

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS

Brief of Evidence for James William Blackwell

Solicitor acting:

JENNY CATRAN

Crown Law

PO Box 2858

Wellington 6140

Tel: 04 472 1719

jenny.catran@crownlaw.govt.nz

Counsel acting:

PAUL RADICH QC

Clifton Chambers

PO Box 10731

Wellington 6140

Tel: 04 974 5951

paul.radich@cliftonchambers



1. I am Colonel (Retired) James William Blackwell, ONZM. I am the Chief Executive Officer of the Kauri Group Companies. I have held this position for over three years.
2. I enlisted in the New Zealand Army in 1984. I commenced my service with the New Zealand Special Air Service (**NZSAS**) in 1992, where I completed some twenty years of service. I held a variety of appointments culminating as the Commanding Officer between 2006 and 2009. I was appointed Director of Special Operations of the New Zealand Defence Force (**NZDF**) on 29 March 2011 where I served until 3 July 2015. I then retired from the NZDF.
3. During my 31 years of service I have seen operational service in Angola, Bougainville, Kuwait, Kosovo, Afghanistan and Iraq.
4. I have a Master's Degree in Science from the University of Leicester and a Postgraduate Diploma in Strategic and Defence Studies from Massey University.
5. I was made an Officer of the New Zealand Order of Merit in 2002 for service in Afghanistan.

2010

6. I was in Iraq in August 2010 when the NZSAS operation - now commonly referred to as Operation Burnham - was conducted in Baghlan. I did not know anything about the operation. I was busy dealing with operational issues in Iraq and the accepted military protocol is that you are made aware of matters on a need to know basis.

2011

7. I became Director of Special Operations (**DSO**) on 29 March 2011 and my place of duty was at HQNZDF in Wellington. My handover period with my predecessor, Colonel Peter Kelly, was minimal as he had been reappointed and deployed to Christchurch to assist in coordinating the NZDF response to the 22 February 2011 earthquake.
8. I understand that on 20 April 2011, One News ran a story about Operation Burnham under the headline *SAS's deadly counterattack revealed*. The Deputy Director of Special Operations (**DDSO**), Lieutenant Colonel Karl Cummins, managed the NZSAS input into the NZDF response to this story. I was not involved in drafting or approving the response.
9. I believe that, at a later point, Karl provided a debrief on this and many other ongoing matters. I knew, in general terms, that there had been an operation in Baghlan which had been conducted to assist the security situation of the New Zealand Provincial Reconstruction Team, and that insurgents had been engaged. It was at this point that I became aware of the allegations of civilian casualties, of the investigation undertaken by the International Security Assistance Force (**ISAF**), and of the conclusion that there had been no civilian casualties. Karl told me that we did not have a copy of the conclusions of the ISAF investigation (**IAT report**).



10. I was of the view that we should try to get a copy of the IAT report. I was aware that we had not been able to achieve that to date, however, I was not at all surprised. Sharing of classified information within coalition operations was always a challenge in my experience. I was in constant communication with the Senior National Officer (**SNO**) in Afghanistan. I reinforced to him that we wanted a copy of it.
11. I eventually received a copy of the IAT report from the SNO. He emailed it to me on our secure email system. I believe that it was the SNO, or the special operations liaison officer within ISAF, who obtained a copy.
12. When the email arrived, I would have read the IAT report, saved a copy of it electronically, and then filed away the email in the appropriate electronic directory. I avoided printing classified material for my own use unless it was for a brief that day after which I would shred the document. There was no need to put a DSO copy in an already overloaded safe. The sheer volume of the classified material coming into my office would have made that completely impractical. Also, I had secure electronic mechanisms for storing it. It is important to note that my office was virtually a broom closet on the 5th floor. This was an insecure floor and I was not permitted to leave the room with classified material not either in the safe or on the secure electronic system. It was easier to keep the safe constantly locked, as a simple log out of my electronic system was a more practical way of operating. I mainly operated on my secure system, with the NZDF restricted system used for routine unclassified administration.
13. The IAT report is a partner-controlled document that remains classified so I am limited as to what I can say about it. However, the conclusions reached in the IAT report are recorded in the United States AR 15-6 investigation report, a version of which is now publicly available. I refer to the NZDF Bundle at page 101:

The investigation concurs with the IAT observation that based on WSV evidence it is possible that CIVCAS occurred because at the time of the AWT engagement, women and children appear to have been present... However, there is no evidence in the video that confirms that there were civilian casualties. The only piece of information that can be confirmed is that rounds impacted the roofs of buildings where it is possible that civilians were located. Based on the evidence I have reviewed, I concur with the IAT findings that civilian casualties are possible, but it cannot be confirmed.

