



**REPORT TO THE STATE SERVICES COMMISSIONER
ON THE INVESTIGATION INTO THE POSSIBLE UNAUTHORISED
DISCLOSURE OF INFORMATION RELATING TO
THE MINISTRY OF FOREIGN AFFAIRS AND TRADE**

Paula Rebstock

27 November 2013

By agreement, this report has been redacted to remove statements made regarding the individuals identified as [Y] and [Z]. An apology was also made to [Y] and [Z], which can be viewed at <http://www.ssc.govt.nz/apology-leask-fyfe>

Suppression Orders:

Please note that Orders of the High Court are in place that prohibit publication of [X]'s name or any other details that might potentially lead to [X] being identified. The material contained in this report relating to [X] may be republished without breaching the suppression orders that are in place.

Please note that to the extent the inquiry and Final Report relates to 'Z', it has been the subject of an Ombudsman's investigation which found that SSC acted unreasonably in a number of respects.

**You may find the Ombudsman's published opinion at
[http://www.ombudsman.parliament.nz/system/paperclip/
document_files/document_files/1587/original/
investigation_into_ssc_conduct_of_mfat_leaks_inquiry.pdf?
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Report to the State Services Commissioner

On the Investigation into the Possible Unauthorised Disclosure of Information relating to the Ministry of Foreign Affairs and Trade

EXECUTIVE SUMMARY

Introduction

- 1 On 4 May 2012, the State Services Commissioner (the Commissioner) acting under section 8 of the State Sector Act 1988, appointed Paula Rebstock to investigate the possible unauthorised disclosure of information relating to the Ministry of Foreign Affairs and Trade (MFAT).
- 2 The Commissioner delegated to Ms Rebstock certain powers under sections 7, 9, 10 and 25 of the State Sector Act 1988. These included powers under the Commissions of Inquiry Act 1908 to summon witnesses and receive evidence.
- 3 The Terms of Reference (as amended on 23 May 2012) are:
 - Investigate and report on the relevant facts around a possible unauthorised disclosure of three Cabinet papers, titled “Ministry of Foreign Affairs and Trade: Change Programme”, “MFAT: Global Footprint: European Posts”, and “Ministry of Foreign Affairs and Trade: Forecast Financial Position”, as well as information relating to those papers.
 - Investigate and report on the relevant background facts surrounding the development of the MFAT change programme culminating in the Cabinet papers referred to above and the environment within which MFAT was operating during this period. This includes, as appropriate, who may have been responsible for earlier unauthorised disclosures during the development of the MFAT change programme.
 - Make recommendations as to measures, if any, that could strengthen information management systems within MFAT (or other agencies relevant to the investigation) to improve secure handling of government information and deter unauthorised disclosure.
- 4 Letters from the Commissioner to Ms Rebstock confirming the original Terms of Reference and the amended Terms of Reference are shown in Appendix A.

Focus

- 5 The focus of this investigation is the **possible unauthorised disclosure of official information**. Official information is any information held by a department or by a Minister of the Crown in his or her official capacity. Most of the information under investigation also had a security classification.
- 6 The rules governing the disclosure of official information are clear. Official information is to be released only when authorised, and in accordance with the Official Information Act 1982 and any Departmental policies and guidelines. Only Ministers may approve the proactive release of Cabinet material.

- 7 The investigation focused on ascertaining:
- the factual context within which possible unauthorised disclosures had occurred;
 - what information may have been leaked and what information had been authorised for disclosure or was otherwise legitimately in the public domain;
 - who might have leaked a range of MFAT documents and information that had not been authorised for release;
 - who might have leaked all or parts of the three final Cabinet Committee papers – Change Programme, Europe Posts, and Forecast Financial Position - issued by the Cabinet Office on 30 April 2012 for the State Sector Reform and Expenditure Control (SEC) Cabinet Committee meeting to be held on 2 May 2012;
 - what processes were in place or were planned by MFAT and other agencies to improve secure handling of government information and deter unauthorised disclosures; and
 - what further improvements could be considered by MFAT and other agencies to improve secure handling of government information and deter unauthorised disclosures.
- 8 The approach to the investigation is set out in detail in Part 1 of this Report.

Background facts including other unauthorised disclosures

- 9 The investigation interviewed a wide range of MFAT staff, other public servants and Ministers; and reviewed many MFAT documents and other electronic records to determine the background facts. This included other possible unauthorised disclosures.
- 10 The three Cabinet Committee papers issued by Cabinet Office on 30 April 2012 provided advice and recommendations to the Government on decisions made by MFAT's Senior Leadership Team about the organisational and structural changes to be implemented at MFAT to meet the Government's objectives.
- 11 In 2011 the Minister of Foreign Affairs had made it clear in a public address¹ that a major change programme was underway at MFAT. Some change projects were discussed at the Foreign Affairs Trade and Defence Select Committee in 2011². In addition, the Government was expecting MFAT, like other government agencies, to contribute to the Government's objective of delivering better public services during a period of fiscal restraint.
- 12 The need and opportunities for substantial organisational change at MFAT had been signalled in reports and reviews over several years prior to 2012. These included the Performance Improvement Framework (PIF) Review published in September 2010.

Media and political commentary

- 13 There was considerable political and media interest in the developing change programme throughout 2011 (a General Election year). Proposed changes at MFAT were the subject of public commentary from a range of sources including from Labour Party Members of Parliament and former New Zealand diplomats.
- 14 Media and political commentary increased in January 2012, and continued during and after the consultation period at MFAT.

¹ Speech to the New Zealand Institute of International Affairs on 5 April 2011

² 2011/12 Estimates for Vote Foreign Affairs and Trade and Vote Official Development Assistance (18 July 2011) as reported by the Foreign Affairs, Defence and Trade Committee

- 15 Some of the commentary during 2012 contained government information or referred to government documents that had not been authorised for public release by either the Minister of Foreign Affairs or the Chief Executive and Secretary of Foreign Affairs and Trade (the Secretary).
- 16 The unauthorised disclosures compromised the political neutrality of MFAT staff.
- 17 Ministers and the Prime Minister were put in the position of having to comment publicly on proposals being developed as part of an in confidence departmental process, before receiving robust, unbiased advice from the Secretary, after having consulted and considered the views of staff at MFAT.

Change programme

- 18 It was the role and responsibility of the Secretary to provide advice to the Government on organisational changes needed to deliver on the Government's priorities and to ensure MFAT would be well-placed to deliver on its purpose into the future.
- 19 The Ministry's "20/20 programme" originally focused on improving back office (administrative) functions and expanded to consider a more focused, flexible front office. Staff had been given the opportunity to provide input to, or feedback on, some key components of the developing change proposals in 2010 and 2011. These included the Offshore Organisational Development Project, the Future Business Model and a review of remuneration, allowances and staff benefits.
- 20 The change proposals were published on 23 February 2012 to all MFAT staff in two consultation documents: the Ministry Business Model and the Ministry Remuneration Review. These documents were classified MFAT IN CONFIDENCE. The consultation documents were loaded on two secure websites and MFAT employees were issued passwords to access the websites.
- 21 The consultation documents described changes to MFAT's operating model: how MFAT would allocate, organise and manage its resources in local and overseas locations; what skills it needed to develop in its staff; its performance management system; the number and types of roles at MFAT and how they would be remunerated. There were proposed changes to how public services provided by MFAT would be delivered, using technology to improve the efficiency and effectiveness of back and front office functions.
- 22 For MFAT staff these proposals had implications for established ways of working, career progression and future earning potential within MFAT. Many employees were supportive of the need for change at MFAT, however, many were concerned about the scale and nature of the formal proposals.
- 23 Staff members were encouraged to provide feedback on the proposals. They were instructed to use the two secure websites both for their feedback and to ask questions, as individuals and as groups. Team meetings and staff forums were organised to help staff learn about, discuss and understand the changes proposed. The closing date for staff feedback was 21 March 2012.
- 24 The spokesperson for the MFAT partners group confirmed that they had formed the partners group after offshore partners set up a Facebook page before the consultation documents were issued. The Facebook page was used to exchange thoughts and concerns and facilitate a partners response on the expected change proposals. Many partners, including the partners spokesperson, were given access to the MFAT IN CONFIDENCE consultation documents for the purpose of supporting MFAT employees in providing feedback on the change proposals. Partners discussed and provided feedback on the change proposals through MFAT staff and the Foreign Service Association (FSA), and also in a letter and at two meetings with the Secretary. The partners group also published in the media their views on the change proposals

based on the information they had gained from MFAT IN CONFIDENCE documents, their own experience accompanying their partners offshore, and other government information that was not in the public arena. The partners spokesperson issued a media release with their letter to the Secretary on 12 March 2012 on behalf of 180 partners. The spokesperson was interviewed by local and national media about the partners' views on the change proposals.

The role of Tier 3 managers in the change process

- 25 The role of managers is critical to the success of any organisational change process. This was particularly true at MFAT where Tier 3 managers were 10% of the directly employed staff and were mostly long-serving, highly experienced senior employees filling influential roles. As Heads of Mission (HOMs) and Division Directors, they were part of the leadership of MFAT. Training was provided to help these managers lead their teams through the change process. Tier 3 managers were entitled to form their own views on the change proposals and to provide feedback directly to the Senior Leadership Team in meetings and through secure websites during the MFAT in confidence consultation period.
- 26 Some Tier 3 managers helped their staff face up to the prospect of change, given the challenges facing MFAT and the Government's policies and expectations. Whether they supported or disagreed with the proposals they still engaged constructively in the formal consultation process, encouraging their direct reports to do likewise.
- 27 Other Tier 3 managers were so strongly opposed to key aspects of the change proposals, they did not give the staff consultation and feedback process an opportunity to work effectively.

For example:

- 27.1 Instead of recording their feedback on the secure websites, three HOMs emailed their feedback as formal messages to in-boxes for most teams at MFAT. They included critical comments about the on-line tools provided for staff feedback. One of the three proposed a community of practice discussion forum to replace the consultation process. These formal messages were subsequently leaked to the Labour Party.

- 27.6 One Head of Mission on behalf of 49 colleagues sent a MFAT IN CONFIDENCE letter to the Secretary with feedback on the change proposals. This letter was sent by email rather than through the secure website.
- 27.7 Despite the intention of the HOMs to keep their joint letter confidential, thirteen Tier 3 managers (11 HOMs, one Deputy Head of Mission and one Division Manager) forwarded the letter within MFAT to people who were not the intended recipient or other signatories.
- 27.8 Some MFAT staff who received one of these unofficial copies forwarded it on so that it reached at least 31 MFAT staff.

This letter was subsequently leaked to the Labour Party.

- 27.9 Nine Tier 3 managers misreported to the investigation how they handled the HOM's joint letter and so misled the investigation. The investigation does not know whether misleading the investigation was an intentional act on the part of all or any of these Tier 3 managers.

- 28 More details about the background facts of the MFAT change programme are recorded in Part 2 of the report.

Other unauthorised disclosures

- 29 The investigation collated much of the public commentary from January to May 2012 on the MFAT change proposals. It did not have resources to analyse every item to identify if it contained any government information that had not been authorised for disclosure. Some apparent leaks were of information by the Labour Party

- Spokesperson on Foreign Affairs and Trade that was publicly available through Select Committee hearings and reports.
- 30 Rather, the investigation identified key instances where specific government documents about the change programme appeared to have been leaked in whole or in part, including documents that were leaked directly or indirectly to the Labour Party or to the media.
- 31 The government documents (official information) about the change programme identified as having been leaked were:
- 31.1 Part or all of the change programme consultation documents: the Ministry Business Model and the Ministry Remuneration Review.
 - 31.2 Part or all of a spreadsheet containing data about remuneration for staff offshore created for and used by the Change Programme Office.
 - 31.3 Three formal messages dated 2, 3 and 5 March 2012 from three HOMs providing feedback on the change proposals to the Secretary and Senior Leadership Team.
 - 31.4 A letter emailed on 15 March 2012 to the Secretary from 49 HOMs providing feedback on the change proposals.
 - 31.5 A letter dated 20 April 2012 from the Secretary to all staff advising of the latest timeframe for announcing decisions on the change proposal.
 - 31.6 A letter dated 27 April 2012 to the Secretary and Senior Leadership Team from the Trade Negotiations Division seeking a further consultation period.
- 32 It is important to note that staff feedback on a staff in confidence consultation is official information just like any other information received by MFAT, and is subject to the same requirement to protect it from unauthorised disclosure.
- 33 In the instances listed above, the investigation concluded it was most likely that staff or contractors employed by MFAT were the source of these leaks.
- 34 Part or all of the consultation documents, emails containing feedback from HOMs and the Trade Negotiations Division and a letter from the Secretary to all staff were leaked to the Labour Party with the intention of embarrassing and putting pressure on the Government and the Secretary to stop the change process. It is possible that all these documents were leaked by the same person. All these documents had wide circulation within MFAT and the investigation was unable to identify who may have leaked these documents directly or indirectly to the Labour Party.
- 35 The information in a spreadsheet listing remuneration and allowances of MFAT staff posted offshore was leaked to the media. The investigation considered this looked like a retaliatory action as it occurred immediately after a news article with information about the cost of consultants employed by MFAT on the change process. The investigation established that the information was not authorised for release by the Secretary. It is likely the leak of information in the spreadsheet was caused by a staff member or consultant working in the Change Programme Office, given the limited distribution of the document within MFAT.
- 36 At least three MFAT staff and the FSA's Executive Secretary were approached by the Labour Party Spokesperson on Foreign Affairs and Trade or his office for information about the MFAT change programme. It is not known whether other staff were contacted by Labour Party representatives or what, if any, government information was disclosed during at least six identified telephone conversations from or to the Labour Party Spokesperson on Foreign Affairs and Trade.
- 37 The evidence and commentary about the unauthorised disclosure of government information about MFAT is recorded in Part 3 of the Report.

Unauthorised disclosure of Cabinet Committee papers

- 38 The investigation interviewed every public servant and contractor who was authorised and known to have handled both the Change Programme and Europe Posts Cabinet Committee papers prior to Question Time in Parliament on 2 May 2012. Interviewees included Ministerial staff for all Ministers who were recipients of the Cabinet Committee papers and the Minister of Foreign Affairs and the Minister of Trade. This comprised 120 interviewees, some of whom were interviewed more than once. The copies of the Cabinet Committee papers were examined to determine if original staples had been removed to allow for undisclosed copying or scanning of the documents.
- 39 After these interviews and examination of the documents, the investigation decided it was unnecessary to interview another 15 Ministers who had received the Cabinet Committee papers.
- 40 The investigation did not talk to all the individuals who may have handled only the Europe Posts Cabinet Committee paper which had a wider circulation than the Change Programme Cabinet Committee paper (about another 158 people of whom 43 may have accessed the paper up to 2 May 2012).
- 41 Various forensic investigations were undertaken. Details of the evidence found about the handling and distribution of the Cabinet Committee papers are noted in Part 4 of this Report. Details of evidence found about the possible unauthorised disclosure of the Cabinet Committee papers are described in Part 5 of this Report.
- 42 The investigation identified it was not possible to rule out any office as a possible source of a leak of the Cabinet Committee papers based solely on its documented processes and independent evidence. This is due to the current processes for handling Cabinet documents in Ministerial offices and government agencies, using hard copies for the source documents. The investigation weighed up information from interviews and evidence available to draw conclusions about the likelihood of particular opportunities to leak the Cabinet Committee papers.
- 43 The investigation was particularly concerned about the handling of the Cabinet Committee papers by a contractor employed at the State Services Commission (SSC) as noted in Part 5 of the Report.

Improvements in handling government information

- 44 The investigation looked at how MFAT and its staff handled government information about the MFAT change programme that was subject to unauthorised disclosure.
- 45 At the time of the investigation, MFAT was rationalising and upgrading its IT systems, and changing how it classifies and stores government information. However, the investigation had no reason to believe that unauthorised disclosure of government information from MFAT was due to failures of IT systems.
- 46 Rather it was clear the government documents about the change proposals listed in paragraph 31 above were selected specifically for unauthorised disclosure by persons employed by MFAT who disregarded their responsibilities to handle government information in accordance with the standards expected of public servants.
- 47 The leaks of emails from HOMs and the Trade Negotiations Division were particularly damaging to MFAT's reputation, not so much because of the content as because of the signatories to these letters. As one Tier 3 manager said they became political issues.
- 48 These leaks may not have been possible if the senders had handled this government information in accordance with the Secretary's instructions to provide feedback by the specified due date via the secure websites.

- 49 The investigation also gathered information about how MFAT and other relevant agencies handled the Cabinet Committee papers, and this is noted in Part 4 of this Report.
- 50 The current system of maintaining and distributing Cabinet documents using paper copies relies for its security on the integrity and competence of a very large number of public servants and external contractors. These people distribute, review, copy and file these documents for legitimate administrative purposes.
- 51 The handling of Cabinet documents has been standardised within Cabinet Office and is mostly standardised across Ministers' offices. It was possible to trace the progress of the Cabinet Committee papers with reasonable certainty from arrival at Cabinet Office to delivery to Ministers' offices.
- 52 There are limited, ineffectual audit trails of the transmission, handling and receipt of specific Cabinet documents after they reach Ministers' offices. Most staff in Ministers' offices and at agencies could not demonstrate how they had protected the Cabinet Committee papers about MFAT other than by describing their normal routine.
- 53 Each agency has developed its own process for handling Cabinet documents to suit its own needs, within the guidelines issued by Cabinet Office. No agencies' approach was without risk. For example:
- 53.1 Some agencies did not keep a log of Cabinet documents received. Evidence about what had happened to the Cabinet documents, including copies taken, who received them and where they were stored had to be reconstructed from 'usual practice' and sometimes did not fit with other known facts.
- 53.2 Some agencies kept a log of Cabinet documents received, but practice varied as to how promptly each log was updated and the level of detail recorded. Where the Cabinet documents were sent to the wrong office at one agency, it took some time to track down what had happened to them.
- 53.3 Some agencies scanned Cabinet documents as they arrived at the agency. This allowed for efficient distribution of the documents to those who needed access, and provided an audit trail of user access. However, the audit trail started only once the documents had been scanned and was only as useful as the information it recorded. In one case, there was 16 hours delay between receipt and scanning of the documents with no record of where the documents were held. The audit trail showed only who had viewed the scans and not what other actions they may have taken, such as printing the documents. Staff at the agency were surprised they could not rely on the audit trail of scanned documents to prove their actions.
- 53.4 In some cases, staff who collected Cabinet documents from Parliament Buildings or logged and distributed the Cabinet Committee papers were temporary staff, or staff who worked in a number of locations in their agency, or were new to their roles and in all these cases had not been adequately trained in appropriate handling of Cabinet documents.
- 53.5 A variety of more or less secure files, folders or document pouches were used for transmitting papers between Parliament Buildings and agencies.
- 54 Given the paper-based system for Cabinet documents with many people involved in handling the documents, from the processes described to us there were opportunities for an ill-intentioned person to gain unauthorised access to the Cabinet Committee documents within Parliament Buildings and in transit to or within government agencies.

- 55 In offices where photocopiers were not activated by user IDs it was possible for staff to take unauthorised copies of the Cabinet Committee papers without leaving any evidence of this activity.
- 56 Some Ministerial staff and agencies confirmed the leaks of Cabinet papers had caused them to review and tighten up their procedures, such as improving procedures for logging receipt, copying and distribution of Cabinet documents, storing them in locked cabinets when not in use, and refreshing their training for staff responsible for handling Cabinet papers.
- 57 Cabinet Office is currently undertaking the CabNet project to move the current process for developing, distributing and storing Cabinet documents to a secure electronic system.
- 58 More details about the handling of government information are described in Part 6 of this Report.

Conclusion

- 59 The unauthorised disclosures occurred at a time MFAT was undergoing transformational change and peaked during a period of formal staff in confidence consultation within MFAT about proposed changes to the operating model for the organisation.
- 60 Actions of some MFAT employees in supplying information and personal views , to the Labour Party Spokesperson on Foreign Affairs and Trade, and to the media fuelled the political debate. This directly undermined MFAT's ability to provide Ministers with robust, unbiased advice once the Secretary had consulted and considered the views of staff at MFAT.
- 61 Prior to the change programme, MFAT had been regarded as an agency that could be trusted with government information. This trust, locally and internationally, is critically important given the role that MFAT undertakes on behalf of the Government and all New Zealanders.
- 62 The leaks of documents that had been prepared by MFAT staff detrimentally affected MFAT's reputation as a trustworthy organisation, thereby damaging New Zealand's interests and the Government's trust and confidence in MFAT.
- 63 The fact that Government Ministers and other politicians were commenting on proposed change at MFAT was not an excuse or justification for leaking government information or for MFAT employees to seek to influence final decisions on the change proposals other than through feedback within MFAT
- 64 The leak of Cabinet Committee papers and other documents about the MFAT change programme to the Opposition were unconscionable acts that undermined the reputation for political neutrality and integrity of the New Zealand State Services and the Government's trust and confidence in public servants.
- 65 It is a core responsibility of public servants to handle official information properly and securely, regardless of the classification of government documents or of the process used to create, store and distribute them. Secure and proper handling of official information is dependent on public servants behaving with integrity.
- 66 Some public servants acted contrary to the Standards of Integrity and Conduct expected of state servants. There was no authorisation for public servants to:
- engage in a course of action to embarrass and put public pressure on the Government and MFAT's Senior Leadership Team to stop or substantially amend the change proposals;

- disclose Cabinet Committee papers;
- discuss the change proposals with the media

- talk to Members of the Opposition or their staff without the express approval of the Minister of Foreign Affairs. The proper course of action was to report promptly to the Secretary the fact that calls and texts from Opposition Members of Parliament or their staff (whether on work or home phones) had been received regarding MFAT business.

- 67 Even if MFAT employees felt that New Zealand's interests were at risk if the change proposals developed during 2010 and 2011 were implemented, the appropriate first course of action was to engage fully with the process within MFAT and to contribute ideas and feedback within the formal consultation period that began on 23 February 2012.
- 68 It was inappropriate and contrary to standards expected of public servants to use political channels, _____ and the media (directly or indirectly) to try to influence decisions on the change programme.

Findings

- 69 The investigation's findings are:

Background facts and other unauthorised disclosures

- 69.1 The investigation found MFAT employees were given access to the MFAT IN CONFIDENCE consultation documents for the sole purpose of providing their feedback on change proposals at MFAT.
- 69.2 From the evidence outlined in this Report, the investigation considers some Tier 3 managers at MFAT did not meet the Standards of Integrity and Conduct expected of public servants.
- 69.3 _____ choosing _____ to send their feedback to all or most team in-boxes at MFAT. As a result, these Tier 3 managers created a perception that it was acceptable for their opposition to the change proposals to be leaked and to be used for political purposes.

- 69.6 While politicians and others were commenting publicly, and some MFAT staff may have agreed with those comments, this does not affect or diminish the responsibility of staff to maintain the political neutrality of the Public Service. This means, amongst other things:
- working within their organisation's processes as directed by the Secretary;
 - enabling the organisation to develop robust and unbiased advice;
 - avoiding unauthorised discussions with Members of Parliament;
 - ensuring the appropriate handling of government information; and
 - keeping a clear separation between their personal interests and views and their role as public servants.
- 69.7 The investigation found many MFAT employees gave their partners access to the MFAT IN CONFIDENCE consultation documents for the purpose of assisting MFAT employees to formulate their views and provide in confidence feedback on the change proposals. The partners were also invited to meet with the Secretary during the consultation period for a discussion with the Secretary about the change proposals. The partners relied on information in the documents and at the meeting with the Secretary to inform their views and provide feedback directly to the Secretary and through their partners on the change proposals.

- 69.9 It is probable that prior to 1 March 2012 an MFAT employee or employees leaked part or all of the consultation documents, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade.
- 69.10 It is probable that between 2 March 2012 and 9 March 2012 an MFAT employee leaked the three formal messages from the HOMs in Singapore, Buenos Aires and Tokyo, directly or indirectly to the Labour Party. One of these messages had a RESTRICTED classification and two had an UNCLASSIFIED classification.
- 69.11 On 6 March 2012 after the leak of the first formal message from the Head of Mission in Singapore (noted above), the Secretary re-confirmed his instructions to all Tier 3 managers at MFAT that their formal feedback on the consultation documents should be submitted via the secure on-line tool (websites).
- 69.12 It is probable that an employee or contractor employed by MFAT leaked part or all of a spreadsheet containing data about remuneration for staff offshore. This was leaked to the media sometime before 24 March 2012.
- 69.13 It is probable that between 15 March 2012³ and 28 March 2012 an MFAT employee leaked, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade the letter sent via secure email to the Secretary on behalf of forty-nine HOMs, marked MFAT IN CONFIDENCE.
- 69.14 It is probable that between 20 April 2012 and 26 April 2012 an MFAT employee leaked, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade a letter from the Secretary to all staff advising of the latest timeframe for announcing decisions on the change proposals, marked MFAT IN CONFIDENCE.
- 69.15 It is probable that on or about 27 April 2012, and before Question Time in Parliament on 2 May 2012, an MFAT employee leaked, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade a copy of an email from Trade Negotiations Division to the Secretary and Senior Leadership Team, marked RESTRICTED.
- 69.16 The investigation found that none of this leaked information was authorised for release by the Minister of Foreign Affairs or the Secretary.
- 69.17 The investigation did not find out who leaked this material. It is probable that this is not an exhaustive list of government information that was leaked.
- 69.18 The investigation considers that the documents listed above were the most damaging leaks and it is most likely that persons employed by MFAT were the source of these particular leaks, given the nature of the documents and their distribution. Any unauthorised disclosure of official information by public servants is a breach of the State Services Standards of Integrity and Conduct and of the MFAT Code of Conduct.
- 69.19 The investigation found two telephone calls were made to the Labour Party Spokesperson on Foreign Affairs and Trade's cellphone on key dates during the change process from telephones in two different MFAT meeting rooms. These calls occurred on 23 February 2012 when the consultation documents

³ NZ time

were issued to all staff and on 2 April 2012 at the end of the first day of the meeting of HOMs and Division Directors with the Senior Leadership Team in Wellington.

