

16 May 2019

Hon Sir Terence Arnold QC
Rt Hon Sir Geoffrey Palmer QC
He Uiuinga i a Inquiry into Operation Burnham
PO Box 12008
Wellington 6011

Dear Sir Terence and Sir Geoffrey

Review of classified/withheld material: Further documents related to detention

1. In accordance with our appointment and instruction under the *Inquiry Procedural protocol for review of classified information / claims to withhold information from disclosure* and further to our discussion last week, we can advise that a tranche of documents concerning detention and sought by the Inquiry for next week's hearing can be considered for release.
2. Following paragraphs [5](a), [5](b) and [8] of the *Protocol*, we have identified and assessed claims to non-disclosure made in respect of parts of these documents in consultation with relevant Crown agencies.
 - 2.1. We have accepted a claim against disclosure of one document and some other much more limited claims not to disclose short passages of a number of documents, on the basis that disclosure would prejudice interests protected by the Evidence Act 2006 and that that prejudice was not outweighed by the public interest. The reasons for that acceptance are set out below. Where it is possible to summarise the content of the redacted passages, we have agreed upon summaries.
 - 2.2. We are still working to conclude agreement upon summarised/redacted versions of three documents but are hopeful that that can be concluded within the next day.
 - 2.3. A possible issue of legal privilege and/or related claim to withhold has arisen in respect of two other documents. We continue to seek to resolve that issue by agreement but will advise as soon as possible if the issue requires resolution by the Inquiry.

- 2.4. There are a handful of minor points that Crown agencies have sought to withhold on grounds that we do not consider sufficient. However, the points do not relate to matters in issue in the Inquiry.
3. The reasons for the accepted claims against disclosure are as follows:
- 3.1. For the one withheld document, the Crown agencies raised the objection that the document was an informal/working reference that was never finalised and that disclosure of such a document would inhibit officials from freely and frankly working through documents in future. We consider that:
- 3.1.1. Much of the content of the document is already available in material released by the Inquiry and/or publicly;
- 3.1.2. The remaining content was very slight and, accepting that there is some reason for concern over inhibition of free and frank advice, did not outweigh that concern.
- 3.2. The remaining withheld passages relate to:
- 3.2.1. Technical aspects of military and intelligence activity, which would if disclosed give rise to prejudice to national security and/or the safety of personnel;
- 3.2.2. Material concerning other governments and/or international organizations, which would prejudice international relations and/or the provision of information in confidence if disclosed without those entities' consent. These include quite substantial passages recording comment by such entities; and
- 3.2.3. The names and other details of some individuals, which would prejudice those individuals' privacy and in some cases safety if disclosed.
- 3.3. There are also several documents that contain copies or excerpts from documents already addressed in earlier advice, such as parts of the applicable New Zealand Rules of Engagement.
4. In addition to the two outstanding matters noted at 2.2 and 2.3 above, we are continuing to work on several further compilations of documents. We anticipate providing advice on those over coming weeks.

Yours sincerely



Ben Keith / David Johnstone
Specialist advisors