14. This conclusion is different to what NZDF had understood the position to be, namely, that there were no civilian casualties.
15. My recollection is that, after reading the IAT report, I printed a copy of it and took it to the Office of the Chief of Defence Force (**OCDF**). I gave it to Mike Thompson, who was the Deputy Chief of Staff (**DCOS**) in the OCDF and who was responsible for coordinating between OCDF and the Office of the Minister of Defence. I said to him that this was a document that the Chief of Defence Force (**CDF**) and the Minister of Defence needed to see. I asked Mike to let me know when the CDF was ready to be briefed on the IAT report.



16. Looking now at the OCDF Classified Document Register (**OCDF Register**), which is in the Bundle at pages 369 - 372, I can see that someone has recorded the title as "Baghlan Province Brief for MINDEF" and has noted that there were two secret documents. It is not my handwriting on the OCDF Register. I only supplied one copy of the IAT report, but it seems, from reading the OCDF Register, that another copy was made so that one could be sent to the Minister's Office and the other left in Mike Thompson's safe.
17. I know that one of the secret documents was the IAT report because its receipt was the impetus for me to take it to the OCDF. I believe that the other secret document was the Operation Burnham "storyboard" because this has the classified register sticker on it, the number of which matches the OCDF Register. I would have provided the "storyboard" because it provides an overview of the Operation and, therefore, some context for the IAT report. These are complex operations and are not easily briefed to un-trained or operationally inexperienced officers, hence storyboards helped in simplifying the narrative.
18. In preparation for this hearing I was shown a bundle of documents with the Operation Burnham "storyboard" as the covering page and the IAT report as the final document. There were a number of documents in between, including draft Notes to the Minister from August and December 2010, and the body of an email from a SNO, the text of which had been incorporated into a word document.
19. I did not assemble the additional documents. I do not recall ever seeing these Notes to the Minister before and would not have had access to them. I did have access to the SNO email, but I would not have transformed that email into a word document without further information, including the name of the SNO, the date of the email, and that the document had been prepared by the named DSO. I did not give that document to Mike Thompson.
20. I did not make any markings on the secret documents. I do not consider it to be appropriate to make annotations on source material placed in a safe; that task is for the reader of the document should they so desire.
21. Looking at the OCDF Register again, I can see that, on 1 September 2011, one copy of the Operation Burnham "storyboard" and the IAT report was dispatched to "MINDEF", the Minister of Defence, and signed for by Chris Hoey, who I believe was the Military Secretary to the Minister of Defence at that time; and that the other copy was referred to the "DCOS", which means Deputy Chief of Staff and was, at that time, Mike Thompson.
22. The documents that were dispatched to the Office of the Minister of Defence were given the serial number 386/11; and the documents that were referred to the Deputy Chief of Staff were given the serial number 387/11. The ditto marks on the OCDF Register signal that they were copies of the same document.
23. My usual procedure when providing briefings on matters relating to special operations was to brief the CDF first and then to brief the Minister of Defence. That is how the chain of command works.



24. I cannot recall when exactly I briefed the CDF. It was a very busy period and I think it appropriate that I elaborate on that in detail. Between 28 June and 28 September 2011, the NZSAS was engaged in some of the toughest fighting we had encountered to date. Over that three-month period two members of the NZSAS were killed - Corporal Doug Grant on 19 August 2011 and Lance Corporal Leon Smith on 28 September 2011 - and five were seriously wounded. Domestically, the NZSAS was involved in providing counter terrorism support during the Rugby World Cup. I will list those operations below that are available on open source material. There were many others.

Hotel Intercontinental Hostage Rescue One NZSAS wounded and repatriated to NZ One NZSAS wounded and hospitalised	28 June
JMK Battle 3 x NZSAS wounded	17 Jul
British Council hostage rescue Doug Grant killed	19 Aug
Service for Dougie at Regt	25 Aug
Funeral for Doug - Linton	29 Aug
ISAF report filed in CDF / Minister office by DSO	01 Sep
Rugby World Cup support	09 Sep – 23 Oct
CDF visit to Afghanistan <i>NOTE – CDF is getting briefed on the Hotel Intercontinental Hostage Rescue when an explosion signals the beginning of the Grey Palace Attack.</i>	10 – 14 Sep
Battle of the Grey Palace	13 Sep
Leon Smith killed – Mayden Wardek	28 Sep
Service for Leon at Regt	06 Oct
Funeral for Leon - Johnsonville	07 Oct

25. In addition, the NZDF was dealing with a substantial number of requests made under the Official Information Act 1982. The analyst in the Directorate of Special Operations was spending a significant amount of time responding to them.