- 69.20 The investigation did not find who made these calls, though the calls were probably made by a MFAT staff member as the meeting rooms are in secure areas used by MFAT staff.
- 69.21 The investigation established that at least four people (three MFAT staff and the FSA's Executive Secretary) were telephoned or sent texts by the Labour Party Spokesperson on Foreign Affairs and Trade or his office seeking information about the MFAT change programme. The investigation was unable to establish how many staff were approached for information. One staff member, who has since left MFAT, and the then-current FSA Executive Secretary, reported they were telephoned at home by the Labour Party Spokesperson on Foreign Affairs and Trade and spoke to him for some minutes about the MFAT change programme.
- 69.22 The investigation was unable to establish whether any government information was leaked through any of seven identified calls between the Labour Party Spokesperson on Foreign Affairs and Trade (or his office) and MFAT staff and the FSA Executive Secretary.
- 69.23 The investigation found that there was no authorised reason for MFAT staff to call the Labour Party Spokesperson on Foreign Affairs and Trade or take calls from him or his office.
- 69.24 The investigation found that identified calls to and from the Labour Party Spokesperson on Foreign Affairs and Trade (and his office) from and to MFAT staff were not reported to the Secretary or to the Minister of Foreign Affairs.

Unauthorised disclosure of Cabinet Committee papers

- 69.25 From the evidence outlined in Part 5 of this Report, it is probable the Labour Party Spokesperson on Foreign Affairs and Trade was in possession of a copy of the Change Programme Cabinet Committee Paper. It is also probable he was in possession of a copy of the Europe Posts Cabinet Committee paper.
- 69.26 It is probable the Labour Party Spokesperson on Foreign Affairs and Trade would have received these papers after they were issued by the Cabinet Office at 2.30pm on 30 April 2012 and by 10.30am on 2 May 2012.
- 69.27 It is probable the Labour Party Spokesperson on Foreign Affairs and Trade received either a scanned copy or a photocopy of the original Cabinet Committee papers.
- 69.28 It is not possible to establish if the Labour Party Spokesperson on Foreign Affairs and Trade was in possession of a copy of the Financial Forecast Cabinet Committee Paper however, it is unlikely that the Labour Party Spokesperson on Foreign Affairs and Trade had a copy of that paper in his possession prior to Question Time on 2 May 2012.
- 69.29 The Cabinet Committee papers were not authorised for release to the Labour Party Spokesperson on Foreign Affairs and Trade or anyone else.
- 69.30 Having considered the evidence in Part 4 and Part 5 of this Report about the preparation, handling and distribution of the three MFAT Cabinet Committee papers it is unlikely that the Cabinet Office or the rest of DPMC, or Ministerial

offices were the source of unauthorised disclosure of Ministerial or departmental copies of the Cabinet Committee papers.

- 69.31 Having considered the evidence in Part 4 and Part 5 of this Report it is unlikely that MFAT, Treasury and the Ministry of Justice were the source of unauthorised disclosure of the Cabinet Committee papers.
- 69.32 Having considered the evidence in Part 4 and Part 5 of this Report, it is unlikely that permanent staff at SSC were the source of unauthorised disclosure of the Cabinet Committee papers.
- 69.33 The investigation assessed the probative effect of the evidence outlined in Part 5 in relation to a contractor working at SSC at the relevant time, and this person's involvement with the Cabinet Committee papers. The investigation needed to bear in mind the distinction between evidence which merely raises strong suspicion and that which is sufficient to amount to proof. Recognition of that distinction and what the evidence establishes requires the investigation to apply a level of proof commensurate with the seriousness of the primary issue into which the investigation has to inquire and report.
- 69.34 Approaching the matter in that way, the investigation has concluded that on the evidence outlined, there is a proper basis for strong suspicion this person may have been responsible for the leak of a copy of the Change Programme and Europe Posts Cabinet Committee papers to someone, not necessarily the Labour Party Spokesperson on Foreign Affairs and Trade, who may have passed them on to him. However, applying the level of proof referred to in the preceding paragraph, the investigation does not believe it can conclude as a matter of proven fact that this person was responsible for the leak of the papers. As indicated, the evidence takes the investigation no further than a point of "strong suspicion".
- 69.35 The SSC assigned a contractor to handle sensitive government documents without mitigating possible risks due to the person's: prior work for a political party; likely lack of experience of following Cabinet guidelines for handling Cabinet papers; and dual role working in the secure area of the Commissioner's Office and in the more public reception area of SSC. While the hiring of people that have previously worked for political parties is not in itself problematic, it is the department's responsibility to induct, train, and provide oversight to mitigate any risk.

Handling of government information

- 69.36 The fact that Cabinet papers are distributed in hardcopy means there is greater opportunity for undetectable, unauthorised photocopying/scanning and transmission of the papers. Most people who handle the papers are not the intended recipients so the risk of unauthorised activity is increased.
- 69.37 The investigation found Ministers' offices and agencies that received the Cabinet Committee papers had weaknesses in their processes for logging and tracking the handling of Cabinet documents. Audit trails and processes beyond the delivery by Cabinet Office were ineffectual in demonstrating the secure handling of the documents and protecting the staff responsible for handling the documents.
- 69.38 There is wide variation in the handling of Cabinet papers across departments and, while there was generally good understanding of the need to keep Cabinet documents secure, that did not stop two sets of the Cabinet Committee papers being delivered to the wrong recipients. In DPMC two of the numbered sets of papers were switched between two intended recipients

and in the Ministry of Justice the intended recipient did not receive his copy of the Change Programme and Forecast Financial Position Cabinet Committee papers as they were filed by mistake in the Chief Executive's office. The investigation did not consider that an unauthorised disclosure resulted from these errors in delivery.

Recommendations

70 The investigation recommends that:

Recommendations to improve the secure handling of Cabinet documents

- 70.1 Cabinet Office should continue to progress the CabNet project to provide a secure electronic system for development, storage, distribution and tracking of copying and other access to Cabinet documents.
- 70.2 In the meantime, Cabinet Office should issue a reminder to Ministerial staff and departments to ensure their handling of Cabinet papers is in accordance with the clear Cabinet Office guidelines that have been issued and refer public servants to the section of the PSI website that holds information about the secure handling of Cabinet documents.
- 70.3 Government agencies should review their procedures for handling Cabinet documents to ensure:
- 70.3.1 They have clear procedures that ensure Cabinet documents are logged on receipt (date and time) and are held securely at all times.
- 70.3.2 Staff who have access to Cabinet documents are properly trained, understand and follow the correct procedures and are fully aware of their responsibility and accountability to ensure the security of these documents.
- 70.3.3 It is clear who (if anyone) has authority to copy or scan Cabinet documents, and details of the date, time and recipient of copies and scans taken are recorded.
- 70.3.4 Where scans of Cabinet documents are made for authorised use within the department, there is:
- minimal delay between the receipt and scanning of the documents;
 - documents waiting to be scanned are held securely;
 - access to scans is limited to those who have a legitimate "need to know" about the contents of the documents; and
 - an audit trail to record activity associated with scans including viewing, printing copies, making additional electronic copies or attaching the scans to emails.

Recommendations to improve the secure handling of other government information

- 70.4 Government agencies should ensure they have adequate audit trails of electronic communications and activities by their staff. This includes determining what logs and records should be held and for how long where a staff member or contractor ceases employment with the agency. While staff must be responsible for identifying which of their transactions constitute corporate records, the investigation found a significant variation in the quality and quantity of electronic records, logs and audit trails held by individual

agencies. The lack of adequate audit trails in some departments significantly hampered the investigation's efforts to gather evidence that would either confirm or highlight deficiencies in individuals' accounts of their activities.

- 70.5 Government agencies should ensure, when purchasing equipment for printing, photocopying and scanning, that facilities to record user IDs for each activity are activated and the activity logs are retained.

Recommendations to improve clarity of the role of public servants

- 70.6 MFAT should reinforce to all its staff the standards expected of them in communicating with Members of Parliament, including Ministers. MFAT will retain the trust and confidence of successive governments only if its staff ensure they loyally serve the government of the day. Public servants do this by ensuring:

- the advice they give Ministers is robust, unbiased advice from their agency rather than their own personal views and opinions;
- if their personal views and opinions are at odds with those of their agency or Ministers, they seek to resolve that situation within their agency. As a last resort, there are formal processes to follow set out in each agency's Code of Conduct for private communications with Ministers and for protected disclosures;
- they do not leak government information to Members of Parliament and they refer to their chief executive any requests from Members of Parliament for information over what would normally be provided to the public; and
- they do not try to influence their agency or the Government by unauthorised disclosures to the media, or by allowing unauthorised use of government information to publicly lobby, embarrass or put pressure on their agency or the Government.

- 70.7 SSC should also reinforce to all public servants that upholding the principles of political neutrality and impartiality is essential for public servants to maintain the trust of successive governments. Public servants can best protect their own reputations and that of their colleagues and their agency by being vigilant about protecting government information from unauthorised disclosure. It is unconscionable for public servants to allow unauthorised disclosure in order to embarrass, or to improperly influence decisions of, their chief executive or the Government.

Structure of the Report

- 71 The full report is structured as follows:

Part 1 details how the investigation was conducted.

Part 2 contains the relevant background facts surrounding the development of MFAT's change programme including the environment within which MFAT was operating.

Part 3 sets out the facts relating to the unauthorised disclosures of MFAT information and the outcome of the inquiries made as to who might have leaked this information.

Part 4 sets out the relevant background facts surrounding the preparation and distribution of the Cabinet Committee papers and their handling by Ministerial and Departmental staff.

Part 5 sets out the facts relating to the unauthorised disclosure of the Cabinet Committee papers and the outcome of the inquiries made as to who might have leaked this information.

Part 6 considers the secure handling of Cabinet papers and makes recommendations to strengthen information management systems within MFAT (and other agencies relevant to the investigation) to improve secure handling of government information and deter unauthorised disclosure.

PART 1: Introduction and details about the conduct of the investigation

Introduction

- 72 On 2 May 2012 during Question Time in Parliament, the Labour Party Spokesperson on Foreign Affairs and Trade referred to having, and read extracts from, at least two papers from the Minister of Foreign Affairs that had been lodged with Cabinet Office on 26 April 2012. Other content from these Cabinet papers was referred to in the Labour Party Spokesperson on Foreign Affairs and Trade's press release that afternoon, and in subsequent news stories.
- 73 These papers were two of three papers relating to an organisational change programme proposed for MFAT. The papers were distributed by the Cabinet Office on 30 April 2012 and were on the agenda for the Cabinet Committee on State Sector Reform and Expenditure Control (SEC) meeting at 4.45pm on 2 May 2012.
- 74 The Labour Party Spokesperson on Foreign Affairs and Trade also referred to holding a letter from the Trade Negotiations Division at MFAT. The letter was addressed to Mr John Allen, the Chief Executive and Secretary of Foreign Affairs and Trade and the Senior Leadership Team at MFAT.
- 75 These documents appeared to have been leaked to the Labour Party Spokesperson on Foreign Affairs and Trade. This followed a series of apparent leaks of information in documents prepared or handled by officials about MFAT's change proposals.
- 76 On 4 May 2012, the Commissioner acting under section 8 of the State Sector Act 1988, appointed Paula Rebstock to investigate the possible unauthorised disclosure of information relating to MFAT. The Commissioner delegated to Ms Rebstock certain powers under sections 7, 9, 10 and 25 of the State Sector Act 1988. These powers included powers under the Commissions of Inquiry Act 1908 to summon witnesses and receive evidence.

Terms of reference

- 77 The terms of reference, as originally framed on 4 May 2012, were:
- Investigate and report on the relevant facts around a possible unauthorised disclosure of 3 Cabinet papers, titled "Ministry of Foreign Affairs and Trade: Change Programme", "MFAT: Global Footprint: European Posts", and "Ministry of Foreign Affairs and Trade: Forecast Financial Position", as well as information relating to those papers.
 - Make recommendations as to measures, if any, that could strengthen information management systems within MFAT (or other agencies relevant to the investigation) to improve secure handling of government information and deter unauthorised disclosure.
- 78 The Commissioner amended the terms of reference on 23 May 2012 to include a new second paragraph. The Commissioner had always intended that the investigation encompass more than just the Cabinet paper leaks and extend to the earlier leaks of information. The additional paragraph was included principally for the avoidance of doubt about the scope of the matters to be investigated. The amended terms of reference are:
- Investigate and report on the relevant facts around a possible unauthorised disclosure of three Cabinet papers, titled "Ministry of Foreign Affairs and Trade: Change Programme", "MFAT: Global Footprint: European Posts", and "Ministry of Foreign Affairs and Trade: Forecast Financial Position", as well as information relating to those papers; and

- Investigate and report on the relevant background facts surrounding the development of the MFAT change programme culminating in the Cabinet papers referred to above and the environment within which MFAT was operating during this period. This includes, as appropriate, who may have been responsible for earlier unauthorised disclosures during the development of the MFAT change programme.
- Make recommendations as to measures, if any, that could strengthen information management systems within MFAT (or other agencies relevant to the investigation) to improve secure handling of government information and deter unauthorised disclosure.

Disclosure of official information

- 79 The focus of this investigation is the possible unauthorised disclosure of official information. Most of the information under investigation also had a security classification.
- 80 'Official information' is defined in s 2 of the Official Information Act 1982 as any information held by a department or organisation (as defined, 'organisation' includes most agencies in the wider State sector) or a Minister of the Crown in his or her official capacity.
- 81 Government documents may be given a security classification. Classified documents must be handled according to the manual Security in the Government Sector. Guidance on the application of security classifications to Cabinet material is set out in Cabinet Office Circular CO (08) 1 Security Classification System: Application to Cabinet Documents, and in the CabGuide.
- 82 Information is classified using principles and guidelines which enable a determination to be made of the degree of harm that could result from unauthorised disclosure. Standard rules (for example regarding handling and transmitting) are then applied to determine how the information so classified is to be protected.
- 83 Information is divided into two prime categories:
- 83.1 National security information. This is information which, if the subject of an unauthorised disclosure, could threaten the security or defence of New Zealand or affect New Zealand's international relations. National Security information has four classifications which are, in descending order of importance: Top Secret, Secret, Confidential and Restricted. These national security classifications are mainly applicable to material handled by MFAT, and the defence and intelligence agencies.
- 83.2 Policy or Personal Privacy information. This is not National Security information, but if the subject of an unauthorised disclosure could prejudice law and order, impede the effective conduct of government business or damage or prejudice New Zealand's economic interests. Policy and Personal Privacy information has two classifications which in descending order of importance are: Sensitive and In Confidence.
- 84 A particular paper can also have an endorsement marking, e.g. Budget or Commercial.
- 85 The rules governing the disclosure of official information are clear. Official information is to be released only when authorised, and in accordance with the Official Information Act 1982 and any Departmental policies and guidelines. The Privacy Act 1993 may also be relevant.

- 86 Only Ministers may approve the proactive release of Cabinet material⁴. In this case, the Cabinet Committee papers had not even been considered by a Cabinet Committee when they were leaked and had not been approved for release.
- 87 The Protected Disclosures Act 2000 provides for certain disclosures in the event that employees have concerns about unlawful actions or serious misconduct within their organisation, colloquially called “whistle-blowing”. Employees must follow internal procedures to make a protected disclosure and allow time for their organisation to investigate before raising their concerns outside the organisation including in private communications with Ministers. MFAT’s Code of Conduct is clear about the standards expected of its employees in private communications with Ministers about matters concerning MFAT, including that such matters should first be raised with the Secretary.
- 88 State sector employees have a duty to not release or communicate official information without authority. Depending on the circumstances unauthorised disclosure of information may lead to disciplinary action.
- 89 All employees of State Services agencies are required to adhere to the Standards of Integrity and Conduct for the State Services as set out in the code of conduct issued by the Commissioner under section 57 of the State Sector Act 1988. Aspects of the code of conduct that are particularly pertinent to this investigation with respect to the handling of official information are:
- 89.1 The requirement to be fair, including being professional.
- 89.2 The requirement to be impartial:
- maintaining the political neutrality required to enable employees to work with current and future governments;
 - carrying out the organisation’s functions, unaffected by personal beliefs;
 - supporting the organisation to provide robust and unbiased advice; and
 - respecting the authority of the Government of the day.
- 89.3 The requirement to be responsible, including treating information with care and using it only for proper purposes.
- 89.4 The requirement to be trustworthy:
- ensuring actions are not affected by personal interests; and
 - avoiding any activities, work or non-work, that may harm the reputation of the organisation or of the State Services.
- 90 Guidance issued by the SSC about the Code of Conduct deals specifically with the use and disclosure of official information. MFAT’s own Code of Conduct contains similar guidance:

1.26 The disclosure of official information is subject to the requirements of the Official Information Act 1982. All employees shall comply with the requirement that official information should be released only by authorised employees and within the guidelines, procedures and delegations established from time to time relating to the release of official information.”

1.28 Employees authorised by the Ministry to respond to requests made under the Official Information Act 1982 should exercise proper care and discretion in the application of departmental procedures. In cases of doubt, employees

⁴ Cabinet Manual 2008: Chapter 8 Official Information, paragraph 8.4

should seek guidance through their Manager. Should the release of politically sensitive material be required, such employees should ensure (through the Secretary) that the Minister is kept fully informed. At overseas posts, members of staff should consult with the Head of Mission or Post concerning the procedures to be followed in responding to any requests under the Official Information Act 1982.”

1.29 In all other circumstances, information to which they have access during the course of their employment is to be used by employees only for official purposes, to be treated with appropriate regard to any sensitivity that the information might have in the hands of the recipient, and to be released only when authorised and in accordance with any guidelines and procedures established by the Ministry ... Employees releasing information without authority and not in accordance with such guidelines and procedures 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.

- 91 In addition sections 78A and 105A of the Crimes Act and section 20A Summary Offences Act 1981 create an offence, in certain circumstances relating to the security and defence of New Zealand, of improperly disclosing or retaining official information.
- 92 The approach the investigation has taken in respect of ‘unauthorised disclosure’ covers a broad spectrum of actions and includes, but is not limited to; the deliberate leaking of government information, the unauthorised disclosure of government information to individuals outside departments, the unauthorised disclosure of government information to individuals inside departments, and the unauthorised use of government information for a purpose for which it was not intended.
- 93 The unauthorised release or use of official information is a serious matter. The Cabinet Manual sets out the range of responses that may be considered. These responses include: an internal inquiry by the chief executive of the department concerned perhaps in association with the Commissioner, an inquiry by the Secretary of the Cabinet, a ministerial inquiry, a SSC inquiry, or a police inquiry⁵.
- 94 The investigation acknowledges that the wide range of actions that have been included within the scope of an “unauthorised disclosure” significantly vary in their degree of seriousness, and therefore the corresponding response must be considered in the context of the individual disclosure.

Investigation scope

- 95 The investigation focused on ascertaining:
- 95.1 What information may have been leaked and what information had been authorised for disclosure or was otherwise legitimately in the public domain.
- 95.2 Who might have leaked all or parts of the three final Cabinet Committee papers issued by the Cabinet Office on 30 April 2012. Very early on in the investigation and for reasons which will be set out later, it was possible to conclude that the Labour Party Spokesperson on Foreign Affairs and Trade was in possession of the final Change Programme Cabinet Committee paper, and was probably also in possession of the Europe Posts Cabinet Committee paper.
- 95.3 Who might have leaked a range of MFAT documents including:
- change programme consultation documents: the Ministry Business Model and the Ministry Remuneration Review documents;

⁵ Paragraph 8.6 Guide to Cabinet and Cabinet Committee Processes 2008

- a spreadsheet containing data about remuneration for staff offshore;
 - three formal messages from HOMs in Singapore, Buenos Aires and Tokyo dated 2, 3 and 5 March 2012, respectively;
 - a letter emailed 15 March 2012 to the Secretary from 49 HOMs;
 - a letter dated 20 April 2012 from the Secretary to all MFAT staff advising of the latest timeframe for announcing decisions on the change proposal; and
 - a letter dated 27 April 2012 to the Secretary and SLT emailed to all MFAT divisions from the Trade Negotiations Division.
- 95.4 The factual context within which the possible unauthorised disclosures had occurred and, in particular, understanding the MFAT change process and the environment at MFAT during the relevant period.
- 95.5 What processes were in place or were planned by MFAT and other agencies to improve secure handling of government information and deter unauthorised disclosures.
- 95.6 What further improvements could be considered by MFAT and other agencies to improve secure handling of government information and deter unauthorised disclosures.

Approach to the investigation

- 96 In accordance with the powers delegated to the investigation under sections 7, 9, 10 and 25 of the State Sector Act 1988, the approach to the investigation was to:
- 96.1 Identify and interview on oath those people who might have received and/or handled the three Cabinet Committee papers after they were distributed by the Cabinet Office on 30 April 2012.
- 96.2 Arrange for the return of all copies of the three Cabinet Committee papers from their recipients.
- 96.3 Interview on oath a range of MFAT employees and contractors (both current and former) as well as other Public Service employees to assist with establishing background information relating to the development of the change process and to establish who might have been responsible for the earlier leaks.
- 96.4 Obtain relevant background documents. A list of key documents is contained in Appendix B.
- 96.5 Obtain information from agencies that handled one or more of the three Cabinet Committee papers about their processes. This helped to identify further lines of enquiry as well as possible process recommendations. Agencies that contributed information are listed in Appendix C.
- 96.6 Confirm a timeline for key events in MFAT's change process. See Appendix D.
- 96.7 Carry out forensic investigations, including:
- reviewing electronic copies of all documents that had been scanned at MFAT between 30 April 2012 and 2 May 2012;
 - requiring electronic searches and/or production of scanner/copier/printer logs by other departments that received the three Cabinet Committee papers to try to establish what scanning, photocopying or printing had occurred of the papers that had been the

subject of unauthorised copying, scanning and/or transmission between 30 April 2012 and 2 May 2012;

- reviewing the fax log for Cabinet Office for 30 April 2012;
- analysing available MFAT phone records for calls to/from numbers of interest, and for high volumes of calls and call patterns that could not be easily explained as part of routine business transactions;
- obtaining expert analysis of the TVNZ and Parliamentary TV footage of the Labour Party Spokesperson on Foreign Affairs and Trade in the House and in his office at Parliament Buildings speaking about and handling documents on 2 May 2012;
- securing certain MFAT hard drives and reviewing MFAT emails for persons of interest, as well as particular subject matter, including subject matter associated with key date ranges;
- reviewing selected MFAT printer logs from 30 April 2012 to 2 May 2012;
- reviewing information from MFAT security access cards;
- obtaining expert analysis of the Cabinet Committee papers to determine if the top pages of the original copies showed indentations reflecting hand-written notes that might provide lines of enquiry. (While some handwritten notes were found, no useful lines of enquiry were identified); and
- reviewing copies of email and document management logs from MFAT for the period 23 April 2012 to 2 May 2012.

96.8 Review prior reports and recommendations on the secure handling of government information to determine what relevant information there may be for this investigation.

96.9 Provide extracts of drafts of content and findings from the investigation's report to persons against whom there were potentially adverse findings; receive and consider their responses and any additional information provided; amend and confirm the wording of the final report.

96.10 Respond to judicial proceedings and other legal submissions.

97 The investigation accessed records of government departments such as documented procedures for handling Cabinet documents, activity logs, emails, telephone records, and contents of selected hard drives.

The Labour Party Spokesperson on Foreign Affairs and Trade was not interviewed

98 As the recipient of the Cabinet Committee papers, the Labour Party Spokesperson on Foreign Affairs and Trade was an obvious person to interview.

99 The investigation also gave some consideration and sought legal advice on the ownership of the Cabinet papers and whether it would be possible for Cabinet Office to seek to retrieve the copies that the Labour Party Spokesperson on Foreign Affairs and Trade was holding, as would be possible in other circumstances where a private individual had acquired copies of papers that were the personal property of someone else.

100 Legal advice provided was that it was not possible to interview the Member about how he came to receive the documents or to retrieve them from him. The Labour Party Spokesperson on Foreign Affairs and Trade disclosed information from the Cabinet Committee papers and other government documents in Parliament and consequently

parliamentary privilege applies to protect him from being asked to disclose the source of the documents, or to produce the documents, or to disclose any information pertaining to the acquisition of the documents.

Comment on Ministerial interviews

- 101 The two Ministers whose portfolios were most directly impacted by the unauthorised disclosures of information, namely the Minister of Foreign Affairs and the Minister of Trade, made themselves and their staff available for interviews. The investigation interviewed both Ministers, as well as all of their staff who had handled the Cabinet Committee papers.
- 102 The investigation contacted the offices of all Ministers who received the MFAT Cabinet Committee papers. All Ministerial staff who were identified as having handled both the Change Programme and Europe Posts Cabinet Committee papers were interviewed.
- 103 All Ministerial copies of the Cabinet Committee papers returned to Cabinet Office were inspected for evidence as to whether undisclosed copies or scans may have been taken, and the results were assessed against information supplied at interview by Ministerial staff. On the basis of this work and information provided at interviews, the investigation decided it was not necessary to interview other Ministers who had received the Cabinet Committee papers.

Authorised access to government information

- 104 One of the challenges for the investigation was the number of MFAT staff and other public servants who had access to much of the information that was subject to unauthorised disclosure.
- 105 For example, many of the earlier documents that were leaked were distributed unsolicited to large numbers of people, such as documents sent to group in-boxes at MFAT for all offshore posts and Divisions in New Zealand. This includes the FSA in-box which is managed by the FSA Executive Secretary who is not an MFAT employee but uses office facilities at MFAT. Some of these documents were also sent to MFAT staff seconded to Ministers' Offices and DPMC, or were forwarded on by recipients to staff who were not the intended recipients.
- 106 A similar challenge arose in the case of the Cabinet Committee papers as over 177 people had direct access to a hard copy or a scanned copy of one or all of the Cabinet Committee papers between 30 April 2012 and 2 May 2012. This list included: 17 Ministers, 62 staff in Ministers' offices, and at least 98 departmental staff and messengers. Another 115 departmental staff were identified as having been granted access to an electronic version of the Europe Posts Cabinet Committee paper; it was confirmed this occurred only after 2 May 2012.
- 107 Once the investigation established that the Labour Party Spokesperson on Foreign Affairs and Trade had received the Change Programme Cabinet Committee paper (as opposed to a draft of that paper), the Minister of Foreign Affairs, the Minister of Trade and 118 people in Ministers' offices and departments (including messengers and contract couriers) were interviewed about their handling of the papers, as evidence showed these people accessed or handled at least the Change Programme and Europe Posts Cabinet Committee papers (if not all three documents) either in hard copy or PDF format. In all cases, these people had legitimate reasons to handle the documents, whether as named recipients, their support staff and analysts, or staff providing courier or record management services for Ministerial offices and departments. Some people were interviewed more than once. Numbers of people interviewed in relation to the distributed copies of the Cabinet Committee papers are listed in Appendix E.

