

## **Government Inquiry into Operation Burnham**

### **Progress Report No 2**

#### **An update on provision of information, sources and clients to the Inquiry**

##### **Provision of information**

The Inquiry has been steadily receiving a large volume of information and material from Crown agencies to assist its investigations. In [Minute No 6](#) (26 November 2018), the Inquiry made a number of formal orders to ensure it obtained all the information and material it needed in a timely fashion. The Inquiry acknowledged that the process of retrieving, reviewing and providing information, including stepping through consultations with international partners, can be a complex and time consuming process. This Progress Report describes the responses to those orders, as well as the extensions sought by relevant parties and granted by the Inquiry.

##### *New Zealand Defence Force*

At the time of Minute No 6, the New Zealand Defence Force (NZDF) had identified 17,400 items of potential relevance sourced from NZDF itself and from other parties, including overseas partners (principally the United States and the North Atlantic Treaty Organisation). In order to provide these documents to the Inquiry, NZDF confirmed that it first had to obtain consent from overseas partners. This number of potentially relevant classified documents was much larger than originally advised by NZDF at the beginning of the Inquiry's process. The Inquiry made an order for NZDF to provide all relevant material by 28 February 2019.

In memoranda of 18 January and 15 February 2019, NZDF informed the Inquiry that it had discovered a further tranche of potentially relevant documents. On 26 February 2019 it advised the Inquiry it had identified approximately 11,425 classified documents which would require assessment. It requested an extension to 29 March 2019 to provide the additional relevant material and this was granted. The memoranda noted that NZDF would, by the original deadline, have processed a total of 18,720 documents and provided the relevant material to the Inquiry. On 28 February NZDF advised the Inquiry it had provided 946 relevant items. It is anticipated that the total number of relevant documents will be fewer than 2000.

The Inquiry expects NZDF to have provided all sovereign material (that is, New Zealand material) by the deadline of 29 March 2019. At that time, the Inquiry expects that NZDF will advise whether there will be delays in obtaining consent in relation to overseas partner material.

##### *Ministry of Foreign Affairs and Trade*

Minute No 6 required the Ministry of Foreign Affairs and Trade (MFAT) to provide all relevant material, which does not need the prior consent of an overseas partner, by Friday 14 December 2018. Where overseas partner consent was required, the Inquiry ordered MFAT to provide this material as soon as reasonably possible after consent was obtained. MFAT requested, and was granted, an extension to 21 December 2018.

### *Other Crown agencies*

The Ministry of Defence has informed the Inquiry that it considers all relevant material has already been provided by NZDF. The Government Communications Security Bureau and New Zealand Security Intelligence Service have agreed with the Inquiry a timetable for delivery of sovereign material. Both agencies are currently requesting consent from overseas partners for other relevant material.

The Department of the Prime Minister and Cabinet has delivered its material to the Inquiry.

### **Provision of sources and clients**

In Minute No 6, the Inquiry made orders in relation to the sources of Nicky Hager and Jon Stephenson, who have relevant information and who have requested protection of their identities and other identifying details. The orders required Mr Hager and Mr Stephenson to provide the sources' names and contact details to the Inquiry, on a confidential basis, by Friday 14 December 2018. The Inquiry also made confidentiality orders in relation to the publication of the names and any particulars provided to the Inquiry which, if released, may lead to the identification of the sources.

On 14 December 2018 Mr Hager and Mr Stephenson sought a one week extension to 21 December 2018. In [Ruling No 1](#) (21 December 2018), at para [98], the Inquiry recorded the authors' responses. The Inquiry is in discussions about this and will in due course issue a further Minute dealing with this and other outstanding matters.

In Minute No 6 the Inquiry ordered counsel for relevant Afghan villagers to provide, by Friday 21 December 2018, her clients' names, genders, Afghan identification numbers, contact details, and information on their connection to the events at issue. This information was provided and in Ruling No 1 the Inquiry made an interim order prohibiting the publication of the names or any identifying particulars of these Afghan nationals.