26. If the CDF didn't ask for the briefing immediately because, for instance, he was occupied or offshore, I would have followed it up. I knew that he would be interested to see the IAT report and it was my duty to do so.

27. I also cannot recall when exactly I briefed the Minister of Defence, the Hon Dr Wayne Mapp. I briefed him regularly. Sometimes it was on my own if the CDF was unavailable and sometimes it was with the CDF. At other times the CDF would brief on Special Operations matters without me present. The briefing on the IAT report may have occurred alongside other agenda items, or it may have been the only matter we discussed. I may have been

summoned by the Minister upon his receipt of the IAT report, or it may have been arranged by NZDF.

28. Although I do not recall the date or the logistics of the briefing, I do recall explaining to the Minister that the IAT report did not provide evidence that civilians were killed but that it did conclude that there was a possibility of unintended civilian casualties as a result of a coalition AH64 gun not being slaved correctly to its sight.
29. The Classified Document Register from the Office of the Minister of Defence, which is in the NZDF Bundle at pages 373 - 376, records that the document with serial number 386/11, which has been named "NATO/ISAF (S) OP RAHBARI OBJ BURNHAM", was registered on 2 December 2011 and shredded on 5 December 2011. I do not know why it was received on 1 September 2011 but not recorded in the Register until 2 December 2011.

2014

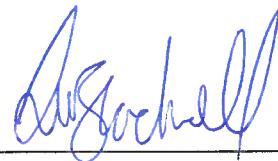
30. I understand that, on 27 June 2014, Jon Stephenson approached the NZDF for comment on information he alleged to have that six civilians were killed, and fifteen civilians were wounded during Operation Burnham as a result of a helicopter gunsight malfunction.
31. At the time I was not aware of Jon Stephenson's request. I was not involved in drafting the response. I was not involved in briefing the Minister of Defence, the Hon Dr Jonathan Coleman, that weekend. I only resided in Wellington during the week at the time so I would have travelled home for the weekend. In any event, if I had briefed the Minister, I would have explained to him what I knew to be the case from reading the IAT report. I had no reason to say anything different.
32. I understand that in early July 2014, the Chief of Staff, Commodore Ross Smith, was trying to track down how the IAT report had come in to NZDF. I don't recall him asking me. Had he done so, I would have explained that it had been emailed to me securely by the SNO in theatre in September 2011, and I would have provided a copy of it to him.

2019

33. On 23 August 2019, I received a call from Lucila van Dam, who is one of the barristers representing the NZDF. I was driving at the time and contemplating a significant commercial acquisition. In that call, Lucila explained to me that the Inquiry had asked the NZDF to address, at an upcoming public hearing, what it knew - at various points in time - about the possibility of civilian casualties arising out of Operation Burnham and what it had reported publicly and to the Government.
34. She mentioned that one of the classified registers showed that a bundle of documents, which contained the IAT report, had been placed in Mike Thompson's safe on 7 September 2011, and that Mike could not recall who had given him the bundle. Lucila asked whether I, as DSO at that time, had given it to Mike.



35. When she called, I couldn't recall the IAT report specifically because, over the years, I had read a huge number of classified reports and it was eight years ago. I told her that, if I had handled the IAT report, it would be in my secure emails or directory and possibly in the DSO safe. I suggested to her that she contact my then analyst, who is still at NZDF, to conduct the search. I did not hear back from Lucila, so I assumed that I wasn't needed as a witness.
36. I understand that a search of my secure and non-secure emails and documents was conducted in August 2019 and again in September/October 2019. Nothing was found. I no longer work for NZDF so I don't know the technical reason why these documents weren't found. I would have expected them to be. My understanding is that not all secure communications and documents from that period are accessible today.
37. It was not until the OCDF Register was found on 19 September 2019, during the course of the hearing, and the media began reporting that I was the person who had 'marched in' the IAT report, that I gave this matter further and deeper consideration. Generally, to this point, I had no interest in the Inquiry as I know what happened and remain firmly of the belief that my colleagues had operated to the highest standards in extremely difficult circumstances. Clearly my interest was piqued when I became the subject of media reportage where it was suggested that I was unwilling to give evidence to the Inquiry.
38. Reading this reportage provided some significant clarity for me; in particular, it confirmed that it was a classified report that I had handled. I then remembered that I had indeed received it and that I had made it available to the CDF and to the Minister of Defence. Now that I know I have relevant evidence to give, I am happy to come before the Inquiry to assist in any way I can.



James William Blackwell

03 Oct 19

Date