- 108 The distribution list for the Europe Posts Cabinet Committee paper had additional recipients to those for the Change Programme and Forecast Financial Position papers. The investigation did not focus on the approximately 158 ministerial and departmental staff who had access to the Europe Posts paper only. Staff who handled or may have handled the Europe Posts Cabinet Committee paper only and were not interviewed are noted in Appendix F.
- 109 Enquiries were not directed at those who were involved only in the preparation of the papers. This was, on the whole, quite a different group to the persons who received/handled the final Cabinet Committee papers.
- 110 Many of the other documents that were subject to unauthorised disclosure had wide circulation within MFAT and also to Ministerial offices and DPMC. It was not possible to interview all the people who had access to those documents.
- 111 In addition to the people who were identified as having access to the Cabinet Committee papers, around 90 interviews were held to establish the background facts, including who may have leaked other government information.

PART 2: Relevant background facts about the MFAT change programme

The Ministry of Foreign Affairs and Trade

- 112 MFAT is responsible for protecting and promoting New Zealand's interests overseas. It provides advice on international relations, works to advance and protect New Zealand's security and trade interests, administers New Zealand's overseas aid programme, and provides consular support for New Zealanders overseas. It is also the Government's official channel for communications with other countries and international organisations.
- 113 MFAT is led by Mr John Allen, the Chief Executive and Secretary of Foreign Affairs and Trade (the Secretary). He is supported by a Senior Leadership Team (SLT).
- 114 As at 30 June 2011, the wider leadership team comprised 29 Division Directors and 54 HOMs and Heads of Post around the world. MFAT had 861 staff: 600 in New Zealand and 261 working in 53 offshore posts. There were also 425 locally engaged staff employed in the posts. For the 2010/11 fiscal year, MFAT's total expenditure was \$373.75 million.

Change Programme – a snapshot

- 115 Like many government agencies, MFAT has been going through a period of transformational change to deliver better public services during a period of fiscal restraint. The need for change had been identified in reviews of MFAT dating back to 1995.
- 116 In 2009, Mr Allen was appointed as the Secretary, and in 2010 a major change initiative known as Ministry 20/20 got underway. This programme aimed to modernise MFAT making it: 'flexible and focussed on strategic priorities; performance orientated; ideas driven and delivering tangible foreign policy results'.
- 117 Ministry 20/20 was made up of seven streams of work: Strategy, Structure, People, Culture and Values, Technology and Knowledge Management, Measures and Efficiency. There were a number of projects making up these streams. It espoused a vision to give New Zealand an edge internationally, and a mission to create conditions for New Zealand to thrive and make its mark as a global citizen. The values that supported the vision and mission were professionalism, leadership, respect, collaboration and innovation.
- 118 The Government's expectation that there would be changes at MFAT had been well signalled publicly. For example, on 5 April 2011 the Minister of Foreign Affairs delivered a speech to the New Zealand Institute of International Affairs setting out the challenges confronting MFAT over the next few years. In that speech the Minister made it clear that 'a major change programme to make the Ministry a leaner, more adaptable organisation, better able to meet New Zealand's future needs' was underway.
- 119 The Minister and the Secretary also referred to the Ministry 20/20 change process when they addressed the Foreign Affairs, Defence and Trade Select Committee (FADTC) during 2011.
- 120 For the purposes of this Report, some specific Ministry 20/20 projects are relevant:
- As part of the Structure workstream, the Ministry focused on designing a modern, more efficient offshore operating platform (Offshore Organisational Design Project or OODP), and also designing a new operating model for the front office (Future Business Model (FBM)); and
 - Projects under the People stream included a remuneration project to review and redesign remuneration, allowances and staff benefits, and a language training

review. These two projects were carried out between August and December 2011. A group of staff known as the People Programme Steering Committee was 'responsible for driving forward to deliver the combined capability and benefits as defined in the People Programme Plan'.

- 121 Projects were managed by teams of selected staff members and independent consultants (both internal and external) and coordinated through a Change Programme Office. A number of staff interviewed by the investigation were involved in these teams. Each project had terms of reference and it was generally understood that any proposals were being developed in confidence for consideration by the Senior Leadership Team. Some of the outputs produced were released to staff for consideration.

MFAT: Internal environment and culture

- 122 MFAT has functioned differently to most other government departments. The following extract from a July 2011 Current State report by MartinJenkins for the Future Business Model Project provides an insight into the nature of this difference and the internal environment existing within MFAT.

MFAT differs from other core public service departments in that it has operated as a career service, more analogous to the New Zealand Defence Force or New Zealand Police. Past and present employees described diplomacy as a vocation. Diplomatic careers are built over a number of decades, emphasising on-the-job learning of a generalist tradecraft through regular rotations to different positions on and off-shore. The career foreign service model combines deep knowledge and experience of different environments, and of how to identify and pursue New Zealand's interests in them.

The notion of a career service is reinforced by a strong organisational culture based on shared experiences and professional identity. There was a strong sense of professional pride and loyalty to the organisation amongst internal staff we spoke to. More than one informant described MFAT as a family.

...

The culture of MFAT is strongly status driven. There is an expectation that once staff have held a Tier 3 position off-shore, on-shore positions will be at the same level or higher. Consequently, there is a significant number of on-shore Tier 3 positions, most with small spans of control, in order to accommodate returning staff.

- 123 The Project's final report entitled, *Future Business Model For Staff Comment*, further describes the pervading culture at MFAT and the need for change:

The Ministry has made a sound start with the articulation of a set of core values to support the realisation of our vision and mission: Professionalism, Leadership, Respect, Collaboration, and Innovation. The positive behaviours that the Ministry wants to encourage flow directly from those and are built into the new performance management system.

The current state report talked about the Ministry's strengths – professionalism, motivation, and sense of loyalty and respect amongst employees. It also talked about how some of those positive features had become distorted in their application.

The Performance Improvement Framework report noted the Ministry's strong culture of professionalism had significant benefits but also created a culture that was relatively closed, individualistic, hierarchical, and risk averse.

We need to abandon hierarchy and unhealthy competitiveness. There is a negative aspect to competition that involves the pursuit of individual benefit rather than the collective good.

We perpetuate those unappealing traits when staff are seen to get away with applying their lobbying or negotiating skills, or going over the head of the designated decision-maker, to help them get the decision or role they want.

They are often seen in association with a distorted sense of personal status and importance; an entitlement syndrome, the feeling that the Ministry should pay for any expense incurred, rather than using one's own remuneration package.

We know that we carry conservatism and risk aversion to excess, and that it frequently stops the implementation of good ideas.

And we seem to struggle sometimes to resolve our own problems. There is more talk behind people's back than there is open and honest behaviour to address issues directly with others, whether they be our managers or our staff. The hierarchy, and unclear decision-making processes around rotations, postings and promotions, can make it hard for more junior staff to have those difficult conversations with their managers.

Rotation has been used too often as a way to avoid rather than address under-performance, whether of the staff member or the manager.

- 124 The Future Business Model report was made available to MFAT staff in September 2011 and the Secretary invited staff to provide thoughts and comment on the Future Business Model report⁶:

I am pleased to advise that the future business model report is now available on Te Aka for your information and comment....

The Senior Leadership Team has discussed the future business model report at length and is now looking forward to comment from across the Ministry.

This is not a formal consultation, but rather an opportunity for you to provide your thoughts and comments on this straw person model and engage on key issues around the Ministry's strategic priorities and how we organise ourselves in a complex environment.

The report is grounded in our vision and our mission statement, as well as our culture and values. It draws on other reports completed over the last 15 years, including the recent MartinJenkins current state report. In addition, the comments you have all provided as part of the Future Business Model project have been a valuable input into the thinking.

The model contains a proposed strategic framework with draft strategic priorities and high level outcomes that have been developed by the Senior Leadership Team with the Future Business Model project team.

Two strands of the report stand out for me.

First, that the Ministry will increasingly need deeper expertise to be applied to specific areas of work. Underpinning this strand is a view that for New Zealand to make an impact on the world stage with limited financial resources, we need people with strong capability in their respective areas.

Secondly orthodoxy: while there will sometimes be reasons for the Ministry to be structured differently to other organisations, much of what we do should be

⁶ Quote from the Secretary in announcing FBM 27 Sept 2011 #1817603

organised in a conventional way. This includes spans of control and how people are appointed into roles.

...

We will be particularly interested in what you think are the benefits and challenges of the model, anything you would like to see done differently, and what else you think should be in the model. There will be staff forums in Wellington and sessions with posts via Skype to discuss this further. More information about these sessions will be provided soon.

Increasingly we are bringing together and aligning the Future Business Model project with the Offshore Organisational Development Project, Wellington Impacts and Devolution to Post projects. They will be combined in a full consultation document on the structure of the Ministry, which will be released to all staff by no later than the end of February 2012. We will keep you informed about this.

- 125 Several staff interviewed advised that they did provide comments on the Future Business Model report, although some felt that their comments were not acknowledged or taken up. A few Tier 3 managers said at interview they did not pay much attention to the report, despite the fact that in the last quarter of 2011 MFAT held staff forums about the Future Business Model, including during SLT visits to offshore posts.
- 126 Some managers involved in the change projects commented on the challenges of achieving change in MFAT. They described a high need for consultation, “everyone wants to consult about everything”, which slows projects down.

Formal change proposals

- 127 The Change Programme Office brought various aspects of the Ministry Business Model (MBM) and the Ministry Remuneration Review together for SLT’s consideration by December 2011 with final draft documents available by late January or early February 2012.
- 128 During this period Tier 3 managers were receiving training on managing change. Change workshops had begun in February 2011 as the SLT recognised that MFAT had little or no experience of implementing significant organisational change.
- 129 Prior to the formal release of the change proposals, advance copies of the MBM were provided to members of the MFAT change team, the SLT, as well as to the Minister of Foreign Affairs and one of his private secretaries on or about 16 February 2012.
- 130 Tier 3 managers at MFAT were briefed on the change proposals on 17 February 2012 and on their role in the change process. They were given early access to the on-line edition of the change documents on 21 February 2012 in order to be ready to lead their teams through the consultation process. The unions, the FSA and the Public Service Association (PSA), were also provided with copies of the documents a day prior to their formal release.
- 131 On 23 February 2012, the Secretary sent an email to MFAT staff describing that they would shortly gain access to the MBM and Remuneration Review consultation documents. His email continued:

Together the proposals in these documents set out a model for a modern Ministry. I am mindful of the Ministry’s rich heritage, but the Ministry cannot stand still. We will not be able to keep doing great work unless we are prepared to adapt to a changing world and unless we have a sustainable structure and processes that will take us forward over the next few years.

It is critical we make the right decisions about the Ministry’s future, so your feedback is important.

Please make use of the resources available to you, and give yourself and your colleagues the space and time to consider the proposals fully. The Senior Leadership Team will be holding forums where you will have the opportunity to discuss the proposals.

You may also want to think about what practical steps you can take to avoid putting pressure on others during the consultation period, while not compromising what the Ministry needs to deliver.

All of us are determined to ensure that through the changes we put in place, we have a Ministry that can deliver for New Zealand.

I look forward to your feedback.

- 132 The consultation documents were released to staff on 23 February 2012. A timeline of relevant events is included in Appendix D.
- 133 The change proposals reflected substantial changes to the operating model for the organisation, affecting back office support structures in Wellington and offshore, and restructuring Wellington-based divisions and posts offshore. One of the central proposals in the MBM was to remove the rotation system in favour of appointing people to open tenure roles, and filling all vacancies through appointment on merit. The proposals presented to staff for consultation would have removed 305 positions (including 136 locally engaged staff overseas where some services would be modified, stopped, outsourced or brought back to Wellington).
- 134 The change proposals included changes to how MFAT would organise and manage its resources, what skills it needed and wished to develop in its staff, and to the number and types of roles at MFAT. In the Remuneration Review there were significant changes to staff remuneration and allowances. As with any major organisational change, for MFAT staff these proposals had implications for established ways of working, career progression and future earnings potential.
- 135 The objectives of the change proposals were to: streamline, modernise and improve the efficiency of the organisation; ensure foreign policy resources were better aligned with modern strategic priorities; introduce new ways of developing and deploying MFAT staff, and create a performance-focused culture that rewarded talented staff and addressed poor performance.

Consultation

- 136 The MBM and Remuneration Review were loaded onto two secure websites as MFAT IN CONFIDENCE documents, for staff consultation. Login details were emailed to each MFAT employee. Employees were encouraged to provide feedback and ask questions and were instructed to enter questions and their feedback online. Some print copies of the consultation documents were made available to staff, and the documents were also translated into several languages.
- 137 The consultation period on the proposed changes was one month, closing at midday on 21 March 2012. Final decisions were to be made by 10 April 2012. All staff (both domestic and overseas) were encouraged to provide feedback. They were asked to do so through the secure websites. Submissions could be made either as an individual or as part of a group, and could be updated through the consultation period.
- 138 Many MFAT staff interviewed described being taken by surprise by the scale and scope of the change proposals, though it was acknowledged that change had been signalled and individual aspects of the proposals had been the subject of prior discussion and feedback. For example, the Future Business Model report from September 2011 was the foundation document for a design for the new business model which set out the underpinning principles and objectives from which the MBM was developed.

- 139 Unlike other departments, MFAT had not had significant restructuring that adversely affected individuals' jobs or career prospects; staff were feeling real uncertainty for the first time. Many staff considered they would be seriously and adversely affected. Others saw the restructuring as providing enhanced career opportunities, a fairer approach to remuneration and were more positive about the overall direction of the changes.
- 140 Most staff recognised there was a genuine need for change. There was concern, however, that the proposals were too ambitious, would result in an exodus of staff, would fail to attract new talent and, ultimately, would be a threat to MFAT's ability to conduct its business. Members of SLT candidly acknowledged that they had not anticipated the intensity of staff concerns.

Relevant events – consultation period

- 141 For the purposes of this Report, it is necessary to identify some specific events during the consultation period.
- 142 The communications plan, agreed at MFAT for the change programme, was that MFAT would communicate directly with its employees and encourage feedback from them, and would not try to make the case for change in the media. However, on 20 February 2012 the Minister of Foreign Affairs' Senior Private Secretary alerted MFAT to the fact that a journalist already knew a considerable amount about the change proposals including likely staffing numbers. On 21 February 2012, the Dominion Post featured an article by Tracy Watkins and Kate Chapman reporting that "most of MFAT's 600 core staff would have to reapply for their jobs in a restructure that could see 300 roles lost". It said "staff will be told on Thursday of the plans". The Labour Party Spokesperson on Foreign Affairs and Trade was quoted in this article. These details of the proposals were not in the public domain.
- 143 The same day, the Secretary emailed all staff about the early coverage of the change programme in the media. He also emailed all HOMs and Division Directors:

Many of you will have seen the Dominion Post front page article this morning. While media interest around public sector change is inevitable, this is not the way in which we wanted our staff to hear information like this.

While the article's assessment is fair in some areas it also contains inaccuracies, and does not take account of proposed new positions or existing vacancies that are proposed to be filled.

The consultation documents are very detailed and it is important that all staff read their respective consultation documents and engage in the wider formal consultation process over the coming weeks. Our primary concern is to support our staff, and the integrity of the formal process.

It is important to remember that the consultation documents are proposals. Hearing our staff's views, opinions, ideas and feedback on the proposals is an important part of the change process. Final decisions will only be made after staff feedback has been considered.

...

Your staff may raise questions in response to the media activity. Please remind them that we are following a formal process which places a high priority on their feedback and urge them to:

read the detailed proposals

ask questions by the two secure websites – questions will be answered as quickly as possible

give full feedback on all the proposals over the next month – that is the key component of the consultation process.

- 144 Given the level of media comment including leaked details contained in MFAT IN CONFIDENCE documents, and in order to correct erroneous or misleading content for instance that half of all core roles would be lost, the Secretary provided one briefing to the press about the key elements of the change proposals on 23 February 2012 once all staff had access to the consultation documents.
- 145 On 23 February 2012 at 5.40pm, a call one minute 16 seconds long was made to the Labour Party Spokesperson on Foreign Affairs and Trade's cellphone from a meeting room on Level 12 at MFAT's offices, 195 Lambton Quay. This meeting room was in the staff only area of the floor, accessible only by security card.
- 146 On 29 February 2012, the FSA issued a media release entitled: 'Foreign Ministry faces Diplomat Crisis, Survey Shows' reporting the results of a union-sponsored survey of its members.
- 147 Sometime after the MBM consultation document was released, in early March, a staff member for the Labour Party Spokesperson on Foreign Affairs and Trade rang to talk to a MFAT manager who was the FSA President. The MFAT Manager was not available and the call was put through to the FSA Executive Secretary. The FSA President and Executive Secretary discussed this call and decided it was not wise for the President to talk to the Labour Party Spokesperson on Foreign Affairs and Trade but that the Executive Secretary could do so. The FSA Executive Secretary called back from her landline at MFAT. She spoke to someone in the Member of Parliament's office. The person asked for her phone number so that it could be passed to the Labour Party Spokesperson on Foreign Affairs and Trade. He called the FSA Executive Secretary some time later, at the office. It was most likely the same day, but the FSA Executive Secretary was not sure of the precise day or how long the call lasted. It may have been five minutes or so. The FSA Executive Secretary recalls not spending very long on the call as she thought it was immediately before a staff Town Hall meeting to talk about the change proposals. She said the Labour Party Spokesperson on Foreign Affairs and Trade was keen to push the issue of MFAT restructuring in Parliament. The FSA Executive Secretary says she did not tell him anything that was not in the public domain. The FSA President and Executive Secretary decided not to say anything about this call to anyone else.
- 148 On 1 March 2012, the Minister of Foreign Affairs was reported as saying that 'the proposals about remuneration had caused the most negative reaction'.
- 149 On 1 March 2012, the Foreign Affairs, Defence and Trade Committee (FADTC) met. One of the MFAT attendees considered that from questions asked it appeared the Labour Party Spokesperson on Foreign Affairs and Trade had a copy of the MBM consultation document.
- 150 Three HOMs sent formal messages dated 2, 3 and 5 March 2012, respectively, to all MFAT divisions as well as two private secretaries seconded from MFAT to the offices of the Minister of Foreign Affairs and of the Minister of Trade, and a policy advisor seconded from MFAT to DPMC and the FSA in-box which is cleared by the FSA Executive Secretary. These messages outlined the adverse implications of the proposals for the particular post and were available to most MFAT staff.
- 151 The investigation noted that the FSA Executive Secretary is not an employee of MFAT, but continued to have access to formal messages and in confidence government documents sent to the FSA in-box. This arrangement started when this person was employed by MFAT. The FSA Executive Secretary told the investigation:

I consider myself totally bound by MFAT In Confidence. I might not be a Ministry staff member but, I fully accept that I work in this building and that that requires the same obligations on me as any other staff member.

- 152 Sometime in March 2012, the Labour Party Spokesperson on Foreign Affairs and Trade called the FSA Executive Secretary in the evening on her home phone. The FSA Executive Secretary said, when asked about the nature of the call:

Well he actually asked me if I had information that I could give him and I said no. He was - I think, I'm not sure, I think he was asking for those papers from the posts. I really -

- 153 When asked if she meant the cables (from the three HOMs), the FSA Executive Secretary said:

Yeah, I'm not sure. I'm not sure. It was probably those because it must have been around that time. I told him that I couldn't share any information. I said ... I was shocked. We had a talk about the fact that Foreign Affairs had a fine tradition of not leaking things. Because I distinguish very clearly between leaking documents and asking him to promote the cause of Foreign Affairs staff in Parliament. That's just freedom of speech. But leaking documents is different. And I said it was a mark of how grim things were for the Ministry, I thought, that people were doing this.

- 154 The FSA Executive Secretary indicated she did not tell anyone about this second phone call until later in 2012 when she told the FSA President. She said they agreed not to tell others about the call.

- 155 The three formal messages were leaked to the Opposition very soon after being sent:

155.1 On 6 March 2012 in Parliament, the Labour Party Spokesperson on Foreign Affairs and Trade referred to content in the formal message from the Head of Mission (HOM) in Singapore. (In this same exchange at question time, the Labour Party Spokesperson on Foreign Affairs and Trade also sought to table page 305 from the MBM, and questioned the cost to fly the Minister of Foreign Affairs and his delegation from Bangkok to Burma. These details had not been authorised for disclosure.)

155.2 On 8 March 2012, the Labour Party Spokesperson on Foreign Affairs and Trade read from the formal message from the HOM at Buenos Aires in Parliament. (He also noted that HOMs had been instructed not to express their concerns in cables. In fact, there had been an exchange of emails between the Secretary and Tier 3 managers about the requirement to provide their formal feedback via the secure websites. This was an instruction within MFAT that had not been authorised for disclosure.)

155.3 On 9 March 2012, the Labour Party released the formal message from the HOM in Tokyo to the media, as reported in an article in nzherald.co.nz.

- 156 On 12 March 2012, a group of 180 spouses and partners of MFAT employees delivered and released an open letter addressed to the Secretary setting out their views on the proposed restructuring. This letter was the subject of media releases or comment by both the PSA and the FSA from 8 March 2012 onwards.

- 157 In a letter dated 15 March 2012 to the Secretary, 49 HOMs set out various issues with the change proposals and recommended a further formal consultation period. The letter was headed MFAT IN CONFIDENCE. In an effort to avoid further leaks, the sender, on behalf of other HOMs, emailed this letter to the Secretary and copied it to the HOMs who were signatories to the letter. Thirteen Tier 3 managers forwarded unofficial copies of this letter to other MFAT staff, including in the offices of the Minister of Foreign Affairs, the Minister of Trade and the Chief Executive of DPMC. At least 31

MFAT staff received an unofficial copy of the HOMs' letter, and it is likely that some printed copies of this letter were available within MFAT.

- 158 On or around 21 March 2012, the Minister of Foreign Affairs wrote to the Secretary providing formal comment on the change proposals. The Minister released this letter to the media at the same time.
- 159 The consultation period closed on 21 March 2012.

Relevant events: Post-consultation period

- 160 On 23 March 2012, articles about MFAT featured information about the up-coming meeting of HOMs in Wellington and detail about numbers and cost of consultants employed by the Change Programme Office at MFAT.
- 161 On 23 March 2012, media articles reported comments from the National Secretary of the PSA following a meeting between the Secretary of Foreign Affairs and Trade, the PSA and the FSA.
- 162 On both 24 and 27 March 2012, the Dominion Post led with front page articles about remuneration for diplomats overseas. The first article made a reference to "leaked figures". Staff in the Change Programme Office considered that while some information could have been constructed from public sources, the information as presented could only have come from an internal MFAT spreadsheet created for the Change Programme Office. A limited number of MFAT employees and contractors had access to this document.
- 163 Following the articles about diplomats' remuneration, on 24 March 2012 MFAT engaged KPMG to carry out an independent investigation to identify how information about the diplomats' remuneration got into the public domain. KPMG were unable to identify how this had occurred.
- 164 On 28 March 2012 in Parliament, the Labour Party Spokesperson on Foreign Affairs and Trade quoted from and tabled a leaked letter signed by 49 HOMs dated 15 March 2012. This is the letter to the Secretary from the 49 HOMs referred to above. The letter was not widely distributed within MFAT, but unofficial copies were generated as noted above. There was a considerable delay between when the HOMs' letter was issued and when it was tabled in the House.
- 165 MFAT held a meeting on 2 and 3 April 2012 to which all Tier 3 managers (HOMs, Heads of Post and Division Directors) were invited.
- 166 On 2 April 2012 at 4.54pm a telephone call of seven minutes 44 seconds duration was made to the Labour Party Spokesperson on Foreign Affairs and Trade's cellphone from a meeting room on Level 14 at MFAT's offices, 195 Lambton Quay.
- 167 On 20 April 2012, the Secretary published a letter to all staff on MFAT's intranet, Te Aka, confirming he expected to finalise the revised restructuring plan by 10 May 2012. This letter was leaked to Fairfax NZ News and reported in an article on 26 April 2012.
- 168 The Trade Negotiations Division wrote a letter to the Secretary and the SLT, seeking a second round of consultation. This was emailed on 27 April 2012 to the SLT and copied to all MFAT divisions and posts. This was leaked to the Labour Party Spokesperson on Foreign Affairs and Trade and mentioned in Parliament by him on 2 May 2012.

Media and social media activity

- 169 Prior to, during and after the consultation period, the change proposals attracted significant cross party political and media interest and commentary from former diplomats and academics.

- 170 Findings from a MFAT Workplace Engagement Survey were leaked to the opposition and were published by the Labour Party Spokesperson on Foreign Affairs and Trade on 15 January 2012. Public comments about aspects of the change process were also made by the Government, including the Prime Minister and the Minister of Foreign Affairs.
- 171 The MFAT change proposals also featured in the social media. There was a 'member only' website called *FriendsofMFAT* which was a site set up by MFAT staff and partners "to share our feedback on the MBM and Remuneration consultations". There were Facebook pages to which MFAT staff could contribute some of which were 'invitation only' while others were open forums accessible by the public, and the MFAT Partners Facebook page.
- 172 There was also commentary on Twitter, including from a contributor known as MFAT Deep Throat. Whoever is writing under the nom de plume provided the following disclaimer:

MFAT Deep Throat is a satirical name. I only tweet info in the public domain already to draw attention to it. Others are leaking it.

Decisions on change proposals

- 173 On 17 May 2012, the Secretary announced the decisions made on the MBM and Remuneration Review following the consultation period with staff and unions. SLT made many changes to the proposals as a result of the feedback received, including reducing the number of job cuts from 304 to 79, introducing a hybrid appointment to role and scaling back the proposed changes to the remuneration system.
- 174 During the course of the investigation MFAT has implemented these decisions.

