at the end.

Cheryl Gwyn
Inspector-General of Intelligence and Security



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

Appendix C

Office of the Prime Minister	Position at July 2011
Wayne Eagleson	Chief of Staff
Philip de Joux	Deputy Chief of Staff
Stephen Woodhouse	Senior Private Secretary
Jason Ede	Senior Advisor
Kevin Taylor	Chief Press Secretary
Paula Oliver	Senior Press Secretary

Department of the Prime Minister and Cabinet	Position at July 2011
Sir Maarten Wevers	Chief Executive
Roy Ferguson	Director, Intelligence Coordination Group

Other Witnesses	
Nicky Hager	Author of <i>Dirty Politics</i>
Cameron Slater	Political Blogger
Jessica Mutch	Reporter TVNZ
Felix Marwick	Reporter NewstalkZB

New Zealand Security Intelligence Service	Position at July 2011	Descriptor used in report
Dr Warren Tucker	Director	"Dr Tucker" or "Director"
	Deputy-Director - Resources and Capability	"DDRC"
	Deputy-Director - Relationships, Outputs and Communications	"DDROC"
	Director's General Counsel	"DGC"
	Director's Personal Assistant	Not referred to in report
	Head, Director's Office	"Head, Director's Office"
	Communications Advisor	"Communications Advisor"
	Assistant Communications Advisor	"Assistant Communications Advisor"
	Archives Policy Manager (responsible for OIA requests)	"OIA Officer"
	Assistant Legal Adviser	Not referred to in report
	Legal Administrator	Not referred to in report



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

**SUMMONS TO BE EXAMINED ON OATH BEFORE THE INSPECTOR-GENERAL OF INTELLIGENCE
AND SECURITY**

Sections 23(1) and (2) Inspector-General of Intelligence and Security Act 1996

Date:

To:

You are summoned to be examined on oath before the Inspector-General of Intelligence and Security (the Inspector-General) at [time], [date] and [location].

The general scope and purpose of the examination will be as set out in Schedule "A" to this summons.

You are required to bring with you and produce any documents that may be specified to you by the Inspector-General's inquiry team prior to the date of hearing.

The examination before the Inspector-General will be conducted in private. Further information about the examination is set out in Schedule "B" to this summons.

Enquiries about this summons should be directed to [] on +64 4 439 6721.

Cheryl Gwyn
Inspector-General of Intelligence and Security



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

CONFIDENTIALITY ORDER

TO [insert name in full]

This is an Inquiry pursuant to section 11(1) of the Inspector-General of Intelligence and Security Act 1996 (the "Act"). The Inquiry is a judicial proceeding (section 23(3) of the Act) and the Inspector-General may regulate the proceedings of the Inquiry in such manner as the Inspector-General sees fit (section 19(8) of the Act). Further the Inquiry is to be conducted in private and no account of the Inquiry may be published: Sections 19(6) and 29 of the Act.

Pursuant to those provisions, and in order to ensure the integrity of this inquiry, fairness to those involved and overall confidentiality, you are required until further notice from the Inspector-General to keep confidential the following matters:

1. Questions put to the witness by the Inspector-General and answers to those questions;
2. Requests for documents and documents produced by the witness; and
3. Information provided to the witness, including statements made by other witnesses and the identity of other witnesses.

Failure to comply with this order is an offence pursuant to sections 23(8)(a) and/or (b) and/or 29(4) of the Act.

Notwithstanding the above, you are permitted to:

1. Confirm that you have appeared as a witness and given evidence before the Inspector-General; and
2. Refer publicly to anything you said in your preliminary remarks, provided that doing so does not disclose any classified information.

Cheryl Gwyn
Inspector-General of Intelligence and Security

September 2014

Received and acknowledged

[insert name in full]

/ /