

Stephen Moore [SSC]

From: Liz Sinclair [SSC]
Sent: Wednesday, 29 August 2018 4:41 PM
To: Catherine Williams [SSC]
Cc: Robert Liberona [SSC]
Subject: Additional information

[UNCLASSIFIED]

Kia ora Catherine,

The Private Security Personnel and Private Investigators Code of Conduct is contained in Regulations 2011. It relates primarily to the Surveillance of Individuals. It includes inter alia that "A person to whom this code applies may ...undertake surveillance of an individual who is in any public place, or any part of a public place." 6 (1) (c).

Complaints in relation to Private Security Personnel and Private Investigators are dealt with by the Private Security Licensing Authority. Reasons for making a complaint include not having a licence, not wearing visible ID while working, and misconduct or gross negligence.

Liz

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the State Services Commission

Leanne Kelly [SSC]

From: Robert Liberona [SSC]
Sent: Wednesday, 29 August 2018 6:31 PM
To: Catherine Williams [SSC]
Cc: Andrew Gane [SSC]; Ken Stephen [SSC]; Grahame Armstrong [SSC]
Subject: FW: SSC Inquiry Weekly Report

[IN-CONFIDENCE]

Hi team;
Below is MJ's weekly report that I will table at our 10 am internal meeting tomorrow.

Regards

Robert

Hi Robert

Key activities week to date:

The Inquiry team has now fully analysed the 124 self-evaluations. Of those, 11 remain outstanding as per the list below. SSC staff are currently assisting us chase these responses. 15 agencies have identified direct and indirect engagement with TCIL. A number of follow ups are required to gather further information. At this stage focus remains on MPI and DoC. We have follow up discussions planned with MOH, NZTA, Customs, Corrections and MFAT although they have yet to be informed.

The Inquiry team interviewed a member of the public who has close association with various community organised groups to discuss their perspective on the Inquiry.

Formal interviews continue with MPI related individuals. An initial meeting has also been set for the Department of Conservation as we expect that is the next area of dedicated focus.

A meeting is being held with NZTA to discuss issues related to the Motor Vehicle Register. The meeting tomorrow with the Ombudsman is particularly important given the number of OIA requests and imminent releases we are aware of across a range of Government departments. Discussions with the SFO occurred and are ongoing.

Please let me know if you need any further clarification.

Kind regards

Sarah

No response list

Civil Aviation Authority
Bay of Plenty District Health Board
Canterbury District Health Board
Northland District Health Board

West Coast District Health Board
New Zealand Antarctic Institute
New Zealand Blood Service
Sport New Zealand
Te Māngai Pāho
Crown Asset Management Limited
Fairway Resolution Limited

Sarah Baddeley
 Manager, Consulting

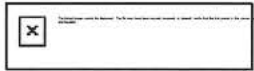
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AGENDA

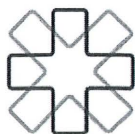
SSC Inquiry Phase Two: Discussion

11am

Hunt Room, Ministry of Health Offices 133 Molesworth Street, Wellington

30 August 2018

- 1 Report on self-evaluation across the State sector
 - a By exception report
- 2 Update on key entities
 - a Ministry of Primary Industries
 - b DOC
 - c Ministry of Health
 - d Customs
 - e NZTA/MOT
- 3 Other
 - a NZ Police
 - b TCIL
 - c Interested third parties/private citizens
- 4 Scope
 - a Crown Research Institutes
- 5 Terms of Reference
 - a Public disclosure
- 6 Themes to date/relevance to guidance being developed
 - a Privacy breaches
 - b Attendance at public meetings/surveillance
 - c Issues motivated groups
 - d Investigative capability outside core enforcement agencies
 - e Intelligence networks (horizontal vs vertical accountabilities)
 - f Intelligence provided by third parties to support state enforcement functions