Managing organisational change

- 175 Ministers delegate to chief executives of government departments the responsibility to determine what resources are used and how they are deployed within the constraints of the available Vote(s) to provide public services and deliver on the Government's priorities. It is the chief executive's role to ensure the organisation is delivering what is expected of it and is well-positioned to deliver on its purpose for the future.
- 176 Where the chief executive proposes to make organisational changes, obtaining staff feedback is a vital component of the change process and is legally required where changes would impact on the roles and terms/conditions of employment of staff. However, organisational change is not a democratic process in the sense that final decisions are determined by majority views. Staff members do not make the decisions on change proposals, rather that responsibility rests with the chief executive following consultation with affected staff.
- 177 The standard expected of public servants in providing advice is that they must support their organisation to provide robust and unbiased advice. The standard applies to all advice provided by public servants, whether on Government policy, operational matters or organisational change.
- 178 This means public servants can provide their best advice on change proposals to the organisation's chief executive, whether that advice is supportive of or opposed to the proposed changes, in order for the chief executive to make decisions on advice to Ministers on changes to be implemented. Public servants must be careful to act within their delegated authority and to not undermine their organisation's relationship with the Government

- 179 The standard for MFAT employees in providing advice to the Government is no different than for other public servants.
- 180 It became clear early in the investigation that one significant feature of the consultation process was the level of concern about the proposals expressed by some MFAT Tier 3 managers, i.e., HOMs and Division Directors. Some Tier 3 managers expressed strong opposition to the changes,
- 181 The investigation did not have the resources to review every item of business correspondence for MFAT, but it followed up on information supplied by interviewees and triangulated this with other evidence such as patterns of phone calls and extracts from MFAT's business records of phone calls, texts and email records of a range of persons of interest, on key topics and for key date ranges.
- 182 It appeared to the investigation that some Tier 3 managers had taken steps to deliberately undermine the formal staff consultation process inside MFAT. The opposition to the change proposals appeared so substantial, and so much at odds with what would be expected of a senior manager, it seemed to the investigation that the actions of these officials may have encouraged others to believe it was acceptable to contribute to the public and political debate concerning the proposed changes at MFAT and/or leak information and documents about the change programme.
- 183 There is a critical difference between it being permissible to provide feedback or encourage others to discuss and provide feedback within an organisation to the senior team about changes proposed, and leading or encouraging dissent within and outside the organisation, with a view to the dissent being communicated outside the organisation, including directly to Members of Parliament
and to the public.
- 184 No staff at MFAT could have been unaware of the Ministry 20/20 projects or the drive for change in MFAT. One HOM said:
"A number of my colleagues had talked generally about the implications of the change programme and what it might mean. ... Over a period of years, two years I guess or a year leading up to this [release of the MBM] we would have all had conversations about the change programme and what it might mean and what it might entail for us all."
- 185 Change projects had been underway since 2010; some detail is provided earlier in this Report, **Change programme – a snapshot** from paragraph 115. Staff input was sought for various change projects, including the OODP Project looking at offshore organisational design. Experienced managers from different parts of the organisation on the People Programme Steering Committee oversaw the development of proposals for remuneration review at MFAT in 2011. In the last quarter of 2011, MFAT staff were encouraged to provide comment on the Future Business Model. As previously described, managers and staff knew that the Future Business Model was to be further developed with this staff input, for formal consultation the following February.
- 186 MFAT was clear with its Tier 3 managers about the role they were expected to play in leading and managing the change process. One Division Director said that in terms of setting clear expectations of managers about their role in leading change:
[The Secretary was] absolutely crystal clear and categorical about that expectation from the moment that he arrived in the organisation and [was]

regularly finding opportunities and ways to discuss that, to explain that and to demonstrate the benefits of that and to set the expectation of that.

... it was a matter of debate, so it was an iterative debate, because it was equally clear that some [managers]... didn't see that [leading change] was their role. If they didn't agree with the direction of the change then they didn't see that it was their role to take it and lead it up to their staff.

- 187 Tier 3 managers were given training on how to be change leaders. Change workshops began in February 2011 and managers' performance agreements for 2011/2012 included performance obligations to lead through the change. One Division Manager told the investigation:

We have a performance system that now operates off agreed key objectives and every person who is in a management position has the same agreed key objectives around the change programme. That system ... took effect from the 1st July 2011, the performance objectives were supposed to be agreed by end of August so the standard performance objective came out sometime in July/August. It'll be in every third tier manager's performance agreement – onshore and offshore.

- 188 Given the changes were expected to impact on the number and scope of Tier 3 roles, the SLT were required to speak to Tier 3 managers about their careers during 2011. Several interviewees noted the conversations they had had with their Deputy Secretary.
- 189 During January and February 2012, European HOMs discussed the impact of changes in the arrangements for, and number of, locally employed staff, and information about possible impacts on their roles as they learned about the developing content of the MBM.
- 190 Despite all the preparation, a number of the Tier 3 managers interviewed said they were very surprised by the scope and scale of the changes in the consultation documents that were provided to staff in February 2012. They had not been expecting such wide-sweeping proposals. The direct impact on individual teams came as a surprise, as is often the case with consultation on major organisational change.

Tier 3 managers in the MFAT change process

- 191 The role of Tier 3 managers in organisations is pivotal to the success of any change process. Organisational change is a test of leadership for managers, and was especially so for Tier 3 managers at MFAT. Around 10 percent of the directly employed staff were Tier 3 managers⁷. Approximately two-thirds of these managers had more than 20 years service. Many had spent their whole career at MFAT, filling senior roles at head office and at offshore posts. Understandably, they had a vested interest in their future with the organisation. The existing operating model was deeply embedded; it was the only model that most had operated in and was seen by them as critical to MFAT's past success and so should not be tampered with. It was also more attractive, professionally and financially for many senior staff to back the existing operating model, especially those within 10 years of retirement. Despite this, as managers, they each had a responsibility to lead their direct reports constructively through the consultation and change process. In addition, as employees they were entitled to make personal submissions on the change proposals within MFAT.
- 192 MFAT managers were accustomed to having to resolve sensitive matters confidentially while under political and media scrutiny. With the level of political interest in proposed changes at MFAT, it was important Tier 3 managers supported the Secretary and SLT by ensuring they and their staff engaged constructively with the change process and

⁷ HRC Survey 30 June 2011: MFAT directly employed 858 staff of whom 91 were classified as Tier 3 managers.

used the secure websites to give personal and team feedback on the change proposals.

193 The investigation interviewed over 20 MFAT employees who were, or had been, Tier 3 managers. Many said they recognised the two roles they were performing (manager leading change and employee being consulted on change) and believed they separated out and performed those two roles appropriately.

194 Some Tier 3 managers helped their staff face up to the prospect of change prior to the release of the consultation documents, as the broad direction of change was reasonably clear from material released to staff in 2011. These managers encouraged their staff to understand that some change was inevitable and appropriate given the challenges facing MFAT and the Government's expectations. They engaged constructively in the formal consultation process, encouraging their direct reports to provide detailed feedback and suggestions for improvements through the secure websites provided. Where they had concerns about the change proposals, these managers contributed their personal feedback through the secure websites. Some indicated they were pleased to see where their concerns were acknowledged and reflected back in the final decision document.

195 In relation to the consultation process, one Division Director said:

I and my own Division had fastidiously maintained an open mind on this and we had engaged with it in a very constructive way and submitted a collective submission on what we thought was practical and where we saw there was scope for improvement or fine-tuning. But I was completely open to seeing that, you know, that we engaged with the process rather than resisted it.

196 A HOM said:

As far as this [Post] was concerned if there wasn't fat in the system there was a fair bit of resting muscle which we couldn't afford and ...I didn't think this Post was exceptional in that circumstance so I was very supportive of the wider process.

197 In response to a question about the role of Tier 3 managers and what the expectations were of them from the SLT, this HOM said:

In the consultation process they [the consultation documents] were put out there for feedback and I was already championing change...

...I think there was not an expectation that people would go around bagging the process because it was a process at that stage and therefore [the SLT] were seeking genuine feedback on how people were thinking about the process because [the Secretary] clearly had a vision as to what he wanted to achieve, he also had some fiscal targets. There was the cultural element and the fiscal element and you know he needed feedback on how far he was going to be able to take this stuff. So I don't think there was an absolute expectation that when the consultation documents came out that this was a fait accompli and Heads of Mission had to say 'this is the best thing since sliced bread therefore we've got to go with it', it was 'Head Office wants feedback on the good, the bad and the ugly with regard to this' ...

198 A HOM said:

I didn't see it as my role to express to staff my personal views about the programme. So what I sought to do was to faithfully represent a broader Post perspective but not individual concerns...I expected as a, for want of a better word, one of the management of this organisation to be representing the change not resistant to change.

...it was very rapidly very clear to me that other [HOMs] did not see it as their role to represent the change programme, they saw it as their role to represent their own personal concerns and what very rapidly happened was a kind of waging of guerrilla warfare against the change programme or rather against the first document that was raised.

199 A Division Director said:

I don't know that there has been a general understanding or maybe there's not a general acceptance that [leading change] is the role that third tier managers are supposed to play. I think the message has been conveyed reasonably clearly in all sorts of different ways. It's come through in Divisional Directors [meetings] it's come through in other conversations but there might be a disconnect if you like between the organisational expectation and the role that third tier managers thought they wanted to take on.

200 In reflecting on how Tier 3 managers had responded to the consultation documents and the change process, a HOM said:

There were people in the third tier that felt directly threatened 'they were going to be the targets'; there were people who saw opportunity because they backed themselves and then there were people who it wasn't going to affect directly in any fiscal or career sense because they were very close to the end of their career ... So you had two of those three groups of third tier managers who potentially had an interest in trying to directly influence what was happening or to throw anchors out and that sort of thing. And those two groups were doing that for different reasons. One group just didn't want to change because they were potentially going to lose their jobs and the other ones, I think, were taking what they considered to be a much more principled position in that... I think that some of those people felt that their legacy was being impugned you know. They were being told that the culture changes were required because MFAT was no longer a good organisation and hadn't been for some time. I think some of those people felt their legacy of 35 years' contribution was being brought into question. That's what I took when I sat in on the two day HOM meeting.

...I said to [the Secretary] and I said to others, change was required. I was very happy to see appointment to role...people can't rest on their laurels. You can't get to a certain level and then kick back for 10 – 12 years and draw those very good salaries if you are not delivering on them.

201 At a later stage in this interview, this HOM said:

There was a lot of consultation, [the Secretary] put a lot of effort into talking to his teams around the world...I thought that Head Office... made a very significant effort and the amount of time that [the Secretary] led stuff personally with a significant number of his senior leadership team there to try to get the message out and to get feedback to make the changes they thought were necessary but with the best chance of succeeding.

Providing feedback on the consultation documents

202 The secure websites set up by MFAT for the consultation period were designed to gather staff feedback in an orderly fashion on specific aspects of the proposals. Feedback could then be quickly collated and reviewed. This was necessary given the large number of potential submitters and the scope of the changes proposed.

203 One Division Manager said:

...the system that we had, the consultative system for the MBM, it seemed to us as a Division [MFAT] had an innovative and useful IT tool to gather and distil the information in some sort of ordered fashion. I mean the changes that had

been proposed were probably the biggest that had been proposed for an organisation of this type or at least for a Foreign Service in New Zealand's history I imagine, so I could see from that perspective you needed to find some way of ordering the streams of feedback otherwise it would just be completely unmanageable and so I thought that if we wanted to have any prospect of influencing the change process and we wanted to be taken seriously in our views then we had to engage with the system and use the tool that had been created for us.

204 A Division Manager said:

[I] decided to work with and trust the consultation process...

205 Other Tier 3 managers took action outside the process for providing feedback, promoting their personal views inside and outside MFAT.

206 Soon after the consultation documents were released to staff, three HOMs (now former employees of MFAT) independently but in close succession developed detailed comments on the impact of the proposals on their particular Posts. Rather than use the secure websites, these HOMs chose to send their comments to the organisation as a whole through MFAT's formal message system. Each HOM included critical comments about the secure websites for staff feedback. One said:

The IT mechanism for feedback on the MBM is rather cumbersome (requiring one to salami one's comments into numerous different segments) so I prefer to provide my feedback 'holistically', in one complete piece. I would prefer my comments to be 'on the record' rather than sent to the relative anonymity of the feedback mechanism, which does not enable views to be shared among colleagues (e.g. in [this] ...region).

207 The senders sent these messages to team inboxes for all or most Divisions and all offshore Posts. As a result, most MFAT staff would have had access to them. MFAT advisors seconded to the offices of the Minister of Foreign Affairs, Minister of Trade and DPMC also received these messages. Two of the three HOMs also sent their messages to the team in-box for the FSA; this is accessed by the FSA Executive Secretary who is not an MFAT employee.

208 The investigation is clear that employees were entitled to discuss personal views on the change proposals with their union representatives for the purpose of preparing formal feedback on the change proposals as part of the staff in confidence consultation process.

209 One HOM justified the widespread distribution of his feedback by saying he proposed MFAT should move to a Community of Practice discussion forum. Through making dismissive comments about the "feedback mechanism", proposing an entirely different approach to consultation, and sending personal feedback outside MFAT, the actions of some HOMs may have sent a signal to other staff that it was acceptable to ignore the instructions of the Secretary

210 Two of the formal messages were classified UNCLASSIFIED, the third was classified RESTRICTED. These documents were leaked to the Opposition very quickly after being sent. It was suggested by a few people from outside MFAT that these messages were drafted in a manner to be leaked. The three HOMs were very concerned their correspondence had been quoted in Parliament and in the media. The practice of sending formal messages accessible to most people at MFAT to debate foreign policy advice was not out of the ordinary. However, there was a process for the Secretary to receive staff feedback, allowing him to consider all staff views, in order to provide advice to the Minister on organisational changes required.

- 211 Immediately after the first formal message had been leaked, on 6 March 2012 the Secretary emailed all HOMs and copied all Tier 3 managers as follows:

Dear colleagues,

You may or may not be aware that one of the recent formal messages sent by a post commenting on the MBM was referred to by Phil Goff during this afternoon's question time. Obviously, this does not reflect well on the Ministry or Ministry staff as it is clear someone has leaked the contents of the message outside the Ministry.

We have been careful to try to make our discussions with staff on the MBM and remuneration "MFAT in confidence". This is out of respect for our staff, particularly those whose jobs are potentially affected by the proposals. This is increasingly becoming a hard position to maintain, but we continue to think that it is important that it is Ministry staff who get the first chance to debate the future of the organisation.

In future, we need you to please confine your feedback to the online tool. We appreciate this means you have to break the feedback up into sections, but the points that have been made in formal messages so far do relate to one or another aspect of the proposals rather than their totality. The tool also means all the feedback on particular aspects of the proposals can be carefully considered by SLT and the change team as they go through each issue covered by the MBM and the remuneration proposals. Common points made can also be picked up in FAQs, so that perspectives can be shared.

I realise this is a difficult time and staff are concerned about themselves and the future Ministry, I am too. But there is no justification for leaking material outside the Ministry. We want to hear what people think – but please use the online tool. It was set up for that purpose.

- 212 There was an immediate, adverse reaction to this message from some Tier 3 managers, as is apparent in a further email from the Secretary to them on 6 March 2012:

I gather some of you may have misinterpreted this message as an attempt on my part to stifle conversation about the change process. It wasn't. The points I was trying to make were that leaks don't help us, and that formal feedback should be submitted via the online tool not formal message. If people want to email their thoughts or share their feedback with their colleagues who they want to be part of the dialogue they should.

- 213 On 8 March 2012 the Secretary sent a follow-up:

Several of you have been in touch with me again to ask whether Formal Messages can be used as well as email. The answer to this is yes, but please do think about the appropriate classification.

- 214 This sequence of emails from the Secretary was interpreted by some HOMs and Tier 3 managers as "a complete backdown" by the Secretary on the requirement to provide formal feedback via the secure on-line tool. Clearly, that was not the case; if staff wanted to share their thoughts or feedback with colleagues as part of a dialogue they could do so with appropriate classification for such discussion, but formal feedback was required by the online tool. The Investigation also accepts that MFAT staff could share their thoughts or feedback with staff seconded into Ministers' offices or other departments. However, staff should have ensured that the appropriate classifications were maintained and that the information was only used for that purpose and not distributed further.

217 Some managers said that the change proposals were not, in their view, in New Zealand's interests and would destroy the career foreign service. They were entitled to hold that view and to communicate that view confidentially to the SLT
However, they were not the final arbiters on the changes at MFAT,

218 Some managers criticised the Secretary for going public with the details of the change proposals during the consultation period, and used this as an excuse for themselves or others to talk about the change proposals outside MFAT. A few aspects of the change proposals appear to have been leaked before the MBM was put out for consultation, though the detail of the proposals was largely not in the public domain. The Secretary did attend one media briefing on 23 February 2012 to provide a high level overview of the change proposals and it also gave him an opportunity to correct misleading media comment from earlier that week. The Secretary otherwise refrained from making public comment about the change proposals though entitled to do so. This was intended to protect the integrity of the internal process of seeking feedback in confidence from staff before making any final decisions on the proposed changes.

Advice to Ministers

219 The Minister of Foreign Affairs had tasked the Secretary with delivering organisational change, and it was the Secretary's role and responsibility to provide advice to the Minister on this matter.

220 Ministers work closely with HOMs and Division Directors and were keen to hear their views on the change proposals, especially once the three formal messages had been leaked in early March 2012.

When asked: "In the Ministry... whose job is it to decide, is it up to every Ministry staff to decide when they consult with the Minister about a MFAT IN CONFIDENCE document, what's the understanding?" a senior HOM said:

It would be principally a senior leadership team mission normally, if it was a question of whether something should be explored or aired or the Minister should be advised about it, it would normally be at the senior leadership Deputy Secretary, CEO level. As this [the MBM] goes more to the heart of the future of the Ministry it would be even more so within the judgement of the senior team.

- 221 If such conversations with Ministers could not be avoided, these Tier 3 managers conferred with their Deputy Secretary or reported back on the discussion. A Division Director said:

I think there's something in the Code of Conduct or Public Service Code of Conduct around conveying things to Ministers through Heads of Department when it relates to an individual.

I can convey to the Minister any advice I like, if you like, around areas that fall within my portfolio of responsibility. I have the authority to decide what the Minister needs to be provided advice on and who I need to consult in order to provide that advice, but I don't need to specifically clear that advice up through the system...I can take that on my own accountability. Were I to be providing the Minister with advice that went beyond my portfolio area ...other than when I'm in a conversation with him and you end up having a chat and therefore you make sure the relevant people know what was transacted in the conversation, but in terms of formal communication or advice to him I would not do that. And if I were thinking that there was something that I wanted to draw to the Minister's attention I would be discussing that first with others in the Ministry probably [name of Deputy Secretary] my immediate manager.

- 222 In providing personal feedback on the change proposals to the Secretary, one HOM said in an email to the Secretary's office on 18 March 2012:

Please find attached a submission that I have prepared, as HOM [location], on the current MBM/Remuneration proposals. I would be grateful if it could be brought to the attention of SLT and Director [Name of Division]. ... I have consciously kept distribution of this document tight. ...I am very keen to keep my current contribution appropriately private. I am aware that some of my colleagues have exercised their option to copy similar submissions directly to relevant Ministers' Offices. Relevant Ministers' offices are aware of my intention to make a submission during the consultation process. And I would be grateful if my submission could [be] brought to the attention of PS/MFA; PS/Trade; and PMC/FPA. My preference, however, is that input should be passed via the Ministry, rather than directly.

The HOMs' letter

- 224 Forty-nine HOMs signed a letter to the Secretary setting out their concerns with some aspects of the change proposals (the HOMs' letter). This letter was sent on 15 March 2012 and leaked to the Opposition sometime on or before 28 March 2012.
- 225 The preparation and drafting of the HOMs' letter had been coordinated by a small number of HOMs. There was concern amongst the HOMs about the risk of the letter being leaked. In order to minimise this risk, they agreed the letter would be sent only to the Secretary who would be responsible for any further dissemination. It was classified MFAT IN CONFIDENCE. The covering email to the Secretary, copied to all signatories and the Director of the CEO's Office, was marked IN CONFIDENCE and included these words:

*We are sending our letter to you as an internal MFAT in Confid*ence message. We do not wish the letter to become public. We have not extended circulation to our Ministers' offices or to SLT and will leave you to make them aware of our views.*

- 226 Before the HOMs' letter was sent, HOMs had been notified of a meeting in Wellington on 2 and 3 April 2012 for SLT and Tier 3 managers to discuss the change proposals. Although that forum was to provide a means for HOMs to express their views on the change proposals, HOMs decided it was still desirable for the Secretary to be advised of their particular concerns in advance of that meeting.
- 227 Despite the continuing media and political interest in the change proposals and their concern to avoid a leak of the HOMs' letter, several HOMs circulated the draft letter to deputy HOMs and other seconded MFAT staff for feedback or for their information.
- 228 After the HOMs' letter was sent to the Secretary, 12 signatories independently sent a copy of the covering email marked IN CONFIDENCE with the final HOMs' letter marked MFAT IN CONFIDENCE, to people who were not signatories to, or the recipient of, the letter. In most cases, these unofficial copies were sent to seconded MFAT staff in offshore Posts; the investigation did not find any evidence these copies were forwarded on to others. However, one copy was sent to a Division Director in Wellington and that copy was forwarded on twice to reach 10 MFAT staff within the Wellington office.
- At least 31 MFAT staff
- as well as the two Ministers, the Chief Executive of DPMC, and the Prime Minister's Office received unofficial copies of the HOMs' letter.
- 229 With two exceptions, all the unofficial copies were sent prior to the HOMs' letter being mentioned in the House by the Labour Party Spokesperson on Foreign Affairs and Trade. It is not known whether any hard copies of the letter, in draft or final version, were circulated.
- 230 All HOMs were asked, in person or by letter, whether they knew how the HOMs' letter was leaked. None indicated they knew how the letter was leaked, including to the Labour Party Spokesperson on Foreign Affairs and Trade. Based on email evidence, nine HOMs and one Division Director did not give accurate information to the investigation about how they had handled the HOMs' letter, and whether or to whom they forwarded the letter.

Balancing personal interests and professional responsibilities

- 231 There is no doubt that the MFAT change proposals had adverse impacts on the career prospects and future retirement income of a number of Tier 3 managers. The existing operating model at MFAT provided considerable certainty for long-serving staff in respect of future career options including in terms of boosting retirement income. This was part of the personal benefit of the 'career foreign service'.

232 It is natural for every public servant to want to protect their own personal interests, but they have a duty to the Government and to their organisation not to use their professional position, including access to Ministers, to promote their personal interests.

Partners group

233 The investigation acknowledges that most MFAT staff would have discussed relevant details of the change proposals with their partners or close family or have shown them the MFAT IN CONFIDENCE consultation documents. This would have helped the employee to formulate their feedback on the proposals. Partners would have developed their own views on the change proposals based on their personal experience, what was in the public domain, and what MFAT IN CONFIDENCE information they had been given.

234 Before the release of the change process documents, partners offshore set up a Facebook page and there was an email account for the Facebook group. Access was by invitation only and many partners joined this discussion forum. The partners group encouraged partners to ensure their points were made via their partner through the formal submission process. The partners spokesperson confirmed:

At the height of the debate around the MFAT change proposals more than 190 partners were members of the partners Group Facebook page. The Facebook page was set up – before the release of the Change Process documents – by overseas based partners who wanted to stay abreast of the change process, exchange thoughts and concerns, and see facilitation of an MFAT partners response to the expected proposals. By early March the Facebook pages had become a central communications and exchange forum for MFAT partners around the world. It operated alongside other Facebook and password protected sites set up by MFAT staff, MFAT staff on leave without pay and others, explicitly to discuss and share information and responses to the MFAT change process.

235 By 24 February 2012, the Wellington-based partners had arranged to meet on 5 March 2012, and were expecting to meet with the Secretary at 5.30pm on 12 March 2012.

236 By 1 March 2012, a core group had invited the partner of a Tier 3 manager to be the partners spokesperson and she was endorsed in this role at the 5 March 2012 meeting. She described herself to the investigation “as a public speaker of some experience”.

237 The partners group prepared a letter to the Secretary providing their views on the change proposals. This letter was used by the partners group to launch a media campaign against the change proposals. It is not clear how many partners actively supported the idea of making public statements about the change proposals; media statements were stated to be on behalf of 180 partners. The partners spokesperson advised the investigation:

All communications issued by the MFAT Partners Group, and statements made on its behalf, were shared and canvassed on the Facebook page before the partners Core group agreed that the groups spokesperson – me – should speak publically.

238 The partners’ letter to the Secretary was referred to in a joint media release by the PSA and FSA on 8 March 2012.

- 239 The letter from the partners group was delivered to the Secretary on 12 March 2012 and was released by them to the media that night. Articles about the partners views with comments from the partners spokesperson were reported in the media on 13 March 2012.
- 240 The partners spokesperson subsequently accepted a number of requests by media outlets to comment on the likely impact of the change proposals on MFAT families.
- 242 The investigation is clear the partners were entitled to make any public comment provided they did not rely on government information that had been provided to MFAT employees in confidence.
- 243 The partners spokesperson was given an opportunity to respond to extracts from the draft report as it related to her role as the partners spokesperson. Those submissions were carefully considered and taken into account in reaching the investigation's findings. The investigation is clear that it makes no adverse findings against the actions of the partners group, the FSA or the PSA.

information being passed on to other staff, this can negatively impact on the efficiency and effectiveness of good decision making and the operation of the department.

