

**UNDER
IN THE MATTER**

**THE INQUIRIES ACT 2013
A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS**

Supplementary Brief of Evidence for Gordon Ross Smith

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1. This supplementary brief of evidence is provided further to my brief of 10 September 2019 (**initial brief**). In the initial brief, I explained, at [30], that the Minister of Defence, the Hon Dr Jonathan Coleman, asked me to contact Rian McKinstry - who was the Senior National Officer (**SNO**) in Afghanistan when Operation Burnham was conducted - to ask him what he knew about the IAT report.
2. I did not understand the Minister to be requesting a formal investigation into the matter. If it had been a formal investigation, there would have been terms of reference drafted by lawyers, and the investigation would have been conducted by someone independent of the OCDF. Rather, as I viewed it, I was simply following up a factual matter raised by the Minister.
3. In the initial brief, at [32] to [38], I set out the steps I took to understand how the NZDF obtained a copy of the IAT report:
 - a. I immediately contacted Peter Kelly, who was the Director of Special Operations at the time of Operation Burnham, and Rian McKinstry to ask them to see me the following morning;
 - b. I met with Peter Kelly the following day at 9am;
 - c. I met with Rian McKinstry the following day at 9:35am; and
 - d. Based on a comment made by Peter Kelly, I contacted Defence Legal Services to ascertain whether they had received the IAT report.
4. I have since been shown an email exchange, which is in the NZDF bundle at pages 377 - 382, which indicates that I also contacted the SNO in Afghanistan to ask for a full copy of the IAT report. This was based on the understanding that we only had the "Executive Summary".
5. I have now seen the Classified Document Register from the Office of Chief of Defence Force (**OCDF Register**). It shows that a "Baghlan Province Brief for MINDEF", comprising two secret documents, was marched in on 1 September 2011. The serial number given to those documents - namely, 387/11 - matches the serial number on the bundle containing the IAT report. It also shows that the sender or originator of those documents was the Director of Special Operations (**DSO**) who, in September 2011, was Colonel Jim Blackwell.
6. I don't recall ever seeing these entries in the OCDF Register. I did not seek to trace the origins of the IAT report by way of the various classified document registers at the NZDF. In retrospect, knowing what I now know, it would have been prudent to take that step.
7. However, at that time, I thought I knew when the IAT report had arrived. I assumed, based on the date of the IAT report (i.e. 26 August 2010) and the Minister's suggestion that I contact Rian McKinstry (who was the SNO in August 2010), that the IAT report arrived in NZDF in August 2010. My line of inquiry had that assumption at its core. I believe that is why I focussed my attention on those in the relevant roles in August 2010.

8. For that same reason, I don't recall whether I followed up with the existing DSO or with the Directorate of Special Operations.

9. I don't recall what I did with the information I obtained. I have not made a written note of it. I believe I would have briefed the Chief of Defence Force so that he could relay the information back to the Minister. If the Minister had wanted a formal briefing conveying our findings, he would have made that request, and we would have responded by way of a formal Note to the Minister. There is no formal Note to the Minister on this subject. I can only deduce that this is because he was satisfied with the briefing he received.



Gordon Ross Smith

3/10/19.

Date