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- g Assisting third party business development
 - h Management and oversight within entities (including flows of information)
 - i Health and safety
 - j Procurement
 - k Legal risk management
- 7 Relationship with other regulatory/oversight authorities
- a SFO
 - b Privacy Commissioner
 - c Ombudsman, PSPLA, Archives etc
 - d Inspector General of Intelligence/Independent Conduct Authority

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Stephen Moore [SSC]

From: Neha Pawar [SSC]
Sent: Wednesday, 5 September 2018 10:24 AM
To: Chappie Te Kani [SSC]; Geoff Short [SSC]; Heather Baggott; Erik Koed [SSC]
Cc: Alastair Hill [SSC]; Kellie Coombes [SSC]; Andrew Gane [SSC]; Ken Stephen [SSC]; Nicky Dirks [SSC]; Dahlyani Rawlings [SSC]; Stephen Moore [SSC]; Catherine Williams [SSC]; 'Sarah Baddeley'; Grahame Armstrong [SSC]
Subject: FW: Letter to go out to CEs - On behalf of the Inquiry into Use of External Security Consultants.
Attachments: 20180904 SSC Inquiry Follow Up Letter to State Sector Chief Executives Final to SSC.pdf

[IN-CONFIDENCE]

FYI – I am sending the attached letter to all the CEs on behalf of the Inquiry into Use of External Security Consultants.

Note that agencies may get in touch with ACs if there is a media inquiry or an OIA request.

From: Sarah Baddeley [mailto:[9\(2\)\(a\) privacy](#)]
Sent: Tuesday, 4 September 2018 4:52 PM
To: Neha Pawar [SSC] ; Robert Liberona
Cc: Doug Martin ; Simon Mount ; Ben Craven
Subject: Letter to go out to CEs

Hi Neha

On behalf of Doug Martin and Simon Mount, I would be grateful if you could distribute this letter to entities covered by the State Sector Act Code of Conduct tomorrow.

Appreciate your consistent help and support with the Inquiry.

Thanks

Sarah

Sarah Baddeley
Manager, Consulting

[9\(2\)\(a\) privacy](#)

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4 September 2018

State Sector Agency Chief Executives

State Services Commission Inquiry into the Use of External Security Consultants

Dear Chief Executive

Thank you for your response to my letter of 23 July 2018 regarding the State Service Commission Inquiry into the Use of External Security Consultants.

We have now acknowledged all responses and have also approached individual entities for further information where that information is relevant to the Inquiry.

I do want to thank you for the effort that your organisation went to undertake the self-evaluation in the timeframe provided. The Inquiry team has been impressed by the response overall, and the seriousness with which individual entities have approached the request.

The Inquiry is now well underway and is being progressed with urgency.

We are aware that there has been both media and public interest in the Inquiry and in the relationship between state entities and external security consultants including Thompson and Clark Investigations Limited.

If you are the subject of a media inquiry or an Official Information Act 1984 request that relates to the Inquiry specifically, then you may find it useful to draw this to the attention of your relevant SSC Assistant Commissioner or, for Crown entities, commission@ssc.govt.nz.

In general, entities are best placed to arrive at their own conclusion about the treatment of Official Information Act requests and should go about this in the normal manner. However, we do ask that you consult the Inquiry team prior to the release of any documents related to the Inquiry specifically (including correspondence with the Inquiry). The Inquiry team takes the principle of transparency seriously, and the fact an Inquiry is underway is not a definitive reason to withhold release of information. However, in a small number of instances, release of information may prejudice the maintenance of the law by impeding the work of the Inquiry.

If you have any areas where you feel further guidance is necessary or you want to consult with the Inquiry team, you are encouraged to do this by contacting Sarah Baddeley on 9(2)(a) privacy or on 09 915 1360. Thank you again for your support with the Inquiry to date.