<i>Findings: Background facts and other unauthorised disclosures</i>	
A.	The investigation found MFAT employees were given access to the MFAT IN CONFIDENCE consultation documents for the sole purpose of providing their feedback on change proposals at MFAT.
B.	From the evidence outlined in this Report, the investigation considers some Tier 3 managers at MFAT did not meet the Standards of Integrity and Conduct expected of public servant choosing to send their feedback to all or most team in-boxes at MFAT. As a result, these Tier 3 managers created a perception that it was acceptable for their opposition to the change proposals to be leaked and to be used for political purposes.
D.	While politicians and others were commenting publicly, and some MFAT staff may have agreed with those comments, this does not affect or diminish the responsibility of staff to maintain the political neutrality of

the Public Service. This means, amongst other things:

- **working within their organisation's processes as directed by the Secretary;**
- **enabling the organisation to develop robust and unbiased advice;**
- **avoiding unauthorised discussions with Members of Parliament;**
- **ensuring the appropriate handling of government information; and**
- **keeping a clear separation between their personal interests and views and their role as public servants.**

E. The investigation found many MFAT employees gave their partners access to the MFAT IN CONFIDENCE consultation documents for the purpose of assisting MFAT employees to formulate their views and provide in confidence feedback on the change proposals. The partners were also invited to meet with the Secretary during the consultation period for a discussion with the Secretary about the change proposals. The partners relied on information in the documents and at the meeting with the Secretary to inform their views and provide feedback directly to the Secretary and through their partners on the change proposals.

PART 3: **Unauthorised disclosure of government information about MFAT**

324 The investigation focused on the following other key leaks and unauthorised calls:

- 21, 22 February and 6 March 2012 – information relating to the MBM
- 23 February 2012 – call to the Labour Party Spokesperson on Foreign Affairs and Trade’s cellphone from Level 12 Meeting Room at MFAT
- 6, 8 and 9 March 2012 – three formal messages from HOMs dated 2, 3, and 5 March 2012
- 24 and 27 March 2012 – a MFAT spreadsheet showing remuneration and allowances for offshore posts
- 28 March 2012 – the HOMs’ letter to the Secretary dated 15 March 2012
- 2 April 2012 – call to the Labour Party Spokesperson on Foreign Affairs and Trade’s cellphone from Level 14 Meeting Room at MFAT
- 26 April 2012 – The Secretary’s letter to all staff advising of the latest timeframe for announcing decisions on the change proposals dated 20 April 2012
- 2 May 2012 – Trade Negotiations Division letter to SLT dated 27 April 2012

Evidence of unauthorised disclosure of government information

21 and 22 February 2012 – information relating to the MBM

325 The MBM and Remuneration Review consultation documents were marked MFAT IN CONFIDENCE. The evidence that the Labour Party Spokesperson on Foreign Affairs and Trade had either part or all of the MBM is as follows:

- 325.1 On 21 February 2012, two days prior to the release of the MBM and Remuneration Review, the Dominion Post featured an article reporting that “most of MFAT’s 600 core staff would have to reapply for their jobs in a restructure that could see 300 roles lost”. It said “staff will be told on Thursday of the plans”. These details of the proposals were not in the public domain.
- 325.2 The recollection of a Deputy Secretary at MFAT questioning by the Labour Party Spokesperson on Foreign Affairs and Trade at the FADTC meeting on 1 March 2012.
- 325.3 In Hansard for 6 March 2012, the Labour Party Spokesperson on Foreign Affairs and Trade is reported as having a page from the MBM consultation document which has a diagram of the current and proposed MFAT staff and locally employed staff at the MFAT post in Cairo, Egypt. He said:

I seek leave to table page 305 from the ministry document, showing the number of staff in Cairo...

23 February 2012 – call to Member of the Opposition from Level 12 Meeting Room at MFAT

326 MFAT telephone records for 23 February 2012, show a call to the cellphone number of the Labour Party Spokesperson on Foreign Affairs and Trade at 5.40pm. The call lasted one minute 16 seconds. The telephone used was installed in a small meeting room on Level 12 in the secure office area behind reception. 23 February 2012 was the day of release of the consultation documents. Personnel resident on that floor on that day were: Consular and Protocols Divisions, the Maori Policy Unit, and the FSA Executive Secretary. The Family Liaison Officer and Reception staff were also based on that floor but on the other side of the security access doors for the main office area

where the meeting room was situated. Some staff on that floor reported they gathered for drinks in the afternoon as they worked through the consultation documents.

6, 8 and 9 March 2012 – three formal messages from Heads of Mission dated 2, 3, and 5 March 2012

327 In Hansard for 6 March 2012, the Labour Party Spokesperson on Foreign Affairs and Trade was reported as asking about content of a formal message dated 2 March 2012:

Does [the Minister of Foreign Affairs] agree with the cable that he has received from his High Commissioner in Singapore...

In the same Hansard report, the Labour Party Spokesperson on Foreign Affairs and Trade also referred to the content in the MBM consultation document (noted above) and referred to government information about the cost of the Minister's impending visit to Burma.

328 In Hansard for 8 March 2012, the Labour Party Spokesperson on Foreign Affairs and Trade was reported as reading from the formal message from the HOM in Buenos Aires.

329 On 9 March 2012, the Labour Party Leader released the formal message from the HOM in Tokyo to the media, as reported in an article in nzherald.co.nz.

24 and 27 March 2012 – a MFAT spreadsheet showing remuneration and allowances for offshore posts

330 The Dominion Post published an article on 24 March 2012 under the headline "Diplomat perks revealed". Above the headline in large type are the following notes: \$218,857: Top salary; \$200,393: Largest allowance; \$213,780: Biggest education bill; \$439,518: Biggest residential bill. The article starts: "Leaked figures targeting the country's overseas-based diplomats suggest some staff are receiving more than \$200,000 a year in salaries and allowances....The figures were seen yesterday by the Dominion Post. ..."

331 A Dominion Post article dated 27 March 2012, had a headline "Embassy repair man paid \$154,000". The article talks about "Documents seen by The Dominion Post show..." and goes on to describe the level of allowances collected annually.

332 MFAT staff consider the figures are so precise they could only have come from a spreadsheet prepared for the Change Programme Office to assess employee benefits and other related costs by region. They also confirmed that this document was circulated to a small group of MFAT staff and contractors working on the Change Programme.

333 KPMG was employed by MFAT to investigate this matter, and MFAT allowed the investigation to have access to the notes and evidence collected by KPMG. KPMG was unable to identify the person who made the MFAT document available to The Dominion Post.

334 The investigation interviewed a number of people, reviewed the data in the spreadsheet and was satisfied that the information that was leaked most likely came from that spreadsheet because of the precision of the numbers reported, as noted above, and the way in which the data had been collated.

28 March 2012 – HOMs' letter to the Secretary dated 15 March 2012

335 In Hansard on 28 March 2012, the Labour Party Spokesperson on Foreign Affairs and Trade was reported as saying:

I seek leave of the House to table a letter, dated 15 March 2012 and headed "MFAT in confidence" signed by 49 of our top high commissioners and ambassadors...

336 While the HOMs' letter had a limited circulation, its readership would have been more than 75. It was forwarded on by the Secretary to the Minister of Foreign Affairs and the Minister of Trade and also to SLT. It had also been forwarded by at least one HOM to MFAT officials seconded in Ministers' offices and DPMC, and other HOMs distributed the letter to MFAT staff who were not signatories to the letter.

2 April 2012 – call to Member of the Opposition's cellphone from Level 14 Meeting Room at MFAT

337 MFAT telephone records for 2 April 2012 show a call to the Labour Party Spokesperson on Foreign Affairs and Trade's cellphone number at 4.54pm. The call lasted seven minutes 44 seconds. The telephone used was installed in a small meeting room on Level 14. The whole of Level 14 is accessible only with security cards. Personnel resident on that floor on that day were: Consular and Protocols Divisions, the Maori Policy Unit, the FSA Executive Secretary, Americas and South East Asian Divisions, and the Communications Division.

26 April 2012 – The Secretary's letter to all staff advising of the latest timeframe for announcing decisions on the change proposals dated 20 April 2012

338 On 20 April 2012, the Secretary published a letter to all staff on MFAT's intranet, Te Aka, confirming he expected to finalise the revised restructuring plan by 10 May 2012. The contents of this letter were reported in an article on 26 April 2012, having been leaked to Fairfax NZ News.

2 May 2012 – Trade Negotiations Division letter to SLT dated 27 April 2012

339 During the Parliamentary debate on 2 May 2012 in Hansard, the Labour Party Spokesperson on Foreign Affairs and Trade was reported as saying:

What is the Minister's assessment of the damage done to the vital trade negotiations division in light of this letter, which I am holding, from all the staff of the trade negotiations division, which states that the change process has undermined confidence, has put real pressure on the retention of staff in their area, and has held up urgent priorities...

340 The Trade Negotiations Division letter was issued on 27 April 2012. It included the following statements: "Staff retention is already becoming a problem, particularly in the trade and economic group, and there are urgent BAU priorities which are being held up"; and "Staff confidence in the change process has been undermined".

Telephone calls to/from a Member of the Opposition

341 Four interviewees reported receiving calls or texts from the Labour Party Spokesperson on Foreign Affairs and Trade or a member of his staff in the weeks following the release of the consultation documents. While it is not known whether this activity by the Labour Party Spokesperson on Foreign Affairs and Trade or his team extended to other staff at MFAT, the investigation was advised of these contacts by staff in different divisions of MFAT, as well as by the FSA Executive Secretary, a former employee of MFAT hosted within MFAT.

- 342 At least one staff member, who has since left MFAT's employment, and the FSA Executive Secretary accepted calls from the Labour Party Spokesperson on Foreign Affairs and Trade out of office hours. They said they discussed the impact of the change programme on MFAT staff with the Labour Party Spokesperson on Foreign Affairs and Trade but considered they did not disclose government information that was not in the public domain.
- 343 This activity was in addition to the two calls made to the Labour Party Spokesperson on Foreign Affairs and Trade's cellphone from MFAT office telephones at/after the end of normal office hours, one on each of 23 February 2012 and 2 April 2012, for one minute 16 seconds and seven minutes 44 seconds, noted earlier.
- 344 Most MFAT staff do not stay at work much after 5pm unless working with offices offshore. As it happened, several teams on Levels 12 and 14 would have had good reasons to work after 5pm. Security records showed that quite a number of staff were still in the office by 5.40pm when the call was made on 23 February 2012 (at least 15 people accessed Level 12 offices after 5pm), mostly they were resident on the floor but in some cases they were visitors from other MFAT teams. Interviewees explained that after the MBM was published on 23 February 2012 staff congregated in the afternoon to discuss the change proposals. On 2 April 2012, on level 14 there was also a number of people accessing the floor immediately before the call was made at 4.54pm and in the hour afterwards. This will be partly explained by staff going out to the bathroom before travelling home, and partly by staff returning from the first day of the HOMs meeting which was held on Level 13.
- 345 In relation to these calls to a Member of the Opposition, it was of particular interest that a few teams housed on Level 12 when the 23 February 2012 call was made had relocated to Level 14 before the call on 2 April 2012 was made. This suggested it was more likely that the calls were made by the same person or persons i.e. who worked on Level 12 and then moved to Level 14 or who regularly visited a team that had moved from Level 12 to Level 14. The location of the meeting rooms in relation to team locations on the floor were also of interest. The Divisions that were resident on each floor on both dates were: Consular, Maori Policy Unit, and the FSA Executive Secretary.
- 346 The investigation interviewed 16 people who were identified from security access records as having been in the office working on both floors on the relevant dates. In addition, four people were interviewed who either were in a position to observe the meeting rooms, or may have been in a position to know about a legitimate reason to call the Labour Party Spokesperson on Foreign Affairs and Trade, or visited both floors within a reasonable timeframe before each of the calls were made. It is possible that some other staff may have been on both floors on the relevant dates at the relevant times, but had gained access by following another staff member into the floor. As noted there was an amount of traffic to each floor at around the time the calls were made and it was not possible to identify further people to interview. The investigation considered carefully any correlations between the following facts for individuals:
- what access various people may have had to the relevant phone number, including if they had been seconded to the office of the Minister of Foreign Affairs in the Labour Government
 - residency on and/or access to the relevant floors close to the time of the calls
 - known to have received a copy of the HOMs' letter (some on the floor had received this document though they were not HOMs)
 - attended the HOMs meeting
 - had been particularly opposed to the change proposals or had other issues with MFAT

- were known to have Labour Party affiliations
 - had early access to the consultation documents.
- 347 The investigation found at interview that it had no reason to suspect one person or team over others that were resident on or accessed Levels 12 and 14 on the relevant days.
- 348 The contact phone number for the Labour Party Spokesperson on Foreign Affairs and Trade was no longer in the official emergency directory held by the Consular/Emergency Response team (resident on Level 12 in February 2012 and Level 14 in April 2012), as it would have been when he was Minister of Foreign Affairs and Trade prior to 2006. Some interviewees confirmed they had previously had access to his cellphone number, having worked with him when in Government. These staff said they did not now hold his cellphone number.
- 349 None of the interviewees said they were responsible for the calls or could provide any information about the calls or about any user(s) of the relevant meeting rooms at the end of the day. No-one could remember anything unusual other than that these were significant days in the context of the change programme.
- 350 The fact that this Member of Parliament or his staff were calling MFAT staff directly and staff were calling this Member of Parliament was not reported to the Secretary. The Secretary confirmed there was no authorised reason to call the Labour Party Spokesperson on Foreign Affairs and Trade. Failing to report calls from, or conversations about MFAT's business with, a member of the Opposition or his staff is a breach of trust and of the political neutrality expected of public servants (as outlined in the MFAT Code of Conduct). Importantly, the fact that the Secretary was not alerted to this activity early on meant that other staff were put at risk of being drawn into political processes.
- 351 Staff who were interviewed about the calls made from the MFAT meeting rooms were shocked to learn of them and were very clear that it was inappropriate to talk to a member of the Opposition.

Comment on investigating these other unauthorised disclosures

- 352 It was not possible to talk to every single person in MFAT or all other authorised recipients of these documents or to trace any other known recipients or to conduct exhaustive forensic investigations.
- 353 There was certainly an implicit assumption by the persons interviewed both within and out of MFAT that the source of leaks was a person or persons within MFAT. The media reporting at the time was more express. For example, Tracy Watkins reported in an article in the Dominion Post on 24 March 2012 'a concentrated campaign of leaks from top-level diplomats'. Fran O'Sullivan reported in an article in nzherald.co.nz on 21 March 2012 that 'MFAT has been leaking like a sieve since [the Secretary] unveiled his grand restructuring plan'.
- 354 The investigation considered it important to interview all members of SLT and to question HOMs, either in person or by email exchange.
- 355 Because the HOMs were offshore, some were spoken to directly by Skype or telephone. The remainder were asked to provide a written response as to whether they had disclosed the information directly or indirectly to the Labour caucus or the media or whether they had any information as to who had disclosed the information. All said they had not disclosed and did not know who had disclosed the MBM contents, the three cables and the HOMs' letter, other than limited disclosure to other MFAT staff. On examination of MFAT's records of emails, the investigation was able to identify who had received the original copy of the HOMs' letter and who had forwarded

copies to others, and further forwarding from those non-HOM recipients. A number of HOMs did not accurately disclose whether and to whom they had forwarded the final version of the HOMs' letter.

- 356 It is not known what information – including government information - was released in the two phone calls to the Labour Party Spokesperson on Foreign Affairs and Trade on 23 February 2012 and 2 April 2012. As these dates coincided with two critical events, release of the consultation documents and the HOMs meeting held at MFAT, it seems likely that there was some unauthorised disclosure of government information to this Member of Parliament. No authorisation was given by the Secretary for calls to the Labour Party Spokesperson on Foreign Affairs and Trade.
- 357 It is not known whether government information was disclosed during the course of two calls from the Labour Party Spokesperson on Foreign Affairs and Trade (as well as in calls to and from his office). Both people who received these calls at home said they did not talk about anything that was not in the public domain.
- 358 The investigation noted that:
- 358.1 None of these documents or government information had been authorised for disclosure prior to being disclosed in Parliament (or to the media) by Labour Members of Parliament, or in the case of the spreadsheet and the letter from the Secretary being published in the media.
- 358.2 This information, like the Cabinet Committee papers is official information and is only to be released when authorised in accordance with the Official Information Act and any departmental policies and guidelines. No such authorisation was given by the Secretary or the Minister of Foreign Affairs for release of any of these documents or information.
- 358.3 All of the documents were received by some persons outside of MFAT, as a result of staff choosing to copy some documents to Ministers' offices and/or to DPMC.
- 358.4 While some interviewees posited that Ministers may have been the source of some of the leaks, in the case of documents listed in this section as mentioned in the House or released to the media by the Opposition, it seems unlikely that Ministers or their staff would have leaked this information.
- 358.5 Most of these leaks to the Labour Party and to the media criticised the change proposals and fuelled political debate. The likely reasons for leaking such information were to discredit the change proposals, embarrass the Minister of Foreign Affairs and put pressure on the Government and the Secretary to stop the change process. The leaked information was widely reported and commented on, including by ex-MFAT employees. The unauthorised disclosures compromised the political neutrality of MFAT staff.
- 358.6 Ministers and the Prime Minister were put in the position of having to comment publicly on proposals being developed as part of an in confidence departmental process, before receiving robust, unbiased advice from the Secretary after having consulted and considered the views of staff at MFAT.
- 358.7 The leak of the spreadsheet with data about remuneration, allowances and other benefits for roles at offshore posts appears to have been motivated by a desire to call into question the motives of those leading opposition to the change proposals. The action was contrary to the communications plan agreed for the change process and did not meet the standards expected of public servants. Further, it was ill-considered. Given the Remuneration Review was controversial, the timing of this leak served only to bolster the resolve of those most opposed to the proposals.

- 358.8 Those most opposed to the change proposals were very keen for the Secretary to investigate the leak of individuals' remuneration, but did not make the same requests about other leaks.
- 358.9 The leaks undermined Ministers' trust and confidence in MFAT's employees and in other public servants. A fourth Cabinet paper on the MFAT changes was requested by the SEC Cabinet Committee on 2 May 2012. It was completed with almost no input from senior officials, including HOMs, who would normally have been expected to contribute to such a paper.
- 358.10 Interviewees at MFAT (and elsewhere) were appalled by the leaks. While some MFAT staff sought to understand how the leaks might have come about, nobody condoned them. Staff were clear that disclosing official information and talking to members of the Opposition about MFAT business without authority was a serious breach of the standards of trust and integrity, including political neutrality, expected of all public servants. Staff were also very concerned at the reputational damage the leaks inflicted on MFAT.
- 358.11 The FSA denounced the leaking of any MFAT information in its communications to its members.

<i>Findings: Other unauthorised disclosures</i>	
F.	It is probable that prior to 1 March 2012, a MFAT employee or employees leaked part or all of the consultation documents, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade.
G.	It is probable that between 2 March 2012 and 9 March 2012, a MFAT employee leaked the three formal messages from the HOMs in Singapore, Buenos Aires and Tokyo, directly or indirectly to the Labour Party. One of these messages had a RESTRICTED classification and two had an UNCLASSIFIED classification.
H.	On 6 March 2012, after the leak of the first formal message from the Head of Mission in Singapore (noted above), the Secretary re-confirmed his instructions to all Tier 3 managers at MFAT that their formal feedback on the consultation documents should be submitted via the secure on-line tool (websites).
I.	It is probable that an employee or contractor employed by MFAT leaked part or all of a spreadsheet containing data about remuneration for staff offshore. This was leaked to the media sometime before 24 March 2012.
J.	It is probable that between 15 March 2012 and 28 March 2012, an MFAT employee leaked, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade the letter sent via secure email to the Secretary on behalf of forty-nine HOMs, marked MFAT IN CONFIDENCE.
K.	It is probable that between 20 and 26 April 2012, an MFAT employee leaked, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade a letter from the Secretary to all staff advising of the latest timeframe for announcing decisions on the change proposals, marked MFAT IN CONFIDENCE.

L.	It is probable that on or about 27 April 2012 and before Question Time in Parliament on 2 May 2012, an MFAT employee leaked, directly or indirectly, to the Labour Party Spokesperson on Foreign Affairs and Trade a copy of an email from the Trade Negotiations Division to the Secretary and Senior Leadership Team, marked RESTRICTED.
M.	The investigation found that none of this leaked information was authorised for release by the Minister of Foreign Affairs or the Secretary.
N.	The investigation did not find out who leaked this material. It is probable that this is not an exhaustive list of government information that was leaked. The investigation considers that the documents listed above were the most damaging leaks and it is most likely that persons employed by MFAT were the source of these particular leaks, given the nature of the documents and their distribution. Any unauthorised disclosure of official information by public servants is a breach of the State Services Standards of Integrity and Conduct and of the MFAT Code of Conduct.
O.	The investigation found two telephone calls were made to the Labour Party Spokesperson on Foreign Affairs and Trade's cellphone on key dates during the change process from telephones in two different MFAT meeting rooms. These calls occurred on 23 February 2012 when the consultation documents were issued to all staff and on 2 April 2012 at the end of the first day of the HOMs meeting.
P.	The investigation did not find who made these calls, though the calls were probably made by a MFAT staff member as the meeting rooms are in secure areas used by MFAT staff.
Q.	The investigation established that at least four people (three MFAT staff and the FSA Executive Secretary) were telephoned or sent texts by the Labour Party Spokesperson on Foreign Affairs and Trade or his office seeking information about the MFAT change programme. The investigation was unable to establish how many staff were approached for information. One staff member, who has since left MFAT, and the then-current FSA Executive Secretary, reported they were telephoned at home by the Labour Party Spokesperson on Foreign Affairs and Trade and spoke to him for some minutes about the MFAT change programme.
R.	The investigation was unable to establish whether any government information was leaked through any of seven identified calls between the Labour Party Spokesperson on Foreign Affairs and Trade (or his office) and MFAT staff and the FSA Executive Secretary.
S.	The investigation found that there was no authorised reason for MFAT staff to call the Labour Party Spokesperson on Foreign Affairs and Trade or take calls from him or his office.

T. The investigation found that identified calls to and from the Labour Party Spokesperson on Foreign Affairs and Trade (and his office) from and to MFAT staff were not reported to the Secretary or to the Minister of Foreign Affairs.

PART 4: Facts about the handling of three Cabinet Committee papers

Preparation of three Cabinet papers on MFAT change proposals

- 359 In late April 2012, once the final design of the changes at MFAT was confirmed, the Minister of Foreign Affairs prepared three Cabinet papers about the change proposals. The papers focused on the Change Programme, Europe Posts, and Forecast Financial Position. MFAT staff provided input to the draft papers, and consulted a number of other agencies on drafts of the Europe Posts paper only. The Europe Posts paper had a 'RESTRICTED' classification, the other two papers were classified 'IN CONFIDENCE'.
- 360 There were multiple versions of drafts of the three Cabinet papers, and four 'final' versions of the three Cabinet papers prior to 2 May 2012. These papers were finalised in the office of the Minister of Foreign Affairs on 26 April 2012. The final versions of the three papers were as follows:
- 360.1 The two copies of original signed papers submitted in hard copy to Cabinet Office at 11.10am on 26 April 2012 ('the originals')
 - 360.2 The originals were photocopied and circulated by Cabinet Office to a very limited number of Ministers and officials ('the advance copies') on 26 April 2012 and 27 April 2012
 - 360.3 The electronic (unsigned) version of the three Cabinet papers that were submitted to Cabinet Office on 26 April 2012 ('the unsigned copies'). The Minister of Foreign Affairs' office forwarded the unsigned copies to the Director of Office of the Secretary at MFAT at 11.13am on 26 April 2012, and also to the Minister of Trade's office
 - 360.4 The papers issued by the Cabinet Office on 30 April 2012 for the SEC Committee meeting on 2 May 2012 with the Cabinet Office summary top and handwritten page numbers ('the Cabinet Committee papers').
- 361 On 26 April 2012, the Minister of Foreign Affairs' Office hand delivered hard copies of the originals to the Cabinet Office. The investigation identified that, between 26 April 2012 and 2 May 2012, around 150 staff in a number of agencies handled, transmitted or received copies of one or all of those papers prior to the SEC Cabinet Committee meeting on 2 May 2012.

Cabinet Office: Receipt, compilation and distribution of Cabinet Papers

- 362 Cabinet Office keeps a manual log of the receipt and despatch of Cabinet papers, and was able to provide a detailed timeline for the handling of the Cabinet Committee papers from receipt on 26 April 2012 to despatch to Ministers' Offices and DPMC on 30 April 2012.

26 April - Notice of meeting agenda and advance copies

- 363 On 26 April 2012, the SEC Committee Secretary at Cabinet Office emailed a list of papers, including the MFAT papers, expected to be discussed at the SEC meeting scheduled for 2 May 2012. The 48 recipients included a wide range of people in Cabinet Office, several officials in the offices of Ministers on SEC and specified officials in DPMC, The Treasury and SSC who were members of the Officials' Committee for SEC (OSEC).
- 364 Advance copies of each of the Cabinet papers were photocopied by Cabinet Office for the Officials Committee of SEC, for a few Ministers and DPMC officials. The copies for the Officials Committee were enveloped, addressed to specific individuals and

despatched to Ministers' Offices on 26 April 2012, but in at least one instance did not reach the intended recipients until 30 April 2012 or later.

- 365 The Cabinet Secretary handed an advance copy of two of the Cabinet papers to the Secretary of the Treasury on 27 April 2012, as The Treasury had not been consulted on those papers.

