

**UNDER**

**THE INQUIRIES ACT 2013**

**IN THE MATTER OF**

**A GOVERNMENT INQUIRY INTO  
OPERATION BURNHAM AND  
RELATED MATTERS**

Date of Minute: 16 July 2020

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**MINUTE No 24 OF INQUIRY**

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[1] In Minute No 23, the Inquiry made a number of orders under s 15(1) of the Inquiries Act 2013 for the protection of particular information but reserved leave for recipients to raise any issues about the orders made, or the need for further orders.

[2] Counsel for the Crown Agencies has filed a memorandum asking that the Inquiry not terminate the permanent non-publication order it made in relation to classified information provided to the Inquiry (subject to the outcome of the classification review process) but allow it to continue. This was on the basis that the order covered only the copies of the material held by the Inquiry (which, by virtue of the s 15 order, would not be “official information” in terms of the Official Information Act 1982) and did not cover copies of the same material held by the relevant agencies (which would remain within the ambit of the OIA).

[3] The reason for this was that any requests under the OIA for the classified information should be made directly to relevant government agencies rather than to the Department of Internal Affairs (DIA), which will be responsible for administering matters in relation to the Inquiry when it ends.

[4] The concern that the Inquiry was attempting to address in paragraph [35] of Minute No 23 was that classified material to which the Inquiry has had access during its investigations should remain available for disclosure under the OIA

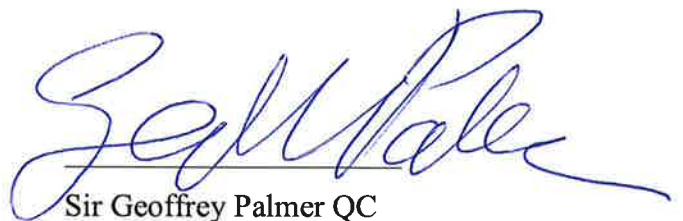
processes in the normal way, whether through review of the material by the originating agency or through review by the Ombudsman.

[5] Given that the Crown Agencies' request ensures that the classified material provided to the Inquiry does remain subject to OIA processes, the Inquiry considers that there is merit in it. If OIA requests were to be made to the DIA in relation to classified material in the Inquiry's records, the DIA would inevitably consult the originating agency and be guided by its views. It seems to us that it will be more efficient if OIA applications are made directly to originating agencies, which will be required to justify any refusals to disclose to the Ombudsman.

[6] Accordingly, the Inquiry rescinds its order in paragraph [35] of Minute No 23 that the s 15 order made in Ruling No 1 dated 21 December 2018 at [90] will expire on 17 July 2020. That order will continue in force until the material the Inquiry holds is dealt with under s 33 of the Inquiries Act (which, we were advised, may take some years). This is on the basis that the non-publication order applies only to the copies of classified material held in the Inquiry's records. The same material held by government agencies will remain subject to OIA processes.



Sir Terence Arnold QC



Sir Geoffrey Palmer QC

Core Participants:

Mr Radich QC for New Zealand Defence Force

Mr Nilsson for Mr Stephenson

Mr Hager

Also:

Messrs Martin and Auld for Crown Agencies