Yours sincerely



Doug Martin
Inquiry Head



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Stephen Moore [SSC]

From: Robert Liberona 9(2)(a) privacy
Sent: Wednesday, 5 September 2018 3:59 PM
To: Robert Liberona [SSC]
Subject: FW: SSC Inquiry Weekly Report

From: Sarah Baddeley [mailto:9(2)(a) privacy]
Sent: Wednesday, 5 September 2018 3:54 p.m.
To: Robert Liberona
Cc: Doug Martin; Simon Mount
Subject: SSC Inquiry Weekly Report

Key activities this week:

Follow up discussions have occurred with those entities whose self evaluation has put them within the Inquiry's area of interest. This includes NZ Customs, Maritime New Zealand, Environmental Protection Agency, Department of Conservation and the Ministry of Health. All of these entities have been tasked with a second round of information gathering related to their self-evaluation. All entities have been very helpful in progressing issues.

Introductory meetings have been scheduled with NZ Customs, Department of Conservation and the Ministry of Health. The preliminary view is that subsequent interviews are not likely to be required for the EPA and Maritime New Zealand as their dealings with TCIL primarily related to enforcement of non-interference activity associated with the Crown Minerals Act. This involvement was well canvassed during the MBIE focussed part of the Inquiry.

The Inquiry team has also visited NZTA in Palmerston North to review information related to the Motor Vehicle Register. This is likely to be an ongoing area of Inquiry.

The Inquiry team continues to liaise with the SFO as to the relationship between the Inquiry and the their investigation.

A second letter has also been sent to all state sector CEs thanking them for their assistance to date and noting some process related issues around the treatment of media and OIA requests so as to ensure they provide for adequate consultation. The letter emphasised that the Inquiry supports the principle of transparency and that the Inquiry cannot be used as a definitive reason to withhold information from requesters.

This coming week (tomorrow) the Inquiry team will meet with Thompson and Clark Directors at their offices in Auckland and conduct follow on interviews related to MPI. As referenced above, introductory discussions are also scheduled with DOC and MOH.

Kind regards

Sarah

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Leanne Kelly [SSC]

From: Catherine Williams [SSC]
Sent: Friday, 7 September 2018 5:11 PM
To: Robert Liberona [SSC]
Subject: RE: MoSS meeting - prep notes please

thanks

Catherine Williams | Deputy Commissioner, Integrity, Ethics and Standards

State Services Commission | Te Kawa Mataaho



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From: Robert Liberona [SSC]
Sent: Friday, 7 September 2018 1:56 PM
To: Catherine Williams [SSC] 9(2)(a) privacy
Cc: 9(2)(a) privacy
Subject: RE: MoSS meeting - prep notes please

Hi Catherine;

I don't know how much does the Minister know, so I have started from the beginning.

It's probably a little too detailed but I thought it provided an end to end view in case you wanted more:

- Investigation commenced on 16 March 2018 and Martin Jenkins were appointed as lead reviewers to look into the activities of Southern Response Earthquake Services (SRES) engagement of an external security consultancy called Thomson and Clarke Ltd (TCIL). Information was received about TCIL doing surveillance of individuals and attending public meetings and taping discussions that was then passed on to SRES leadership.
- TCIL is a licensed security and private investigator agency and has been operating since the early 2000's . TCIL sit in the all of government panel for the provision of security and investigative services that is managed by MBIE.
- On 27 March 2018, following the receipt of information about MBIE using TCIL, the Commissioner widened the inquiry to include MBIE.
- On 19 June 2018 it was discovered that the use of TCIL was wider than the two agencies, accordingly the Commissioner extended the inquiry to cover all of the state sector.
- Martin Jenkins and Simon Mount QC were given the Commissioner's powers to look at the use of TCIL and other private investigator companies and determine whether any breaches of the state sector code of conduct had taken place. The expected end date for this review is 31 October 2018.
- The review attracted a significant amount of media inquiries and members of parliament including the PM made statements about the issue.
- The reviewers contacted all of public sector Chief Executives and asked for a self-assessment to take place to determine if they had engaged with TCIL and others, the type of engagement, method of procurement and management of the relationship.