30 April 2012 – completion, copying and despatch of the three Cabinet Committee papers

- 366 On 30 April 2012, the SEC Committee Secretary attached final versions of the Cabinet Committee summary top for each paper and added handwritten page numbers to each original version of the Cabinet papers. These hand-written page numbers are an important distinguishing feature as the originals of Cabinet papers normally have a typed page number.
- 367 Ministerial and departmental copies of the three Cabinet Committee papers were photocopied, hand-numbered in the top right hand corner of the summary top, and distributed from Cabinet Office in two tranches:
- 367.1 Thirty-five copies of the Change Programme paper and forty-nine copies of the Europe Posts papers were made. The Change Programme paper was classified IN CONFIDENCE so copies were not enveloped. The Europe Posts paper was classified RESTRICTED so copies were placed in addressed, sealed envelopes. These papers were delivered to Ministers' offices and DPMC between 2.30pm and 3pm on 30 April 2012. Most departmental copies would have been delivered to the named department on 30 April 2012 by a courier service from their Minister's office.
- 367.2 Thirty-five copies of the Forecast Financial Position paper were made; this was classified IN CONFIDENCE, so the copies were not enveloped. The papers were delivered to Ministers' offices between 4.30pm and 5pm on 30 April 2012. Most departmental copies would have been delivered on 1 May 2012 via the first available courier service from their Minister's office.
- 368 The copy numbers matched a list of recipients on a Distribution Way Bill. The numbered copies included a file copy, a copy for the Cabinet Room, and a spare copy.
- 369 The offices in Parliament Buildings that received copies were: SEC Ministers' offices, plus the offices of the Prime Minister, Minister of Foreign Affairs, Minister of Trade, and DPMC. The Europe Posts paper was also distributed to Ministers' offices for departments which had been consulted on that paper: Ministry of Economic Development, Ministry for Science and Innovation, Department of Labour, Ministry for Primary Industries, New Zealand Police, Ministry of Defence, New Zealand Defence Force, New Zealand Customs Service, and Department of Internal Affairs.
- 370 All copies distributed by Cabinet Office to Ministers' offices (including departmental copies) were checked and signed for by a staff member in the relevant Minister's office.
- 371 The final agenda for the SEC Meeting was distributed to officials in Ministers' offices and departments on 1 May 2012.
- 372 Twelve interviews were conducted of DPMC employees who work in the Cabinet Office. These people were identified as having handled the papers, including the messengers who delivered the papers within Parliament Buildings. None of these staff had any information as to how the papers came to be disclosed to the Labour Party Spokesperson on Foreign Affairs and Trade.
- 373 The investigation reviewed Cabinet Office documentation about its processes as well as a Cover Sheet on which staff record the time and date they complete steps to

prepare Cabinet Committee papers for distribution and the distribution Way Bills. These were helpful in establishing accountability, time and date of completion of key tasks including delivery and receipt of the Cabinet Committee papers within Parliament Buildings.

- 374 The investigation asked the Cabinet Secretary to recall all copies of the Cabinet Committee papers. All Ministerial copies of the Cabinet Committee papers were returned, except for the copy for the Minister of Foreign Affairs which was shredded. One copy held in the Cabinet Room until the topic had been dealt with was also shredded. Three departmental copies were shredded after use or once a scanned copy of the documents had been made. Departments also sent in additional authorised copies that had been made for use by senior officials who attended the Cabinet Committee meeting.

30 April 2012 – 2 May 2012 - Ministers and Ministers' Offices

- 375 Staff in Ministers' offices described similar processes in each office for handling incoming Cabinet papers regardless of which Minister was involved. In most cases, staff interviewed could not recall handling these specific papers, and described a 'normal' process for receiving, checking, and either filing or despatching the Cabinet papers.
- 376 Staff in Ministers' offices do not note the time of receipt of Cabinet papers; the only record that papers were received from Cabinet Office is the staff signature on the Way Bills. The Cabinet papers are checked and signed for by designated staff members. The Way Bills are dated, the delivery start time is noted, and Cabinet Office messengers confirmed that they would normally deliver all copies within 25 minutes of starting the delivery run.
- 377 The Ministers' copies are filed promptly usually in a lockable or locked cabinet, safe or drawers, depending on the facilities in each office. Only named staff know where to find the key for these secure facilities. Ministers' copies of Cabinet papers and a meeting agenda for each meeting are collated by the Senior Private Secretary or an approved staff member, and are supplied to the Minister the afternoon before, or the morning of, the relevant Committee meeting.
- 378 The handling of departmental copies of Cabinet papers varies a little between Ministers' Offices. The departmental copies are placed in desktop trays on or near private secretaries' desks, in view of others in the office. Prior to the leak of these Cabinet papers, departmental copies held in Ministers' offices were generally not locked out of sight either during the day or overnight. In theory, anyone in Ministers' offices could look through the contents of these in-trays, though staff believe they would notice if this occurred during the work day. Ministers' offices are locked overnight; cleaning staff with security clearances have access to these offices. We heard that, following the leak of the MFAT Cabinet papers, some ministerial staff had changed their practice to ensure that departmental copies are now placed in locked cabinets overnight, if not collected by day-end.
- 379 In most cases, private secretaries are responsible for ensuring the departmental papers are transferred promptly to a box file or courier bag for pick-up at the next messenger or courier run between Parliament Buildings and their departments. In some cases, messengers box the papers themselves from the designated out-tray. If the Cabinet papers are classified 'Restricted' or above they will be delivered from Cabinet Office in a sealed envelope, which the private secretaries do not open. Private Secretaries may look at any Cabinet papers that are not in a sealed, addressed envelope, in order to provide further information as to which person or team in the relevant department should receive the papers.

- 380 Ministerial staff in a few offices keep a log or make a note of the paper number(s) received and despatched to departments. Where this practice occurs, staff described that this process is intended to protect them when officials claim that departmental copies have not arrived. No record of date or time of despatch to departments of Cabinet papers is kept.
- 381 Not every Minister who received the papers was interviewed. Interviews were held for all Ministerial staff whose names were advised to the investigation by the Ministers' offices as likely to have handled both the Change Programme and Europe Posts Cabinet Committee papers, e.g. Senior Private Secretaries, Private Secretaries and Ministerial Secretaries.
- 382 Ministerial staff interviewed were clear in their understanding that copying of Cabinet papers is not permitted and those interviewed confirmed they had not made any copies. The general response was that they would have remembered if copies had been made or asked for because this is unusual and not permitted.
- 383 None of the Ministerial staff interviewed had any information as to how these papers may have ended up in the Labour Party Spokesperson on Foreign Affairs and Trade's possession.
- 384 Interviews were held with the Minister of Foreign Affairs and the Minister of Trade. Neither of these Ministers had any information as to who might have disclosed the Cabinet Committee papers.
- 385 In total, 51 people including Ministers and Ministerial staff were interviewed about the handling of the Cabinet Committee papers in Ministers' offices.

Delivery of departmental copies

- 386 Most departments could not confirm the actual date and time that copies of the Cabinet Committee papers were received by the department and delivered to the correct official(s). Few departments keep precise notes of the receipt or internal transmission of the documents.
- 387 The elapsed time for delivery of departmental copies to the intended recipients varies due to handling practice within Ministers' offices, timing and frequency of messenger or courier services to departments, plus the specific internal delivery process within departments.
- 388 The investigation interviewed each messenger and courier who was identified as responsible for delivery of papers from Ministers' offices to the relevant departments. They described their standard process for pick-up and delivery of papers. Each was aware of his or her responsibility to handle the papers securely and did not recall anything untoward that had occurred for deliveries made on 30 April 2012 and 1 May 2012. They did not recall the specific papers that were the subject of this investigation. All copies of the papers were delivered to the correct departments. These individuals were all unequivocal in stating that they would never leak papers entrusted to them; they understood the consequences for their own jobs or courier businesses should they betray that trust.
- 389 Based on normal practices described to us, it is reasonable to assume that most copies of the Change Programme and Europe Posts Cabinet Committee papers were picked up from Ministers' Offices and delivered to the correct departments between 3pm and 5pm on 30 April 2012, but most would not have reached the intended recipient until 1 May 2012. Due to a later (4.30pm) despatch from Cabinet Office of the Forecast Financial Position Cabinet Committee paper, it is likely that copies of this document were held in desktop trays in most Ministers' offices overnight and were not received by departments until the first courier service on the morning of 1 May 2012.

390 Each department has developed its own practice to handle receipt, distribution and storage of Cabinet papers, to meet the needs of that department. Specific practices of note for each department, reconstructed from interviewees' recollections as well as any corroborating evidence on 30 April 2012 to 2 May 2012, are recorded below. Evidence included registers or logs of Cabinet papers received, available logs of photocopies taken, scans made and printouts of documents on printers at departments that had received all three Cabinet Committee papers by 2 May 2012.

Ministry of Foreign Affairs and Trade

391 MFAT was sent one set of the Cabinet Committee papers for the Secretary. MFAT does not log the arrival of papers, and it was necessary to piece together what had happened with the Cabinet Committee papers because the three staff in the Office of the Chief Executive who handled the papers had different recollections of what had occurred, and some recollections did not accord with other known facts.

392 The investigation interviewed all senior staff who received copies of the papers, together with their Executive Assistants, the messenger who delivered the papers to MFAT, and administration staff who handled or copied the papers and hand delivered the copies of papers. Twelve staff were interviewed; some were interviewed twice, to clarify facts about the probable timing of receipt of the Cabinet Committee papers and their handling and distribution.

393 MFAT has an hourly courier run for papers to/from their Ministers' offices, starting and returning to MFAT between quarter to and quarter past the hour. The last daily run ends at Ministers' offices at 4pm. Cabinet papers are delivered by the courier directly to a staff member in the Office of the Chief Executive. The three Cabinet Committee papers were delivered to the Minister of Foreign Affairs' office on 30 April 2012, but it is likely that all three papers arrived at MFAT on the first courier run after 8.45am on 1 May 2012. The Forecast Financial Position paper was not available to pick up from the Minister's office on 30 April 2012 until after the last courier run from Parliament Buildings to MFAT at around 3pm. The Change Programme and Europe Posts papers may also have missed that courier run because they would have been delivered to the Minister's office at around 3pm.

394 All staff recall that three copies of the three Cabinet Committee papers were made on the day they arrived, together with a copy of the Central Agencies briefing paper. These copies were delivered by hand to the Secretary and the two senior officials who were to attend the SEC Cabinet Committee. The original set was held in a tambour in the Secretary's office. A day later – on 2 May 2012 - a fourth copy was taken for a fourth official to take to the Cabinet Committee meeting that afternoon.

395 Staff interviewed confirmed they did not make any additional photocopies or scans or allow others access to the Cabinet Committee papers. Staff responsible for storing the papers, do not recall any unusual interest in or requests to see or copy the papers. Copies and the originals were stored in tambours when not in use and the tambours were locked overnight.

396 None of these people had any information as to how the papers came to be disclosed to the Labour Party Spokesperson on Foreign Affairs and Trade.

397 MFAT provided a copy of all scans made on MFAT photocopiers between 30 April 2012 and 2 May 2012. Each scan was checked and none matched the Cabinet Committee papers.

398 The photocopier logs at MFAT do not contain any information that could help to determine whether additional unauthorised copies of the Cabinet Committee papers may have been made.

399 The original set and all known copies of these papers were returned to Cabinet Office, or directly to the investigation team, when requested.

State Services Commission

400 SSC was sent two sets of the Cabinet Committee papers; it does not have a precise record of when the papers were received. Based on the messenger services between SSC and the Minister of State Services' office (at/around noon and at/around 4pm), it is likely that the Change Programme and Europe Posts Papers were received at about 4.15pm on 30 April 2012. SSC staff said Cabinet papers received late in the day may not be distributed until the following morning and are stored in locked cabinets overnight.

401 The Forecast Financial Position papers would not have arrived at SSC until 2 May 2012, just after 12 noon. This paper was delivered to the office of the Minister of State Services Office between 4.30pm and 5pm, too late to be picked up in the regular SSC courier run at 4pm on 30 April 2012. There were no deliveries from the Minister's Office on 1 May 2012 due to a flood in SSC's offices. The offices were closed from about 11.20am and courier services from Parliament Buildings were cancelled that day. A member of staff delivered Cabinet papers to the Minister's office after SSC's offices were evacuated, but did not pick up any papers.

402 One photocopy of each of the Change Programme and Europe Posts Cabinet Committee papers were made for the use of the Deputy Commissioner responsible for MFAT on 1 May 2012. She took these with her when she went to a meeting at Treasury to work on a central agency briefing for Ministers about the MFAT change programme.

403 The set of papers for the Commissioner were filed, the other set was delivered to the named Deputy Commissioner who is a member of OSEC. SSC advised that it stores the paper copies of Cabinet documents in locked cabinets and does not scan Cabinet papers for its electronic records.

404 Logs of scans, photocopies and printouts on 30 April 2012 to 3 May 2012 were examined. See paragraph 461 below.

405 The original sets and the copies of the three Cabinet Committee papers were returned to the Cabinet Office.

The Treasury

406 The Treasury was sent three sets of the Cabinet Committee papers. Based on the timing of Treasury's messenger services and emails from the Ministerial Services team at Treasury, the Change Programme and Europe Posts papers were received late on 30 April 2012, and the Forecast Financial Position paper on 1 May 2012.

407 The first two Cabinet Committee papers were placed in an in-tray in the Ministerial Services team, who sent an email at 4.15pm on 30 April 2012 to the Information Management team advising of the papers' arrival. The in-tray is accessible to those who walk by, though normally one of two employees are close by. It is not clear whether these papers were collected from Ministerial Services on 30 April 2012 or 1 May 2012. Neither team could confirm whether they held the papers overnight, though both advised that if they were holding the papers on 30 April 2012, the papers would have been placed in a locked cabinet overnight.

- 408 On 1 May 2012 the three sets of Cabinet Committee papers were handled by the Information Management team as follows:
- 408.1 one set was scanned with the scans lodged in Treasury's document management system, iManage, as 'Read-Only' documents. The hardcopies of the scanned set were shredded.
 - 408.2 one set was filed in Information Management's hard copy records filing system, stored in secure locked cabinets.
 - 408.3 the remaining set was delivered to a named Deputy Secretary who is a member of OSEC.
- 409 The International Team within Treasury was sent a link to the scanned copies. Several staff who received that link viewed the documents on 1 and 2 May 2012. The Manager of the International Team had a printed copy of each of the scanned documents (as she was due to attend the Cabinet Committee meeting), though she did not know whether she or another staff member had printed the copies.
- 410 The Manager of the International Team and other Treasury staff thought that the iManage records would provide evidence as to who had printed the Manager's copies, and would also provide evidence that no-one else had printed or forwarded the scanned Cabinet Committee papers. The investigation established that the iManage history for 'Read-Only' documents only shows who accessed the document. This is recorded as a 'View' access. It appears that if the scans had been printed, emailed or uploaded to a gmail account, no separate log entry would have been created.
- 411 As a result, we needed to interview a large number of staff from Treasury to ascertain what, if anything, they did with the scanned records of the Cabinet Committee papers. All staff interviewed, other than the Manager, advised that they did not print copies or forward the scans to others outside of Treasury. The Manager delivered her printed copies of the scanned papers to the investigation team. The printout of scans made by Treasury are not very clean images, with markings that are not evident in the television footage of the paper received by the Labour Party Spokesperson on Foreign Affairs and Trade.
- 412 Three staff at Treasury were identified as having MFAT partners, who were all affected by the MFAT change proposals. Two of these staff had not accessed the scanned papers on iManage or had access to the available hardcopies. For legitimate work reasons, on 11 May 2012 one of these staff accessed and printed copies of the Change Programme Cabinet Committee paper. Electronic records confirm the date she accessed and printed the Cabinet Committee paper, and this was after the Cabinet Committee papers had been leaked. By mistake, she printed too many copies. She locked the spare copies in her office filing cabinet and reported the mistake to another staff member. The investigation was satisfied that she was not responsible for unauthorised disclosure of the Cabinet Committee papers and commend the actions she took to report and keep secure the copies printed by mistake on 11 May 2012. This was a good example of a staff member being aware of the importance of handling such papers correctly. Having made a mistake in printing too many copies she took appropriate action to protect herself and the papers.
- 413 Due to a technical failure, Treasury did not have any electronic logs or other electronic evidence of printing, photocopying or scanning of documents on Treasury printers for early May 2012. Logs for 30 April 2012, as well as lists of emails sent externally with scans attached and fax logs for the three days, did not show any activity that warranted further investigation.
- 414 The sets of the Cabinet Committee papers that were not shredded were returned to Cabinet Office.

Department of the Prime Minister and Cabinet (DPMC)

- 415 DPMC received four sets of the Cabinet Committee papers from the Cabinet Office messengers on 30 April 2012. The sets were for designated positions or named individuals. By mistake the numbered sets for two of the recipients were swapped, so that each recipient got the set that was intended for the other recipient.
- 416 Three further photocopies were made of the set of Cabinet Committee papers designated for the Chief Executive of DPMC, at the Chief Executive's request on 30 April 2012.
- 417 Interviews covered the person known to have processed and handled the papers and the designated recipients of the papers. None of these people had any information as to how the papers came to be disclosed to the Labour Party Spokesperson on Foreign Affairs and Trade.
- 418 One set of the papers was shredded after the Cabinet Committee meeting. The remaining three sets of the Cabinet Committee papers and known photocopies were returned to Cabinet Office when requested by the Cabinet Secretary.
- 419 Logs of scans, photocopies and printouts for DPMC printers did not show any activity that required further investigation.

Ministry of Justice

- 420 One set of the Cabinet Committee papers was for a named official, a member of OSEC who is employed by the Ministry of Justice. The official never received the two Cabinet Committee papers that were not enveloped (Change Programme and Forecast Financial Position), as the staff member processing them did not notice who was to receive the papers. One of the papers, Europe Posts, had arrived in a sealed envelope addressed to the named official and marked RESTRICTED.
- 421 Following normal practice for most Cabinet papers at the Ministry of Justice, the set of three papers were logged as having been received, probably on 1 May 2012 (but with no date or time record to confirm when the logging actually occurred). The set of papers was copied for the Ministry's locked file of Cabinet papers, and the originals of the two unenveloped papers were sent to and filed in the office of the Secretary for Justice. As a result, they did not reach the intended recipient. The Europe Posts Cabinet Committee paper was taken out of its sealed envelope, copied for the Ministry's file of Cabinet papers then double-enveloped and forwarded to the named official; he received this on 3 May 2012.
- 422 Interviews covered those who handled or received the papers and the intended recipient. No interviewees had any information as to how the Cabinet Committee papers may have been leaked to the Labour Party Spokesperson on Foreign Affairs and Trade.
- 423 The Ministry had no method of tracking when the papers were received or where the papers were, and it took some time for the intended recipient to track down all the papers when recalled by Cabinet Office. The set of Cabinet Committee papers and the photocopies of each paper were retrieved, and were returned to the Cabinet Office.
- 424 The Ministry did not have logs of scans taken, but did supply lists of printing/photocopying activity. There were no obvious items for further enquiry.

Other agencies

- 425 Some other agencies received a copy of the Europe Posts Cabinet Committee paper only, on which they had been consulted: New Zealand Customs Service, Ministry of Defence, New Zealand Defence Force, Ministry of Economic Development (two sets),

Department of Internal Affairs, Department of Labour, Ministry for Primary Industries, New Zealand Police, and Ministry for Science and Innovation.

- 426 In all, 32 officials in Ministers' offices and in these other agencies are known to have handled the Europe Posts paper and not the other two papers. At least another 122 officials (10 of these only after the Cabinet papers were leaked) had the potential to access scanned versions of the Europe Posts paper made within secure document registries for three of the agencies: New Zealand Defence Force (NZDF), Ministry for Economic Development and New Zealand Police.
- 427 It is worth noting that NZDF gave 105 staff access to the scanned copy of the Europe Posts paper. Admittedly, NZDF is considerably larger than most other agencies, but it is questionable whether this level of access really met the test of 'need-to-know'.
- 428 The investigation chose not to interview all the people in Ministers' offices and departments who handled or had access only to the Europe Posts paper. It seemed unlikely two Committee Cabinet papers distributed together would be leaked independently, so the person leaking the Europe Posts paper must have had access to the Change Programme paper.

PART 5: Unauthorised disclosure of Cabinet Committee papers

429 The evidence relevant to whether there was unauthorised disclosure of Cabinet Committee papers is as follows:

429.1 In Hansard for 2 May 2012, the Labour Party Spokesperson on Foreign Affairs and Trade was reported as saying:

In this paper, which I am holding, from the Minister to the Cabinet Committee on State sector reform and expenditure control on Monday, does he admit that “The Government has substantially revised the change proposals” because they have failed to get “the required amount of buy-in from staff”, especially senior staff, and there are too many “unachievable elements”...

429.2 The Change Programme Cabinet paper issued on 30 April 2012 contained the following statements: “the Ministry has now substantially revised the proposals...”; “did not achieve the required buy-in from staff, particularly those at a senior level” and “taking a number of...unachievable elements off the table”.

429.3 In Hansard for 2 May 2012, the Labour Party Spokesperson on Foreign Affairs and Trade was reported as saying:

Why in this paper to his Cabinet this week...and I quote his own words, “our overarching goal of securing a comprehensive agreement with the European Union containing preferential trade provisions”...

429.4 The Europe Posts paper refers to: “...our overarching goal of securing a Comprehensive Agreement with the EU containing preferential trade provisions...”

429.5 In a media release on 2 May 2012 at 2.42pm the Labour Party Spokesperson on Foreign Affairs and Trade quoted:

The document confirm our embassy in Stockholm will be closed next month with an estimated saving of \$1.1 million.

429.6 The Europe Posts paper states: “The closure of the New Zealand Embassy in Stockholm will enable the Ministry to save approximately \$1.1 million from 2012/13 onwards...”

429.7 In television footage on 2 May 2012, the Labour Party Spokesperson on Foreign Affairs and Trade and reporters made reference to the Cabinet Committee papers and the Labour Party Spokesperson on Foreign Affairs and Trade is shown in his office leafing through a Cabinet paper. There are also brief images in the television footage of a document entitled: “Extracts from document from Hon Murray McCully, Minister of Foreign Affairs; Dated: 26/4/12; Titled: ; IN –CONFIDENCE”.

429.8 Close examination of the television footage from 2 May 2012, showed that the document the Labour Party Spokesperson on Foreign Affairs and Trade is reading in his Parliamentary office looks like one of the Cabinet Committee papers. This paper had handwritten page numbers on it; the page numbers were inserted by the Cabinet Committee Secretary on 30 April 2012 and are of a distinctive style and shape. The investigation was satisfied from the page numbers and the layout of several pages shown that it was a copy of the Change Programme paper issued by Cabinet Office on 30 April 2012 and not any other paper. While there was no footage of the Labour Party Spokesperson on Foreign Affairs and Trade with the Europe Posts paper it is probable that the Europe Posts paper that he says he was in possession

of was the version issued by the Cabinet Office on 30 April 2012 because these two papers were issued together.

- 430 There is no evidence that the Labour Party Spokesperson on Foreign Affairs and Trade had an original copy of these two Cabinet Committee papers. The investigation arranged the return through the Cabinet Office of all the originals of the three Cabinet Committee papers together with any known authorised copies. A small number of originals had been shredded but the remainder were all returned. Most had the original staples in them. Agencies advised which papers had been copied and recovered those documents also, or a sufficient explanation was provided if they were not returned, e.g. they had been shredded or had been scanned in accordance with records management processes at particular agencies.
- 431 A forensic examiner was unable to confirm whether the paper shown on television footage in the Labour Party Spokesperson on Foreign Affairs and Trade's office was a photocopy or a scan. The pages have larger margins than in the original documents. The forensic examiner did confirm that it was unlikely to be a photo print because of the technical difficulty in obtaining an undistorted image, such as seen on the television footage.
- 432 The investigation established that an easy way to replicate the image of the paper seen in the television footage is to scan a hard copy to PDF format then use a print option within Adobe Acrobat software to reduce the scale of the image and position it on the page with wider margins. This would allow the recipient, the Labour Party Spokesperson of Foreign Affairs and Trade, to add margin notes to his copy. It is a possible explanation for the only discrepancy observed between the image on the television footage and the original copy, but does not prove whether photocopying or scanning was used to take the original unauthorised copy of the Cabinet Committee papers.
- 433 In order to be able to raise this matter in the House, the Labour Party Spokesperson on Foreign Affairs and Trade would have needed to submit the relevant parliamentary question by 10.30am on 2 May 2012. At that time, the Cabinet Committee papers had yet to be considered by the SEC Cabinet Committee which was due to meet later that day. Those papers had not been authorised for disclosure by the Minister of Foreign Affairs or by Cabinet.
- 434 It has not been possible to establish whether the Labour Party Spokesperson on Foreign Affairs and Trade had received the Forecast Financial Position paper. He does not appear to have quoted from that document on 2 May 2012 or subsequently.
- 435 As noted previously, according to Cabinet Office records for 30 April 2012, the Change Programme and Europe Posts Cabinet Committee papers were distributed to Ministers' offices at the same time from 2.30pm on 30 April 2012, whereas the Forecast Financial Position Cabinet Committee paper was delivered two hours later and in most cases reached agencies at least 16 hours after the first two papers were available. At SSC, the Forecast Financial Position Cabinet Committee paper arrived about 44 hours after the first two papers due to cancellation of courier services following evacuation of SSC's offices on 1 May 2012.
- 436 The gaps between delivery and distribution of the Cabinet Committee papers is a possible reason why the Labour Party Spokesperson on Foreign Affairs and Trade may not have received the Forecast Financial Position Cabinet Committee paper. The person who leaked the first two papers may not have had sufficient opportunity to leak the third paper.

<i>Findings: Unauthorised disclosure of Cabinet Committee papers</i>	
U.	From the evidence outlined in Part 5 of this Report, it is probable the Labour Party Spokesperson on Foreign Affairs and Trade was in possession of a copy of the Change Programme Cabinet Committee Paper. It is also probable he was in possession of a copy of the Europe Posts Cabinet Committee paper.
V.	It is probable the Labour Party Spokesperson on Foreign Affairs and Trade would have received these papers after they were issued by the Cabinet Office at 2.30pm on 30 April 2012 and by 10.30am on 2 May 2012.
W.	It is probable the Labour Party Spokesperson on Foreign Affairs and Trade received either a scanned copy or a photocopy of the original Cabinet Committee papers.
X.	It is not possible to establish if the Labour Party Spokesperson on Foreign Affairs and Trade was in possession of a copy of the Financial Forecast Cabinet Committee Paper, however it is unlikely that the Labour Party Spokesperson on Foreign Affairs and Trade had a copy of that paper in his possession prior to Question Time on 2 May 2012.
Y.	The Cabinet Committee papers were not authorised for release to the Labour Party Spokesperson on Foreign Affairs and Trade or anyone else.

