

5 March 2019

Request for assistance concerning the Inquiry's section 15 confidentiality order

Dear Sir Terence and Sir Geoffrey,

I have been using the Official Information Act to prepare for making submissions to the Inquiry. The purpose of this research has been to try to reconcile the NZDF version of events with what we were told by insiders and put in the book. The NZDF as usual declined to provide most of the information I requested. This led to an Ombudsman investigation for much of the past year.

When the Chief Ombudsman was on the verge of issuing an opinion, NZDF (and the intelligence agencies) adopted a new argument for why current OIA requests can be refused and why much or all of the information covered by the Ombudsman investigation cannot be released: the section 15 confidentiality order you made in Ruling No 1, dated 21 December 2018.

The section 15 confidentiality order was requested by the crown agencies for two reasons: to protect information provided to the Inquiry (at least until the security classifications are reviewed) and to ensure classified information provided to the Inquiry could not be obtained under the OIA at the conclusion of the Inquiry (see sections 88-90 of Ruling No 1). The Inquiry agreed to the agencies' request based on these two reasons.

NZDF and the other agencies did not tell the Inquiry that they would use the confidentiality order to refuse to release information under the OIA that could be lawfully released were it not for that order. I assume that the Inquiry did not agree to the request for the confidentiality order thinking it would be used to prohibit the release of information that otherwise could be lawfully released.

Thus this problem with the section 15 confidentiality order appears to be an unintended consequence of Ruling No 1.

I write to request that you amend the Ruling so it cannot to be used to block otherwise lawful use of the OIA.

Yours sincerely,

Nicky Hager