- So far all of public sector has responded to the self-assessment and the lead reviewers have fully analysed the 124 self-evaluations and are now following up on some of the responses. CEs have been very cooperative and have provided good insights about the issue and continue to assist the inquiry team.
 - In summary, security and investigation consultants are used by agencies in different settings. In the main procurement of the services seems to be in line with current policies. A number of agencies (15) have used TCIL and other security consultants in a number of different ways but in the main to assist with undertaking security assessments of situations relating to staff welfare and security. In some situations surveillance has been used of private individuals.
 - TCIL have also assisted with preparing a prosecution file for MBIE 9(2)(a) privacy [REDACTED]
 - In terms of breaches of the code of conduct, the information obtained has shown that the relationship between TCIL and 2 MPI staff has potentially breached the code of conduct. The two staff no longer work there. 6(c) maintenance of the law [REDACTED]
- Martin Dunn,
- MPI's CE has referred the matter to the Serious Fraud Office to conduct a criminal investigation into these practices. 6(c) maintenance of the law [REDACTED]
- TCIL also had also access to the motor vehicle register that is managed by the NZTA. However based on information that the NZTA uncovered, TCIL was struck off their system and access terminated in March 2018. The inquiry team is liaising with the NZTA to source additional information.
 - The Commissioner will make contact with MBIE once information is verified about TCIL's involvement in the all of government panel. The commissioner will also liaise with the appropriate jurisdiction that deals with licensing of security consultants in due course.
 - The inquiry team also found that Crown Research Institutes (Niwa, Ag Research etc) are heavy users of TCIL. However crown research institutes are not part of public sector and the code of conduct does not apply. The commissioner is however writing to MBIE who is their monitoring agency for them to look further into the circumstances of the engagement of TCIL.
 - The inquiry team are now focusing on four agencies that require a second round of information gathering and interviews:
 - MPI
 - Doc
 - MoH
 - Customs.
 - The Commission is in parallel develop guidelines that will be released in October to public sector. The guidelines provide a comprehensive framework that will guide agencies on how to manage the sourcing of information to undertake investigative activity and security work in line with the code of conduct and appropriate legislation.

9(2)(b)(ii) prejudice commercial position

- The States Services Commission's, Integrity Standards and Ethics team is managing this complex inquiry working closely with the lead reviewers and liaising with the appropriate legislative bodies such as Privacy Commissioner, Ombudsman, Police etc.
- Shortly after the completion date of 31 October 2018, the Commissioner will hold a press conference and release the findings of the inquiry together with all associated information allowed by the legislation. Minister briefings will be held prior to the release.
- In terms of detailed time frames the following is what we are aiming at:
 - Assessment of all responses and follow interviews completed – 20/09/2018
 - Writing up findings and recommendations completed – 01-09/10/2018
 - Advising agencies/stakeholder of findings – 10/10/2018
 - Briefing Ministers – 19-26/10/2018
 - Media release – 30-31/10/2018.

From: Catherine Williams [SSC]
Sent: Friday, 7 September 2018 11:26 AM
To: Robert Liberona [SSC] 9(2)(a) privacy ; Leanne Kelly [SSC] 9(2)(a) privacy
Subject: MoSS meeting - prep notes please

[IN-CONFIDENCE]

Hi,
I'm down on the MoSS agenda to discuss TCIL.
Could you do a few high level bullet points for me of what we'd want Minister to be updated on please?
I'd also like a quick few summary fact sheet points on some of the possible questions – eg where we are at in the process, what is next, what timeframe, cost etc.
Just for me so an email will be fine. Will need to be today.....
Thanks,
Catherine



Catherine Williams | Deputy Commissioner, Integrity, Ethics and Standards

State Services Commission | Te Kawa Mataaho

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Stephen Moore [SSC]

From: Robert Liberona 9(2)(a) privacy
Sent: Thursday, 13 September 2018 6:32 AM
To: Robert Liberona [SSC]
Subject: Fwd: Weekly update to 12 September 2018

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From: Sarah Baddeley 9(2)(a) privacy
Sent: Wednesday, September 12, 2018 4:47:16 PM
To: Robert Liberona
Cc: Doug Martin; Simon Mount
Subject: Weekly update to 12 September 2018

Hi Robert

Key activities week to date:

The Inquiry team focussed on reviewing supplementary material provided by entities identified through the self-evaluation process. This included Maritime New Zealand, Ministry of Health, MFAT, ACC, Customs and Department of Corrections. We also made a subsequent information request to NZTA following our meeting with them in Palmerston North last week.