Who disclosed the Cabinet Committee papers

- 437 The unauthorised disclosure of Cabinet Committee papers about the change programme at MFAT occurred immediately after and contiguous with a series of unauthorised disclosures of other MFAT documents.
- 438 Unlike the other MFAT document leaks on which the investigation focused, few MFAT staff had authorised access to the Cabinet Committee papers, and a rather larger number of people outside MFAT handled these papers. The investigation considered carefully the processes for handling the Cabinet Committee papers and looked at available evidence to verify information provided at interviews and to identify who may have had opportunity to leak the papers. This work is described in Part 4 of this Report.
- 439 Given the close handling of the Cabinet Committee papers, the short timeframe in which the leak could have occurred, and the training and experience of most staff who have access to the papers, it seems likely the disclosure of the Cabinet Committee papers was an opportunistic act by someone encouraged by the public and political debate about the changes at MFAT which was further fuelled by prior unauthorised disclosure of government information. The likely intent of the leak of the Cabinet Committee papers was to cause further embarrassment for the Government and MFAT. Most interviewees were unequivocal in their statements to the investigation that they did not leak the Cabinet Committee papers and were clear about their responsibilities in handling cabinet papers and keeping them secure.
- 440 **Cabinet Office:** The investigation considers it unlikely the Cabinet Office or its staff were responsible for inadvertent or deliberate disclosure of the Cabinet Committee papers. The Cabinet Office operates within a secure area in Parliament Buildings. It

provided evidence of who was accountable for various activities to prepare, check and distribute the Cabinet Committee papers about the MFAT change programme. Staff interviewed described clear procedures for their work and displayed strong understanding of their personal accountability for secure handling of Cabinet papers. While it was theoretically possible for an ill-intentioned person to make an extra copy unobserved of the relevant papers, in practice that would have been very difficult to achieve given the layout of the Cabinet Office, its secure location, and how the papers were handled. Cabinet Office staff could account for delivery of all copies distributed from the Cabinet Office within Parliament Buildings.

- 441 **Ministers' offices:** The investigation considers it unlikely Ministers or Ministerial staff were responsible for inadvertent or deliberate disclosure of Ministers' copies of the Cabinet Committee papers. These papers were signed for on receipt from Cabinet Office and were kept in locked cabinets or drawers prior to the Cabinet Committee meeting. They were generally held under the personal supervision of the Senior Private Secretary in each office, and supplied by that person to the Minister with other Cabinet Committee papers.
- 442 Further, the investigation considers it unlikely Ministers or Ministerial staff were responsible for inadvertent or deliberate disclosure of departmental copies of the Cabinet Committee papers. These papers were signed for at each Minister's office on receipt from the Cabinet Office and mostly were held in a desktop tray near the relevant private secretary for pick-up by departmental messengers. The Change Programme and Europe Posts Cabinet Committee papers were picked up for delivery to most departments within an hour of receipt from Cabinet Office. The Europe Posts Cabinet Committee paper was classified RESTRICTED and was sealed in an envelope; these envelopes were not opened in Ministers' offices.
- 443 **DPMC:** The investigation considers it unlikely members of DPMC staff were responsible for inadvertent or deliberate disclosure of copies of the Cabinet Committee papers. The papers were delivered directly by Cabinet Office and staff responsible for handling and receiving these papers could account for their handling of the papers. Authorised copies were taken for the Chief Executive of DPMC and were marked with his name; these copies were returned to the Cabinet Office when the investigation requested the recall of all originals and copies. There was no evidence of unauthorised copying or scanning of the Cabinet Committee papers by DPMC staff who handled them. The papers were held in pigeon holes pending pick-up by the designated staff member, so could theoretically have been accessed by another staff member for the purpose of taking an unauthorised copy or scan, however the investigation had no reason to believe that had happened.
- 444 **Transmission from Ministers' offices to department offices based outside Parliament Buildings:** The investigation considers it unlikely departmental messengers and contracted couriers were responsible for the inadvertent or deliberate disclosure of copies of the Cabinet Committee papers. They were all very aware of the need to handle government documents securely. The copies all reached the correct departments, and apparently in accordance with the delivery schedule in place for each department. None of the messengers or couriers remembered the particular papers, or anything untoward happening during deliveries on 30 April 2012 to 2 May 2012.
- 445 **The Treasury:** The investigation considers it unlikely members of Treasury staff were responsible for inadvertent or deliberate disclosure of the Cabinet Committee papers. There was a period from 4.15pm on 30 April 2012 when the Change Programme and Europe Posts Cabinet Committee papers were held in an in-tray accessible to other staff. The Treasury has a process to convert hardcopies of Cabinet papers to electronic copies as soon as possible after delivery to its offices; this activity was completed at 9am on 1 May 2012. Treasury does not have a record of where those

papers were stored overnight though staff interviewed said the papers would have been stored in a locked cabinet in one of two locations. All staff who were known to have accessed either a hardcopy or an electronic copy of the papers could account for their handling of the Cabinet Committee papers.

- 446 **MFAT:** The investigation considers it unlikely members of MFAT staff were responsible for inadvertent or deliberate disclosure of the Cabinet Committee papers. However, the investigation did have some concerns as no registers were kept of Cabinet papers received by MFAT, and staff recollections about when and how they handled the Cabinet Committee papers did not entirely match with other known facts. Staff were clear about their own role in handling the papers and in storing them securely, and discrepancies in recollections were able to be accounted for. There was no evidence that the Cabinet Committee papers had been scanned at MFAT between 30 April 2012 and 2 May 2012. MFAT's photocopier logs did not record sufficient information to determine whether additional unauthorised copies of the Cabinet Committee papers may have been made by staff who had access to the papers.
- 447 **Ministry of Justice:** The investigation considers it unlikely Ministry of Justice staff were responsible for inadvertent or deliberate disclosure of the Cabinet Committee papers. The only reason a copy of the Cabinet Committee papers was sent to the Ministry of Justice was because it employed a member of the Officials Committee for the SEC Cabinet Committee. The official did not receive his copy of the Cabinet Committee papers in time for the SEC Cabinet Committee meeting on 2 May 2012 due to a lack of training for staff who logged and filed the papers. Instead, the two Cabinet Committee papers were logged as received, were copied for the Ministry's records and the originals were sent to, and filed in, the office of the Secretary of Justice. The third document, Europe Posts Cabinet Committee paper, was removed from its sealed envelope, copied, the copy filed and the original re-enveloped and delivered to the named official on 3 May 2012. It was not possible to establish, from the Ministry's records, when the papers were received, logged, copied and filed. Both the original set of Cabinet papers and the copies were retrieved from the relevant files and returned to the Cabinet Office at the investigation's request.
- 448 **SSC:** There were no exceptional issues in the initial interviews with SSC staff, and the investigation considered it was unlikely any SSC staff were responsible for inadvertent or deliberate disclosure of the Cabinet Committee papers. However, when the investigation looked at the timing of delivery of the Cabinet Committee papers with Parliament Buildings on 30 April 2012 and SSC's twice daily courier runs, there was a lack of clarity about what events had happened and when, and who had been responsible for taking a copy of the Cabinet Committee papers for the Deputy Commissioner at SSC responsible for MFAT.
- 449 The investigation eventually established that in April and early May 2012 a temporary contractor [X] was responsible for logging Cabinet papers received from the office of the Minister of State Services. [X] was also required to photocopy Cabinet papers for the Deputy Commissioner who was responsible for the relevant department (where that person was not a named recipient of the Cabinet paper), noting copies taken in the Register of Cabinet Papers Received, distributing the copies and filing the Commissioner's copy in a locked cabinet.
- 450 [X] was employed by SSC through an employment agency on a short term contract during the period relevant to the investigation. SSC was aware that before joining SSC, [X] had been employed by Parliamentary Services in the Labour Party Research Unit. The contract for services included the following clause: "The Agency (and its employees) must keep confidential all matters relating to this Assignment and will not, at any time, disclose to any third party any information whatsoever, other than in proper fulfilment of this Assignment." A schedule to the contract was a letter from SSC

to [X] with a Confidentiality and Compliance Deed that [X] was required to sign. The Deed included this undertaking:

I hereby undertake to keep confidential all matters relating to the State Services Commission and to Government Departments and agencies that are disclosed to me in the course of my work with the State Services Commission, and will not disclose any such matters other than in the proper fulfilment of my services for the State Services Commissioner.

I undertake to operate in a manner consistent with the requirements the Standards of Integrity and Conduct for the State Services impose on employees of the Commissioner. I acknowledge receipt of a copy of the Standards of Integrity and Conduct for the State Services.

- 451 [X's] role included reception duties as well as clerical work in the Office of the Commissioner.
- 452 [X] was first interviewed by the investigation via Skype on 14 August 2012. The purpose of the interview was to understand [X's] role at SSC in handling Cabinet papers and any recollections of handling the Cabinet Committee papers. [X] confirmed that the role performed at SSC included logging, copying, distribution, and filing of Cabinet papers.
- 453 In answer to a question about memories of the particular papers that were the subject of the investigation, [X] indicated: "Basically, I vaguely remember the Cabinet papers." [X] thought [X] had copied some of the Cabinet Committee papers for the Deputy Commissioner responsible for MFAT. The fact that [X] recalled the Cabinet Committee papers three months later was a little unusual as most administration staff interviewed in the weeks after the papers were leaked had no recall of the actual Cabinet Committee papers or what they did with them, and described their normal process for handling Cabinet papers.
- 454 [X] confirmed [X's] previous role working for the Labour Party in the office of the Labour Party Leader and that [X] had maintained social contact with colleagues from that time. SSC's logs of external email traffic for [X] showed [X] was in touch with some colleagues in the Labour Party Research Unit, including in the fortnight before the Cabinet Committee papers were leaked.
- 455 [X] was aware of the issues at MFAT at the time: "Yes, I was aware. I read the newspapers".
- 456 At this interview [X] was clear [X] would have photocopied rather than scanned the Cabinet Committee papers for the Deputy Commissioner responsible for MFAT, and did not think [X] had provided access to the Cabinet papers to anyone other than the SSC staff to whom [X] had referred in the interview.
- 457 The investigation checked SSC's electronic Register of Cabinet Papers Received, which showed that the Change Programme and Europe Posts Cabinet Committee papers were received on 30 April 2012 and the Forecast Financial Position Cabinet Committee paper was received on 2 May 2012. Based on the courier runs for SSC, the Change Programme and Europe Posts Cabinet Committee papers would have arrived at around 4.15pm on 30 April 2012 and the Forecast Financial Position paper would have arrived at around noon on 2 May 2012; this meant the two Cabinet Committee papers were separated from the third Cabinet Committee paper for up to 44 hours. There was a note in SSC's Register of the copy of each paper taken for the Deputy Commissioner.
- 458 It was not possible to establish precisely when the Register was updated to record receipt of the Cabinet Committee papers, including when the copies were taken. The activity log for the Register shows that [X] opened the Register four times on 30 April 2012 probably to log other Cabinet papers that would have arrived in the earlier courier

bag that day and to record copies of papers that were requested of [X]. For instance, on 30 April 2012 [X] opened the Register at 3.45.08pm and saved changes and checked-in (filed) the Register at 4.18.22pm. The changes to the Register may have included a record of 20 pages [X] copied at 4.06pm on 30 April 2012. There are no other records of photocopies or scans by [X] on 30 April 2012. [X] opened the Register again at 5.03.10pm and saved changes/checked-in the Register at 5.05.22pm.

459 [X] said that the courier bag in the afternoon would come near the end of the day:

So I wouldn't have generally logged it or opened it until the next day

460 [X] said he was working on the Reception Desk at SSC on the morning of 1 May 2012 and started work at around 8.30am that day. [X] first entered the secure area in SSC's offices on Level 10 at 2 The Terrace at 8.20am via the access door closest to the Commissioner's office. [X] opened the Register of Cabinet Papers Received at 8.24.38am. [X] re-entered the secure area from SSC's Reception area at 8.52am.

461 The investigation reviewed the available electronic logs of photocopies taken, scans made and printouts of documents on printers at SSC from 30 April 2012 to 2 May 2012. The logs record the date and time of each activity, the number of pages scanned, printed or photocopied and the user who initiated the activity. It was not possible to review the actual scans, or to identify what was photocopied. Between 9am and 9.04am on 1 May 2012 SSC's photocopier logs show the following four transactions completed sequentially by [X] at a photocopier near his desk on Level 10 by the Commissioner's office:

9.00am: Photocopied 6 pages

9.02am: Scanned a document of 10 pages

9.03am: Photocopied 28 pages

9.04am: Scanned a document of 18 pages.

462 At 9.52am [X] accessed the secure area again, and saved changes/checked-in the Register of Cabinet Papers Received at 9.52.35am. [X] did not access the Register again that day. At 11.02am on 1 May 2012, [X] photocopied a two page document and a three page document at a photocopier on Level 11 at SSC. There are no other records of scans or photocopies by [X] on 1 May 2012.

463 The Change Programme Cabinet Committee Paper was 10 pages long, the Europe Posts Cabinet Committee paper was 18 pages long. The photocopying activity can be explained by the fact that the Deputy Commissioner responsible for MFAT required copies of the Cabinet Committee papers and [X] confirmed [X] provided those copies as noted above. There were no other photocopies taken of documents of the right size by [X] or other staff who might have had access to the Cabinet Committee papers on 30 April 2012 or 1 May 2012 and the Deputy Commissioner said she had the two papers in her possession by late morning on 1 May 2012.

464 [X] could not explain the scanning of documents of the same number of pages as the two Cabinet Committee papers, either side of the photocopying activity.

465 The scanning function on SSC's photocopiers is distinctly different from the copying function, and the user must switch the machine deliberately from one function to the other. Scanned documents are converted to PDF format and the PDF is automatically emailed to the in-box of the person undertaking the scanning. The email subject line and the document name for the attached PDF is computer-generated and includes the printer used, and the date and time the scan was generated. For the scans made by [X] on 1 May 2012, the prefix would have read 'Scan-to-Me-from 10-util3.govt.nz 2012-05-01' (Prefix) followed by a six-digit number recording the time in hours, minutes and

seconds and an extension of 'PDF'. The six-digit number would have started with 09 since the scanning occurred just after 9am on 1 May 2012.

466 The investigation was unable to establish the contents of the PDFs created by [X] on 1 May 2012, as [X's] in-box had been permanently deleted after [X] left SSC's employment in mid May 2012. SSC does not keep permanent records of documents scanned by staff or emails to and from staff unless the staff member has saved the scans and emails into SSC's document management system. SSC could not find a match for the scanned documents in SSC's document management system from 1 May 2012 to 10 May 2012; over 80 documents had been saved by [X] and they were all checked for size.

467 In September 2012, the investigation arranged for the two hard drives of desktop computers that [X] had logged onto between 27 April 2012 and 15 May 2012 to be examined for any electronic evidence of the PDFs. While evidence of other scanned documents was accessible on these hard drives, there was no evidence to identify the contents of the two scans [X] made on 1 May 2012.

468 At a second interview on 17 October 2012 by Skype, [X] said [X] did not often scan documents in the course of [X's] job, including Cabinet papers, though once or twice [X] had scanned documents to distribute copies to staff. This is consistent with SSC's practice that Cabinet papers were held as hard copies in locked storage. Cabinet papers may be scanned on occasion if specifically requested by a staff member. [X] was responsible for scanning other documents such as signed copies of letters to be saved in the document management system and meeting minutes to be distributed to a number of people. [X] could not recall what documents [X] scanned when [X] photocopied the Cabinet papers and did not recall forwarding the scans to anyone. [X] said:

If I scanned anything it probably would just have been deleted if it wasn't necessary.

469 There was no evidence on the two hard drives accessed by [X] showing those scans had been deleted, however one of the scans had likely been moved to a deleted items folder though the date that occurred is unknown.

470 When asked whether [X] thought it was okay to scan Cabinet Committee papers [X] said:

No I suspect it's probably not -- I don't know the rules ?? - but I imagine it's not, it's you know it's confidential information so yeah.

471 When asked: "Are you quite clear [X] that you didn't scan those Cabinet Committee papers to provide them to someone who was not authorised to receive them?" [X] replied:

I can't recall to be honest. I can't remember.

If you were going to give them to someone who wasn't authorised to receive them wouldn't you recall that?

No. I don't recall.

You don't recall whether you scanned them to give to someone who was not authorised to receive them?

No.

Do you think you would do that [X], give Cabinet Committee papers to someone who wasn't authorised to receive them?

I don't know.

You don't know?

Well I mean that's ?? kind of speculation.

Most public servants understand where their duty lies. When I ask if they would provide access to papers to someone who is not authorised to receive them.

Well I mean to be honest - sorry what were you saying again?

I asked you whether you would recall if you had photocopied or scanned

I suspect I would recall if I had ?? yeah

- for the purpose of giving them to someone who is not authorised to receive them - you wouldn't recall that?

No I suspect I would recall that.

I just want to check with [legal advisor] if she would like to put any questions to you? ???
[X] have you ever given any information to anyone who was not authorised to receive it?

No I don't think so.

You don't think so or you?

Well I mean to be honest I wouldn't have access to a lot of information that -

You had access to a great deal of information actually [X] working where you did. Not least of which were the Cabinet Committee papers.

Oh right, yeah well no.

Did you ever scan Cabinet Committee papers for the purpose of -

On occasions, yeah, a couple of Cabinet Committee papers I'd seen would've been scanned and distributed to some other staff members, yeah.

Did you ever scan Cabinet Committee papers for any other purpose other than to give them to staff?

For staff at State Services Commission?

Yeah.

That'd be the main reason.

- 472 As a result of concerns about the uncertainty and apparent equivocation in the answers given by [X] to the critical questions detailed above, the investigation obtained SSC's logs of email traffic to and from [X's] email address at SSC and logs of URL browsing by [X] at SSC, and arranged for a peer review of the forensic examination of hard drives of the two desktop computers that SSC confirmed [X] had logged onto from 30 April 2012.
- 473 The investigation received advice from the forensic examiner that it was not possible to eliminate transfer of the scans to a USB device as a means of transmission that would have been available to [X] to disclose the Cabinet Committee papers he received and scanned on 1 May 2012.
- 474 The investigation wrote to [X] on two occasions subsequent to the interviews to seek verification of factual matters covered in the interviews and to confirm the accuracy of the transcripts. The investigation also raised with [X] the lack of clarity in [X's] responses at the interviews to the question of whether [X] would ever give access to Cabinet Committee papers to someone not authorised to receive them.

475 The response received was not from [X] but from [X's] legal representative who submitted:

[X] rejects ... allegations ... that [X] was responsible for the disclosure of Cabinet Committee papers about MFAT in May 2012 to the Hon Phil Goff.

476 The firm rejection by [X] through [X's] legal representative for the unauthorised disclosure of the Cabinet Committee papers to the Labour Spokesperson on Foreign Affairs and Trade in the precise terms set out in the legal representative's letter taken at face value does not amount to a disclaimer of responsibility for unauthorised disclosure to a third party.

477 The investigation sent extracts from a draft of this report in March 2013 for comment and the investigation received lengthy submissions from [X's] legal representative which confirmed [X] denies any form of unauthorised disclosure of the Cabinet Committee papers. These submissions were accompanied by a statutory declaration by [X] dated 5 April 2013:

As my denial of responsibility does not appear to have been understood in the manner I intended it to be, I provide this declaration to confirm that I was not responsible for any unauthorised disclosure of the Change Programme and Europe Posts Cabinet Committee papers to any third party, including directly or indirectly to the Labour Spokesperson on Foreign Affairs and Trade

478 The investigation thought it was significant that [X's] firm rejection of responsibility for the disclosure of the Cabinet Committee papers in the Statutory Declaration (which contrasted sharply with the uncertain and equivocal nature of his responses to the same issue in the previous interviews) only came after [X] had taken legal advice. On the face of it, there seemed to be no reason why [X], when questioned about the issue at the interviews, could not have been as clear and forthright about his rejection of responsibility as he was in the Statutory Declaration accompanying the extensive submissions provided to the investigation by his legal adviser in April 2013.

479 [X] was then given a further opportunity to comment on the final draft extracts of the report and provided submissions to the investigation via [X]'s legal counsel. Those submissions were carefully considered and taken into account in reaching the following conclusions.

480 The cumulative effect of the evidence relating to [X] and his involvement with the Cabinet papers, including the Statutory Declaration completed by him and the extensive submissions made on his behalf by his legal adviser, left the investigation with a strong suspicion that [X] may have been responsible for the disclosure of the Cabinet papers to a party not authorised to receive them, not necessarily the Labour Party Spokesperson on Foreign Affairs and Trade. However, for reasons relating to the standard of proof required to prove responsibility as outlined in the Findings which follow, the investigation was unable to find as a matter of proven fact that [X] was the person responsible for the leak of the Cabinet Committee papers.

481 While comprehensive enquiries were made (as detailed in Part 4 and Part 5 of this Report) the investigation did not obtain any direct evidence as to the identity of the person who delivered copies of the Cabinet Committee papers to the Labour Party Spokesperson on Foreign Affairs and Trade.

Findings: Who disclosed the Cabinet Committee papers

Z. Having considered the evidence in Part 4 and Part 5 of this Report about the preparation, handling and distribution of the three MFAT Cabinet Committee papers, it is unlikely that the Cabinet Office or the rest of DPMC, or Ministerial offices were the source of unauthorised disclosure

	of Ministerial or departmental copies of the Cabinet Committee papers.
AA.	Having considered the evidence in Part 4 and Part 5 of this Report, it is unlikely that MFAT, Treasury and the Ministry of Justice were the source of unauthorised disclosure of the Cabinet Committee papers.
BB.	Having considered the evidence in Part 4 and Part 5 of this Report, it is unlikely that permanent staff at SSC were the source of unauthorised disclosure of the Cabinet Committee papers.
CC.	The investigation assessed the probative effect of the evidence outlined in Part 5 in relation to a contractor working at SSC at the relevant time, and this person’s involvement with the Cabinet Committee papers. The investigation needed to bear in mind the distinction between evidence which merely raises strong suspicion and that which is sufficient to amount to proof. Recognition of that distinction and what the evidence establishes requires the investigation to apply a level of proof commensurate with the seriousness of the primary issue into which the investigation has to inquire and report.
DD.	Approaching the matter in that way, the investigation has concluded that on the evidence outlined, there is a proper basis for strong suspicion this person may have been responsible for the leak of a copy of the Change Programme and Europe Posts Cabinet Committee papers to someone, not necessarily the Labour Party Spokesperson on Foreign Affairs and Trade, who may have passed them on to him. However, applying the level of proof referred to in the preceding paragraph, the investigation does not believe it can conclude as a matter of proven fact that this person was responsible for the leak of the papers. As indicated, the evidence takes the investigation no further than a point of “strong suspicion”.
EE.	The SSC assigned a contractor to handle sensitive government documents without mitigating possible risks due to the person’s: prior work for a political party; likely lack of experience of following Cabinet guidelines for handling Cabinet papers; and dual role working in the secure area of the Commissioner’s Office and in the more public reception area of SSC. While the hiring of people that have previously worked for political parties is not in itself problematic, it is the department’s responsibility to induct, train, and provide oversight to mitigate any risk.

PART 6: Secure handling of government information

MFAT's information management systems

- 482 During the change process and through to when this investigation started, MFAT had a major programme of change underway to modernise its IT systems. This included moving from multiple document management systems to a centralised system, as well as changing MFAT's processes about how it classifies and stores documents. The changes were expected to substantially improve the robustness, security and usability of MFAT's information management systems.
- 483 The investigation did not consider that any of the unauthorised disclosures of documents held at MFAT about its change programme were due to failures in IT systems. Rather, the documents that were leaked were selected deliberately by the leakers from the many change documents that were available on MFAT's intranet and in team in-boxes and other documents circulated to MFAT staff. All but one of the documents that were leaked were of particular value to the Labour Party in criticising the Government. The remaining document, a spreadsheet containing details of staff remuneration on offshore posts, was leaked in what was very likely an ill-advised attempt to undermine the credibility of claims made in previous leaks.

The Cabinet paper system

- 484 The current Cabinet paper system, using hardcopies of documents rather than electronic versions, has a very high number of handovers between the distributor of the papers: the relevant Cabinet Committee Secretary, and the intended recipients: Ministers and specified officials. Even before the papers leave Cabinet Office control, they pass through five or more pairs of hands, for logging, reviewing and summarising, preparing documents, peer review, photocopying, and 'boxing' for delivery to Minister's offices. Beyond Cabinet Office, three people handle the documents to get them to the Minister and a further five – seven people pick-up/deliver, log, copy, file and distribute the papers to officials in departments.
- 485 From interviews and documentation obtained, a large number of public servants and some independent couriers were involved in the administration, transmission and use of the hard copies of the three Cabinet Committee papers. For all of these people, handling Cabinet Committee papers is a very important, routine part of their day. The number of people involved meant there was a large number of potential failure points in the distribution process, leading to errors in delivery such as occurred at DPMC and the Ministry of Justice, and in-built delays in delivery. Agencies received the Cabinet Committee papers between three and 16 hours after distribution from Cabinet Office, and up to 44 hours in the case of SSC where delivery of the Forecast Financial Position Cabinet Committee paper was delayed due to the flood at SSC's offices.
- 486 In the Cabinet Office, manual records provide reasonable evidence of who handled these documents and when. Because the Cabinet papers only exist in paper form, theoretically it would be possible for a Cabinet Office staff member to make extra, unauthorised, undetected copies of Cabinet documents or to make genuine mistakes with the delivery of documents. The principal protections against such events are the small size and strong culture of this office, applied learnings from the leak of a Cabinet document in 2006, high awareness that the secure production and distribution of Cabinet papers is a fundamental part of each person's role, together with careful selection and training of staff. Cabinet Office employees are all required to obtain and maintain a Top Secret security clearance and understand their own accountability for the secure handling of these documents. There are also some manual failsafes to help detect errors in final distribution of the papers to Ministers' offices. However, it was still physically possible for a staff member to take an unauthorised copy of Cabinet papers without detection.

