

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

A GOVERNMENT INQUIRY INTO
OPERATION BURNHAM AND
RELATED MATTERS

MEMORANDUM OF COUNSEL FOR THE CROWN (DISCLOSURE OF
DOCUMENTS FROM TRANCHE 3)

12 July 2019

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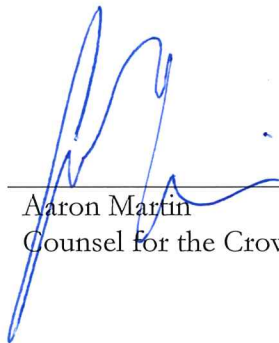
MAY IT PLEASE THE INQUIRY:

1. In accordance with the Inquiry's additional requests for information outlined in its letters of 30 May and 25 June 2019, the Ministry of Foreign Affairs and Trade (**MFAT**) conducted a further review of its disclosure processes and holdings to ensure it produces all material relevant to the Terms of Reference of the Inquiry which is in its possession and control. MFAT will provide a statutory declaration outlining the process MFAT took to identify, review and provide all relevant information to the Inquiry.
2. As a result of this review, MFAT has identified further documents with differing degrees of relevance within the Inquiry's Terms of Reference. Under cover of this memorandum, MFAT now produces the material that has been identified along with other potentially relevant material identified further to the Inquiry's letters of 30 May and 25 June.
3. An Index of documents provided by MFAT is provided in restricted Appendix 1. The material provided falls broadly within the following categories:
 - 3.1 Documents related to New Zealand's general detention policy from 2009 to 2011. This corresponds with paragraph (f) of the Inquiry's letter of 30 May and includes communications (including but not limited to formal messages) and advice about detention and transfer of prisoners (both in terms of general policies and the formulation of bilateral arrangements);
 - 3.2 Documents relevant to paragraphs 3(d) and (e) of the Inquiry's Order for Disclosure of 3 April 2019, concerning operations relating to Alawuddin, Qari Musa and Abdullah Kalta; and
 - 3.3 Documents related to the period immediately following the release of the book *Hit & Run* in March 2017.
3. A number of the documents carry national security classifications, on the basis that their disclosure would prejudice New Zealand's national security or international relations. This material will accordingly be subject to the Inquiry's procedure for handling classified information. Some of this material engages partner equities. Although MFAT does not consider partner consent is

required to provide this material to the Inquiry, it would be required for any further disclosure or publication.

4. Further, some of the material that is not marked with a national security classification, or that is marked as unclassified, may nevertheless contain information for which disclosure would be likely to adversely affect New Zealand's international relations. This includes information that engages partner equities, for example where documents contain information or opinions relating to partners, or confidentiality obligations, for example if the information was shared with the New Zealand government on the basis of an understanding of confidentiality. MFAT has re-classified these documents in the index at the appropriate level of classification. The Crown does not currently seek s 15 orders in relation to this material. However, should the Inquiry be minded to publish or order disclosure of any documents, MFAT would appreciate advance notification of this so that it can consider making an application for orders in respect of specific information.
5. There are also a small number of documents which contain legal advice. Privilege in this advice is held by the Attorney-General. Accordingly, this material will be provided to the Inquiry by Crown Law, rather than MFAT.

12 July 2019



Aaron Martin
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