A first meeting and interview was held with the Department of Conservation which were very useful. DOC has engaged Deloitte to assist them in their internal assurance and are taking a thorough approach. We expect that aspect of the Inquiry to wrap up quite quickly (based on current information).

The Inquiry team interviewed Thompson and Clarke about the services they provide the state sector outside of those matters related to MPI and the parallel SFO Investigation. Thompson and Clark continue to be happy to assist the Inquiry.

Interviews were conducted with the remainder of MPI employees of general interest to the Inquiry (ie unrelated to the SFO investigation). The Inquiry team feel that this largely concludes our interest in MPI outside of the specific case that is known.

Our focus next week is on the original Protective Security Requirement procurement process, connecting again the Inspector General of Intelligence and we will also meet with NZ Police.

Please let me know if you need any further clarification.

Kind regards

Sarah

Sarah Baddeley
Manager, Consulting

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T 09 915 1360

9(2)(a) privacy

 [MartinJenkins](#)

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Leanne Kelly [SSC]

Out of scope

From: Debbie Power [SSC]

Sent: Tuesday, 18 September 2018 9:23 AM

To: ^Parliament: Mike Munro 9(2)(a) privacy

Cc: ^Parliament: Christina Connolly 9(2)(a) privacy; Ken Stephen [SSC]
9(2)(a) privacy; Alastair Hill [SSC] 9(2)(a) privacy; Catherine Williams [SSC]
9(2)(a) privacy; Andrew Gane [SSC] 9(2)(a) privacy

Subject: RE: Police

[IN-CONFIDENCE]

Mike,

Advice attached, this responds to your questions and has been reviewed by Crown Law. Any questions, give me or Alastair Hill a call 9(2)(a) privacy

Cheers,
Debbie

From: Mike Munro [mailto:9(2)(a) privacy]

Sent: Monday, 17 September 2018 5:51 PM

To: Debbie Power [SSC] 9(2)(a) privacy

Subject: Police

Hi Debbie

9(2)(g)(i) free and frank There was a question at post-Cab
about the SSC inquiry into govt agency links with T&C, 9(2)(g)(i) free and frank

9(2)(g)(i) free and frank

9(2)(g)(i) free and frank

Many thanks

Mike

Mike Munro | Chief of Staff

Office of the Prime Minister

9(2)(a) privacy

Authorised by Jacinda Ardern MP, Parliament Buildings, Wellington

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Inquiry into the use of external security consultants – advice to the Prime Minister

Background

The State Services Commission is currently leading an inquiry into the use of external security consultants across the State Sector.

Media coverage this week has questioned whether this inquiry should be expanded to include use of TCIL in operations conducted by the police.

Current state

The SSC inquiry is well on track and aims to release its findings by the end of October. It will detail the extent of, and reasons for, the use of private investigators across the State Services, a clear view on what is and is not acceptable in terms of their use by government organisations and why. The State Services Commissioner will be issuing guidelines using his powers under the State Sector Act at the same time. These guidelines, or a variation of them, would be applicable to the Police should the Commissioner of Police or the Independent Police Conduct Authority choose to adopt them.

Police are running their own process which has been under way for some time and SSC has been liaising with them.

Discussion

SSC Jurisdiction

The Police form part of the State Services (s 2 State Sector Act), though are not part of the core Public Service (s 27 State Sector Act). This reflects the constitutional difference between the Police and government departments. While the Commissioner's powers of inquiry do extend to the State Services, the Policing Act 2008 establishes Police operational (or constabulary) independence that precludes the State Services Commissioner from conducting investigations into NZ Police operational activities.