- 487 In Ministers' offices, there are generally no records of who handled the Cabinet Committee papers. Highest priority was placed on securing the Ministerial copies of papers, departmental copies were generally less well protected. Because the Cabinet papers only exist in paper form, theoretically it would be possible for a staff member to make extra, unauthorised, undetected copies of those documents. Interviewees generally had an appreciation of the importance of secure handling of Cabinet papers, though this was more variable than in Cabinet Office. There is a mix of permanent, contract and seconded staff in each Minister's office, so there is less reliance on a shared culture, and more reliance on following an agreed process.
- 488 There are in-built delays at key handover points for departmental copies of Cabinet papers between receipt of papers at Ministers' office and pick-up for departments, and between receipt at departments and delivery to the intended recipients. For practical reasons, the papers are not necessarily held as securely as would be desirable at these handover points.
- 489 In particular, generally, departmental copies delivered to Ministers' offices were not held as securely in these offices as the Ministerial copies. Ministerial copies were generally kept in locked cabinets, under the close control of the Senior Private Secretary.
- 490 Departmental copies were stored most often in an in-tray or box file held on or near a private secretary's desk, and were accessible potentially to anyone who works in or enters the Ministers' offices. While Ministers' offices are locked overnight, departmental copies of Cabinet papers that are not collected by the end of the day were not necessarily stored in locked cabinets overnight. In theory, these papers could be accessed unobserved overnight by someone with the security clearance to enter these offices. Some Ministerial staff advised that they had changed this practice following the leak of the MFAT Cabinet Committee papers and now store any uncollected departmental copies in locked cabinets overnight.
- 491 To protect themselves against accusation from departments that departmental copies have not been passed on, some staff in Ministers' offices keep informal notes or manual registers of the departmental copies they have received. It is not clear what purpose these actually serve as generally no record is kept of when departmental copies are picked up or who picks up the documents.
- 492 There was no direct evidence of who picked up and delivered the three Cabinet Committee papers for each department or when this occurred. In no case were papers signed out from Parliament Buildings or signed in on receipt at departments. The volume of papers, not just Cabinet documents, being transmitted by hand would make this a time-consuming task for some agencies. None of the messengers knew whether they had carried the MFAT Cabinet Committee papers. The investigation identified who was likely to have distributed the papers to departments, at what time, based on standard routines of each office and of the messengers assigned or contracted to perform this work.
- 493 The principal protection against departmental copies of Cabinet papers going astray between Parliament Buildings and each agency is that messenger services are supplied by either a small group of departmental staff or known couriers and they follow set routines for pick-up and delivery of papers. For the professional couriers their livelihood depends on carrying out the services promptly and securely, and those interviewed for this investigation were trusted long-term contractors to their respective agencies.
- 494 The investigation was surprised to learn that in some cases the messenger taking papers to and from an agency would be able to read the papers being carried. Papers were carried by more or less secure means. In some Ministers' offices the messengers pick up all the papers sitting in the designated out-tray and pack them in a

container they carry with them to take back to the relevant agency. This might be more likely to occur when a private secretary for the agency is away from his or her desk. In other cases, messengers exchange one container with papers from the agency for another container of papers to be delivered back to the agency. Various containers such as box files, sealed envelopes, soft zipped or lockable pouches and concertina files are used to pack up the papers for each agency. One staff member described sometimes having too many papers to fit into the container supplied by her agency. All messengers were clear that they do not read the Cabinet papers they collect and deliver, even where the opportunity to do so exists.

- 495 In departments, there was greater opportunity than in Ministers' offices for undetectable, unauthorised photocopying, scanning and transmission of the Cabinet Committee papers. This is because of the multiple handling that typically occurs for operational needs, for instance receiving documents in one part of the agency and transferring them between staff to reach their final destination. The involvement of staff in these processes is typically not documented. This occurred to a greater or lesser extent in every agency, and the investigation needed to reconstruct what had happened in each case. Other reasons for additional handling were:
- 495.1 Taking a copy for a central record of Cabinet documents received and distributing either the original or the copy to staff who are the intended recipient of each paper. This happened at MFAT and Ministry of Justice.
 - 495.2 Taking extra copies for staff who need to know about the contents of each paper such as for briefings to Ministers, or for additional staff attending Cabinet Committee meetings. This happened at MFAT, SSC and DPMC.
 - 495.3 Scanning the Cabinet documents, filing the physical copies in a secure central file, and distributing the scans to staff who need to know about the contents of the paper. This happened at Treasury (and in other larger agencies such as MED¹², New Zealand Police, and New Zealand Defence Force that received the Europe Posts Cabinet Committee paper only).
- 496 Some departments keep a manual log of Cabinet documents they have received, with a record, if relevant, of any copies taken e.g. SSC and Ministry of Justice. The logs are not time-stamped, and may or may not be updated on the day the papers arrive. They are a useful index of papers received but do not provide an effective audit trail.
- 497 On two occasions, departmental copies were delivered to the wrong recipients, as occurred at DPMC (where two copies were swapped between the named recipients), and at the Ministry of Justice (where copies were taken and filed in the Ministry's central file and the originals were delivered and filed in the Office of the Chief Executive.)
- 498 In departments there is no consistent practice as to whether Cabinet papers can be copied or scanned. Some officials frowned on the practice of scanning Cabinet papers and others see it as an essential part of keeping the documents secure while efficiently conducting government business. If departments choose to scan Cabinet papers they need to be clear about how the scans are stored and distributed, and that audit trails record subsequent handling of those documents.

Improvements in handling government information

- 499 DPMC has made progress with a project to develop a new electronic platform known as CabNet. This system will use technologies and processes allowing departments, Ministers' offices and the Cabinet Office to work together more effectively in supporting Cabinet and its committees. Benefits expected include enhanced security of Cabinet information. The project will involve significant changes to the business processes

¹² Now Ministry of Business, Innovation, and Employment

involved with the Cabinet system. In the meantime, DPMC has reminded its staff of the need to adhere to its current processes for secure handling of Cabinet documents. It has also changed its process for the handling and recording of advance copies of Cabinet papers so that similar processes are followed as for final copies.

500 At the time of the leaks, the Treasury already had a well-documented process for the receipt and handling of Cabinet papers and relied on early scanning of papers for efficient distribution to the teams that may need to work on the papers. The investigation was impressed with the clear training and reference documentation supplied by Treasury to their staff, making clear what is expected in classifying and handling government information, including Cabinet papers. Since May 2012, Treasury has put in place processes to ensure Cabinet documents are securely stored overnight by its Ministerial Co-ordinators if the documents have not been collected for scanning by the Information Management team by the end of the day. Treasury confirmed to the investigation that it has also satisfied itself that existing procedures for handling Cabinet documents align with the Security in the Government Sector (SIGS) manual and Cabinet Office guidance.

501 At the time of the investigation, SSC had recently established the Central Agencies Shared Services with the Treasury and DPMC. SSC scoped the option of using Treasury's systems and processes for recording and providing access to Cabinet material but decided that was not appropriate for its purposes. The principal changes SSC has made to its handling of Cabinet documents are to ensure Cabinet documents are held in locked cabinets at all times when not in use and to designate an established employee as the person responsible for logging and photocopying Cabinet papers (no short-term contractors or agency staff). The relevant desk-file for that position has been rewritten to ensure clarity of expectations regarding procedures and timeliness and the need to maintain confidentiality of material is discussed both at team meetings and individual catch-ups with staff. In addition, SSC and its landlord have a project underway to set up separate SSC security gates at the building lobby entrance so that SSC can track access to its floors from street level.

502 The Ministry of Justice advised it had provided more detailed training for the staff responsible for receipting, logging and distributing Cabinet papers, and improved the monitoring of this activity to ensure Cabinet papers are processed and distributed promptly and to the correct recipient.

503 MFAT's Executive Services Division has confirmed that it has changed MFAT's processes for handling Cabinet documents received from Ministers' offices. The investigation expects that these changes will have improved the security, certainty and efficiency of receipt and distribution of Cabinet documents at MFAT. The changes implemented are as follows:

503.1 Cabinet documents (Cabinet papers, minutes and agendas) are now placed in sealed envelopes at Ministers' offices before being put into courier bags for delivery to MFAT.

503.2 The Executive Services Division has established a Cabinet Document Register to record the details of incoming Cabinet documents, including how many copies are taken, which MFAT employees receive copies of Cabinet documents and the times of receipt and distribution of documents.

503.3 The Cabinet documents are delivered directly to the Office of the Chief Executive in their sealed envelopes.

503.4 There is one full-time Team Administrator with Top Secret security clearance who receives all deliveries of Cabinet documents and opens the envelopes. (Previously the work was shared by two to three employees, some of whom rotated through those roles in between assignments offshore.)

- 503.5 The Team Administrator is responsible, and accountable, for timely completion of all processes for receiving, logging, copying, filing original copies and distributing photocopies of Cabinet documents.

<i>Findings: Handling of government information</i>	
FF.	The fact that Cabinet papers are distributed in hardcopy means there is greater opportunity for undetectable, unauthorised photocopying/scanning and transmission of the papers. Most people who handle the papers are not the intended recipients, so the risk of unauthorised activity is increased.
GG.	The investigation found Ministers' offices and agencies that received the Cabinet Committee papers had weaknesses in their processes for logging and tracking the handling of Cabinet documents. Audit trails and processes beyond the delivery by Cabinet Office were ineffectual in demonstrating the secure handling of the documents and protecting the staff responsible for handling the documents.
HH.	There is wide variation in the handling of Cabinet papers across departments and while there was generally good understanding of the need to keep Cabinet documents secure, that did not stop two sets of the Cabinet Committee papers being delivered to the wrong recipients. In DPMC, two of the numbered sets of papers were switched between two intended recipients and in the Ministry of Justice the intended recipient did not receive his copy of the Change Programme and Forecast Financial Position Cabinet Committee papers as they were filed by mistake in the Chief Executive's office. The investigation did not consider that an unauthorised disclosure resulted from these errors in delivery.

Recommendations for improving the secure handling of Cabinet documents

- 504 The investigation recommends that:
- 504.1 Cabinet Office should continue to progress the CabNet project to provide a secure electronic system for development, storage, distribution and tracking of copying and other access to Cabinet documents.
 - 504.2 In the meantime, Cabinet Office should issue a reminder to Ministerial staff and departments to ensure their handling of Cabinet papers is in accordance with the clear Cabinet Office guidelines that have been issued and refer public servants to the section of the PSI website that holds information about the secure handling of Cabinet documents.
 - 504.3 Government agencies should review their procedures for handling Cabinet documents to ensure:
 - 504.3.1 they have clear procedures that ensure Cabinet documents are logged on receipt (date and time) and are held secure at all times
 - 504.3.2 staff who have access to Cabinet documents are properly trained, understand and follow the correct procedures and are

fully aware of their responsibility and accountability to ensure the security of these documents

504.3.3 it is clear who (if anyone) has authority to copy or scan Cabinet documents, and details of the date, time and recipient of copies and scans taken are recorded

504.3.4 where scans of Cabinet documents are made for authorised use within the department, there are processes to ensure:

- minimal delay between the receipt and scanning of the documents
- documents waiting to be scanned are held securely
- access to scans is limited to those who have a legitimate “need to know” about the contents of the documents
- audit trails record activity associated with scans including viewing, printing copies, making additional electronic copies or attaching the scans to emails.

Recommendations to improve the secure handling of other government information

504.4 Government agencies should ensure they have adequate audit trails of electronic communications and activities by their staff. This includes determining what logs and records should be held and for how long where a staff member or contractor ceases employment with the agency. While staff must be responsible for identifying which of their transactions constitute corporate records, the investigation found a significant variation in the quality and quantity of electronic records, logs and audit trails held by individual agencies. The lack of adequate audit trails in some departments significantly hampered the investigation’s efforts to gather evidence that would either confirm, or highlight deficiencies in, individuals’ accounts of their activities.

504.5 Government agencies should ensure, when purchasing equipment for printing, photocopying and scanning, that facilities to record user IDs for each activity are activated and the activity logs are retained.

Recommendations to improve clarity around the role of public servants

504.6 MFAT reinforces to all its staff the standards expected of them in communicating with Members of Parliament, including Ministers. MFAT will retain the trust and confidence of successive governments only if its employees ensure they loyally serve the government of the day. Public servants do this by ensuring:

- the advice they give Ministers is robust, unbiased advice from their agency rather than their own personal views and opinions.
- if their personal views and opinions are at odds with those of their agency or Ministers, they seek to resolve that situation within their agency. As a last resort, there are formal processes to follow, set out in each agency’s Code of Conduct, for private communications with Ministers and for protected disclosures.
- they do not leak government information to Members of Parliament in Opposition and they refer to their chief executive any requests from Members of Parliament for information over what would normally be provided to the public.

- they do not try to influence their agency or the Government by unauthorised disclosures to the media, or by allowing unauthorised use of government information to publicly lobby, embarrass or put pressure on their agency or the Government.

504.7 SSC should also reinforce to all public servants that upholding the principles of political neutrality and impartiality is essential for public servants to maintain the trust of successive governments. Public servants can best protect their own reputations and that of their colleagues and their agency by being vigilant about protecting government information from unauthorised disclosure. It is unconscionable for public servants to allow unauthorised disclosure in order to embarrass, or to improperly influence decisions of, their chief executive or the Government.

Appendix A: Letters of Appointment



4 May 2012

Paula Rebstock

Dear Paula

Investigation into possible unauthorised disclosure of information relating to the Ministry of Foreign Affairs and Trade

You will be aware from recent media coverage about a possible unauthorised disclosure of government information relating to proposed changes within the Ministry of Foreign Affairs and Trade (MFAT). An investigation is necessary.

I have discussed this matter with John Allen. As the scope of the investigation will be broader than internal MFAT matters, and because it is desirable that an investigator has access to the full range of my investigation powers, we have agreed that an investigation under section 8 of the State Sector Act 1988 (the Act) is preferable to MFAT conducting its own investigation. John will ensure the full cooperation of MFAT.

In undertaking this investigation, I am carrying out my functions under sections 6(b) and 6(ha) and 57B of the Act.

The Terms of Reference for this investigation are:

- Investigate and report on the relevant facts around a possible unauthorised disclosure of three Cabinet papers, titled "Ministry of Foreign Affairs and Trade: Change Programme", "MFAT: Global Footprint: European Posts", and "Ministry of Foreign Affairs and Trade: Forecast Financial Position", as well as information relating to those papers; and
- Make recommendations as to measures, if any, that could strengthen information management systems within MFAT (or other agencies relevant to the investigation) to improve secure handling of government information and deter unauthorised disclosure

As discussed, I appoint you to conduct the investigation in a fair, thorough and prompt manner and to report your findings and recommendations to me. This appointment is made in terms of section 25 of the Act, and accordingly the powers and authority conferred on me by section 25(1) of the Act will attach to you in undertaking the investigation, pursuant to section 25(2). I also authorise you to

exercise my powers under sections 7, 9, 10, and 26 of the Act for the purpose of undertaking this investigation and reporting to me.

For the avoidance of doubt, your appointment to conduct the investigation will not prevent me from appointing additional persons to assist with the investigation as may be required.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Iain Rennie". The signature is fluid and cursive, with a large initial "I" and a distinct "R".

Iain Rennie
State Services Commissioner



23 May 2012

Paula Rebstock

Dear Paula

Amended terms of reference for investigation into possible unauthorised disclosure of information relating to the Ministry of Foreign Affairs and Trade

I refer to my letter to you of 4 May 2012 in which I delegated my powers under the State Sector Act 1988 to you to conduct an investigation on my behalf into possible unauthorised disclosure of information relating to the Ministry of Foreign Affairs and Trade (MFAT).

The terms of reference for the investigation set out in my letter of 4 May 2012 are:

- Investigate and report on the relevant facts around a possible unauthorised disclosure of three Cabinet papers, titled “Ministry of Foreign Affairs and Trade: Change Programme”, “MFAT: Global Footprint: European Posts”, and “Ministry of Foreign Affairs and Trade: Forecast Financial Position”, as well as information relating to those papers; and
- Make recommendations as to measures, if any, that could strengthen information management systems within MFAT (or other agencies relevant to the investigation) to improve secure handling of government information and deter unauthorised disclosure

I intended the scope of the terms of reference to encompass a broad investigation into the background facts surrounding the development of the MFAT change programme and the environment within which MFAT was operating during this period, including who may have been responsible for earlier unauthorised disclosures leading up to the unauthorised disclosures of the three Cabinet papers referred to above.

These aspects go to the heart of understanding what occurred and sets the context against which the standards of conduct required of State servants are to be considered.

For the avoidance of doubt I am amending the terms of reference which will now be as follows:

- Investigate and report on the relevant facts around a possible unauthorised disclosure of three Cabinet papers, titled “Ministry of Foreign Affairs and Trade: Change Programme”, “MFAT: Global Footprint: European Posts”, and “Ministry of Foreign Affairs and Trade: Forecast Financial Position”, as well as information relating to those papers; and
- Investigate and report on the relevant background facts surrounding the development of the MFAT change programme culminating in the Cabinet papers referred to above and the environment within which MFAT was operating during this period. This includes, as appropriate, who may have been responsible for earlier unauthorised disclosures during the development of the MFAT change programme.
- Make recommendations as to measures, if any that could strengthen information management systems within MFAT (or other agencies relevant to the investigation) to improve secure handling of government information.

In all other respects I confirm all of the other matters set out in my letter of delegation to you of 4 May 2012.

Yours sincerely



Iain Rennie
State Services Commissioner

Appendix B: Key documents

Document Type	Document Title
Report	Cabinet Manual State Services Code of Conduct MFAT Code of Conduct Sample employment agreements for MFAT staff Sample Letter of Appointment for Heads of Mission MFAT Security policies Future Business Model (FBM) Ministry Business Model (MBM) – consultation document Ministry Remuneration Review – consultation document
Media	Newspaper articles Television footage from TVNZ and Parliamentary TV
Public records of Parliament	Foreign Affairs Defence and Trade Select Committee (FADTC) – evidence and reports 2011 and 2012 Hansard transcripts
Referred to by the Opposition	Three cables to the Secretary/Senior Leadership Team Letter from 49 Heads of Mission (the HOMs' letter) to the Secretary Letter dated 20 April 2012 from the Secretary to MFAT staff Trade Negotiations Division letter (the TND letter) to the Secretary/Senior Leadership Team
Cabinet documents	Cabinet Committee paper: MFAT Change Programme Cabinet Committee paper: MFAT Forecast Financial Position Cabinet Committee paper: MFAT Europe Posts

Appendix C: Agencies who contributed information

Ministry of Foreign Affairs and Trade

Ministry of Justice

Department of the Prime Minister and Cabinet

Cabinet Office

State Services Commission

The Treasury

Appendix D: Ministry Business Model (MBM) Change Programme Timeline

Date	Activity
2010	Start of change projects including Offshore Organisational Design Project
2011	
April	Programme Manager appointed; PMO established and multiple projects grouped into several workstreams
May	Group to work on Future Business Model Project formed
August	People Programme Steering Committee formed
September	Future Business Model report delivered to the Secretary
27 September	Future Business Model report published on Te Aka
3rd quarter	Meetings with staff on/offshore re Future Business Model
2012	
31 January	New Tier 2 Structure (SLT) published on Te Aka (MFAT intranet)
17 February	The Secretary/SLT briefed Tier 3 managers about the change proposals
21 February	Tier 3 managers received early on-line access to the change proposals
23 February	Ministry Business Model and Ministry Remuneration Review consultation documents published on two secure websites and copies printed
End February/March	The Secretary/SLT briefed all staff by cohort groups
From 2 March	Weekly meetings of Wellington Division Directors (SLT and 3rd tier managers only and MFAT staff seconded to Ministers' offices). Agenda: Change Leadership only and attendance was restricted i.e. no substitutes
Approx 20 March	Minister of Foreign Affairs wrote to the Secretary (letter was published on Te Aka and released by Minister of Foreign Affairs to the media)
21 March	Consultation period closed on MBM and Remuneration Review
29 March	Internal investigation started into Dominion Post leaks of salary and allowances data (articles published from 24 March 2012)
End March	The Secretary noted decision dates (3/5/12 and 10/5/12) in staff forums

2 – 3 April	Two day meeting in Wellington (the HOMs meeting)
5 April	All staff message from the Secretary: debrief of the HOMs meeting
20 April	All staff message from the Secretary: an update on the change process
Around 24 April	The Secretary/SLT briefed all staff by cohort group
26 April	Minister of Foreign Affairs submitted three papers on MFAT to Cabinet Office
1 May	All staff message from the Secretary: further update
Around 1 May	Further round of Secretary/SLT briefings to all staff by cohort group
2 May	SEC Cabinet Committee considered three papers on MFAT
4 May	All staff message from the Secretary: further update
14 May	Cabinet considered four Cabinet papers on MFAT change programme
17 May	Decisions on MFAT change programme released to all staff.

Appendix E: List of interviews for Ministers' Offices and Departments

Interviews conducted of those identified as handling both the Change Programme and Europe Posts Cabinet Committee papers - based on the Cabinet Office Way Bill for the Change Programme Cabinet Paper

Minister/Agency	Number of copies received	Status of paper	Interviewees
Rt Hon John Key	4 copies	All returned	7 interviews
Hon Bill English	4 copies	Minister's copy returned; see below for remaining copy numbers	3 interviews
Hon Gerry Brownlee	1 copy	Returned	3 interviews
Hon Steven Joyce	1 copy	Returned	4 interviews
Hon Judith Collins	2 copies	Minister's copy returned; see below for remaining copy numbers	3 interviews
Hon Tony Ryall	1 copy	Returned	2 interviews
Hon David Carter	1 copy	Returned	3 interviews
Hon Dr Jonathan Coleman	3 copies	Minister's copy returned; see below for remaining copy numbers	2 interviews
Hon Craig Foss	1 copy	Returned	2 interviews
Hon Amy Adams	1 copy	Returned	3 interviews
Hon Chris Tremain	1 copy	Returned	2 interviews
Hon John Banks	1 copy	Returned	2 interviews
Hon Dr Pita Sharples	1 copy	Returned	4 interviews
Cabinet Office	6 copies	All returned, except Cabinet Room copy which was destroyed after 7 May Cabinet meeting	12 interviews
DPMC	4 copies	3 copies returned; 1 disposed of after SEC Meeting	8 interviews
The Treasury	3 copies	2 copies returned; 1 copy shredded	22 interviews
Ministry of Justice	1 copy	Returned	5 interviews
Minister of Foreign Affairs	2 copies	Shredded	6 interviews
Ministry of Foreign Affairs and Trade	1 copy	Returned together with four copies taken by MFAT for staff attending SEC	12 interviews
State Services Commission	2 copies	Both returned together with one copy taken for SSC use	9 interviews
Minister of Trade	1 copy	Returned	5 interviews

Appendix F: Not interviewed: Staff access to the Europe Posts paper only

Minister/Agency	Number of copies received	Status of paper	Staff who had access to Europe Posts paper only
Rt Hon John Key	4 copies	All returned	Nil
Hon Bill English	4 copies	Minister's copy returned; see below for remaining copies	Nil
Hon Gerry Brownlee	1 copy	Returned	Nil
Hon Steven Joyce	3 copies	Minister's copy returned; see below for remaining copies	2 staff
Hon Judith Collins	4 copies	Minister's copies returned; see below for remaining copies	2 staff
Hon Tony Ryall	1 copy	Returned	Nil
Hon David Carter	2 copies	Minister's copy returned; see below for remaining copy	Nil
Hon Dr Jonathan Coleman	6 copies	Minister's copy returned; 1 copy for Minister of Defence treated as spare and returned by Cabinet Office; see below for remaining copies	2 staff
Hon Craig Foss	1 copy	Returned	Nil
Hon Amy Adams	1 copy	Returned	Nil
Hon Chris Tremain	2 copies	Minister's copy returned; see below for remaining copy	2 staff
Hon John Banks	1 copy	Returned	Nil
Hon Dr Pita Sharples	1 copy	Returned	Nil
Cabinet Office	5 copies	All returned, except Cabinet Room copy which was destroyed after 7 May Cabinet meeting	Nil
DPMC	4 copies	3 copies returned; 1 disposed of after SEC Meeting	Nil
Ministry of Economic Development (Tourism)	1 copy	Returned	2 staff; copy scanned, so 4 others could also access, electronic records show no access
The Treasury	3 copies	2 copies returned; 1 shredded	Nil
Ministry of Justice	1 copy	Returned	Nil
Ministry of Economic Development	1 copy	Shredded	Nil. Copy 31 shredded as assumption made that copy 26 met needs of MED
Ministry of Science and Innovation	1 copy	Returned	4 staff

Minister Labour	for	2 copies	Minister's copy returned; see below for remaining copy	3 staff
Ministry Primary Industries	for	1 copy	Returned	Nil
Minister Foreign Affairs	of	2 copies	Shredded	Nil
Ministry Foreign Affairs and Trade	of	1 copy	Returned together with four copies taken by MFAT for staff attending SEC	Nil
New Zealand Police		1 copy	Returned	2 staff; the document was scanned into Cabinet Knowledge Database with links sent to 3 staff
Ministry Defence	of	1 copy	Returned	4 staff; 1 staff member scanned the document into EDRMS
NZ Defence Force		1 copy	Original and copy returned	2 staff; from 7 May 105 staff had potential access as the document was scanned into SharePoint site
State Services Commission		2 copies	Both returned together with one copy taken for SSC use	Nil
Minister of Trade		1 copy	Returned	Nil
Department Labour	of	1 copy	Returned	2 staff
Minister Customs	of	2 copies	Minister's copy returned; see below for remaining copy	2 staff
NZ Customs Service		1 copy	Original and 2 copies returned	3 staff
Department Internal Affairs	of	1 copy	Original returned	3 staff up to 1 May. 11 May - Paper scanned into database – 10 additional people could then access the paper

Appendix G: Glossary

DPMC	Department of the Prime Minister and Cabinet
FADTC	Foreign Affairs Defence and Trade Select Committee
FBM	Future Business Model report published internally for MFAT staff comment in September 2011
FSA	Foreign Service Association
HOM (HOMs)	Head of Mission (and the plural Heads of Mission): used in this Report as a generic term to describe the senior MFAT staff members leading MFAT's offshore offices – High Commissioners and Ambassadors. MFAT would normally refer to and make a distinction between Heads of Mission and Heads of Post
MBM	Ministry Business Model consultation document published internally as part of staff in confidence consultation in February 2012
MFAT	Ministry of Foreign Affairs and Trade
OODP	Offshore Organisational Development Project
PSA	Public Service Association
SEC	Cabinet Committee on State Sector Reform and Expenditure Control
SIGS	Security in the Government Sector – manual issued by New Zealand Security Intelligence Service
SLT	Senior Leadership Team
TND	Trade Negotiations Division

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