Operational independence of Police

The Policing Act 2008 sets out the independence of the Commissioner of Police in operational matters, particularly in regards to the investigation and prosecution of offences and the enforcement of the law. This is a critical constitutional separation – law enforcement from the executive government.

An inquiry into the use of external security consultants in Police operations would be directly related to operational matters of law enforcement and could lead to the investigation and prosecution of offences or to decisions about individual Police employees. In these matters the Police Commissioner must act independently of the Crown. This precludes a Minister, including the Prime Minister, from directing an inquiry into the Police engagement with TCIL be undertaken by either the State Services Commissioner or another inquirer. This includes Ministerial Inquiries and Government Inquiries under the Inquiries Act.

Given that, it is appropriate that Police or the Independent Police Conduct Authority run the process to consider whether there are any issues which need to be addressed within Police.

IN CONFIDENCE

The IPCA was set up to handle, investigate and resolve complaints about Police while maintaining the operational independence of Police.

Role of the Independent Police Conduct Authority (IPCA)

The IPCA is the only official New Zealand Police oversight body. They carry out their own investigations into Police conduct matters. Under the Independent Police Conduct Authority Act 1988, the IPCA has the same powers as a Commission of Inquiry to summon witnesses and gather evidence.

Police are required to provide all information and assistance needed to carry out its investigations.

The IPCA is statutorily independent from Government and the Police, and cannot be overruled by Ministerial or Government Inquiry under the Inquiries Act.

We are investigating the extent of IPCA jurisdiction in this particular case. We will discuss this with Crown Law and provide you with further advice later today. If the IPCA does have jurisdiction in this matter, it may be possible for them to base an inquiry they undertake on the SSC review and the guidelines issued by the State Services Commissioner to ensure alignment across the State Services.

The State Services Commission is meeting with Police later this week to discuss the work underway.

Police to act within the law

Police must administer the law – they have to investigate and prosecute any case within those parameters. Any information or evidence they get cannot circumvent the need to follow a lawful and just process.

For example, it would not be lawful for Police to obtain evidence that is required to be obtained under warrant by using a third party to circumvent that requirement.



MEMORANDUM

[IN-CONFIDENCE]

To: Mike Munro

From: Debbie Power

Copies to: Peter Hughes

Date: 18 September 2018

Subject: Inquiry into the use of external security consultants – IPCA jurisdiction

-
1. In our memo to the Prime Minister of 18 September 2018, we committed to provide further advice in relation to the jurisdiction of the IPCA to inquire into Police engagement with Thompson & Clark in their operations. This memorandum addresses that matter.

The IPCA's jurisdiction

2. The IPCA is established under the Independent Police Conduct Authority Act 1988, as an independent Crown entity. Jurisdiction of the IPCA is set out in section 12 of the IPCA Act, which establishes the lawful basis to receive a complaint concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity. This suggests that the complaint must generally be made by someone who is personally affected or involved.
3. However, the IPCA has issued its own guidance on their ability to receive complaints, for complainants who have no personal involvement in the matter complained of. This includes circumstances where the complaint concerns a matter of significant public concern and requires investigation or review in the public interest. We understand that the IPCA may have an arrangement with Police where they will work together to consider these complaints.
4. This means that the Prime Minister, Ministers, officials, or any member of the public could make a complaint to the IPCA, which they would consider.
5. The concerns regarding Police engagement with Thompson & Clark would likely meet the IPCA's threshold for investigation if raised in this manner.

What happens with a complaint once made?

6. Pursuant to section 17 of the IPCA Act, on receiving a complaint the IPCA may investigate, refer to Police to investigate, oversee a Police investigation, decline to investigate or defer investigation pending the outcome of a Police investigation.

Next steps

7. Should you wish to progress these matters, the next steps would be to engage NZ Police and the IPCA to confirm that such a complaint could be investigated and to brief them on details as appropriate.
8. The State Services Commission would provide you with advice on which entity is best placed to do this.