



INSPECTOR-GENERAL OF  
INTELLIGENCE AND SECURITY

**ANNUAL REPORT OF THE INSPECTOR-GENERAL - 2013**

1. This report for the year ended 30 June 2013 is made under section 27 of the Inspector-General of Intelligence and Security Act 1996
2. The object of the Act (section 4) has been in particular to assist the Minister to ensure that the activities of each intelligence and security agency comply with the law and to ensure that complaints relating to either agency are independently investigated.
3. As well as dealing with complaints, the Inspector-General undertakes inquiries into the activities of the agencies at the request of the Minister or on his or her own motion. Another part of the work is to attend to matters listed in the work programme approved by the Minister in Charge of the intelligence and security agencies. Appendix A states the mandate of the Inspector-General. Appendix B is the programme approved by the Rt Hon Helen Clark on 7 July 2008 which has continued in place until this year. Its structure was built around legal requirements imposed on the two agencies. The general approach to performance of the office was set out in my report for 2012.
4. **Complaints – GCSB:**  
There have been a number of matters of complaint or enquiry relating to the GCSB. The first concerned Mr Kim Dotcom who did not ever make any complaint to me. I became aware of that matter when the Bureau reported to me in that an error had been made in collecting communications of Mr Dotcom to assist the Police. It had been believed that he was not a New Zealand citizen so a bar on collecting

communication of New Zealand persons did not apply.

Those involved in the operation had become aware that he fell into a category of non-New Zealand citizens who were however classed as New Zealand permanent residents because they held a residence permit under the Immigration Act 1987.

Contemporaneously with receipt of that advice the Minister asked me to enquire. My report to the Minister dated 27 September 2012 was subsequently published.

Second: An enquiry from a person who had sought information from the GCSB as to whether that person was included in the popularly so called "88 New Zealanders unlawfully spied upon by the GCSB" over a period of 8 years. The Director of the Bureau as he is entitled to do, relying on s.32 of the Privacy Act 1993, had refused to confirm or deny whether the complainant was one of those people. The complaint was about that decision. I upheld the decision on the basis that if the agency answered such a question positively one way or the other, anybody who thought he or she was under investigation in respect of committing some offence or breach of national security, could simply call and ask if that was the case. I know of no official body investigating such issues anywhere in the world that would do that. It is not hard to work out why that should be so.

Third: An inquiry relating to a criminal prosecution in which evidence had been given of intercepted information. Inquiry indicated that this was not an intelligence or security related matter.

Fourth: An inquiry about computer hacking. The Bureau was of the view from the information supplied that such an event could have happened, and its recommendation that the inquirer should have his computer forensically examined was passed on to him.

Fifth: An internal employment related dispute, which is not resolved at this date.

Sixth: Another inquiry from outside New Zealand about the 88 cases. The issue was related substantially to concerns outside New Zealand and did not call, in my view,

for inquiry here.

**5. Complaints – NZSIS:**

First: A vetting related complaint which was the re-opening of an earlier employment complaint. It is still under enquiry.

Second: Four complaints about vetting. Of those, the Service re-examined a complaint from an earlier year. That enabled the complainant's employment to proceed. Another related to the time taken in the vetting process which the proposed employing department accepted ought reasonably to have been shorter.

Two more related to adverse recommendations in vetting assessments. Neither was upheld after enquiry.

Third: An employment related issue continued from an earlier year for which I did not find evidential support and terminated the enquiry.

**6. Ministerial Reports:**

In addition to the Dotcom matter, because of work that was done within the Bureau during the Kitteridge review, the Minister asked that I review two categories of cases.

The first group related to requests, principally by the Police, for assistance by the Bureau. The question then was whether in my opinion the Bureau's determination that targets were not New Zealand persons (and therefore not protected against interception) was reasonable. In all but three of the cases I was of the view that the determination was reasonable. In the three cases only foreign sources of calls was sought and no content was sought.

The second group included 88 New Zealand persons who, following release of the Kitteridge report, became popularly referred to as the "88 New Zealanders unlawfully spied upon by the GCSB". The Minister asked me to inquire into those cases including whether any New Zealand person had been adversely affected and if so what should be done.

The Kitteridge review report did not say that 88 persons had been unlawfully spied upon. What was written, referring to the collection of metadata by the Bureau at the request of the NZSIS, was

*"the consequence of those developments is that the lawfulness of some of GCSB's past assistance to domestic agencies is now called into question... It is not known as at the date of this report how many of these instances of assistance might ultimately be determined in a way that is inconsistent with the GCSB Act, as there are a number of factors to consider in making that kind of determination".*

The question referred to me about these cases related in the main to metadata covering telephone calls. I was advised on enquiry that except in 4 of the 88 cases only metadata was involved.

In such cases no content of a telephone conversation is collected – what the GCSB is able to say is that one telephone had been connected with another, Who spoke on the call or even who the person was who made it is not ascertained in that way. This kind of collection has been made elsewhere in the world (for example of the London Bus Bombing in 2005) as one step in a detection process.

The GCSB Act is written in terms, particularly s.14, which prohibit the Bureau from engaging in the interception of communications of a person who is a New Zealand citizen or a permanent resident. The Bureau however has had, since the Act was passed in 2003, the specific and perhaps conflicting functions of co-operating with and providing advice and assistance to public authorities in New Zealand or abroad. The NZSIS is such an authority as is the NZ Police.

Some attention has been focused on whether under the Act the collection of metadata as described should be regarded as the interception of a communication. I am not satisfied from reading the whole Act that it should be. Therefore my conclusion was that arguably there had been no breach in these cases.

For completeness I would add that the NZSIS Act provides for that agency to obtain assistance for the purpose of giving effect to an intelligence warrant issued under the

NZSIS Act. That had relevance to the four cases where inquiry went beyond metadata.

In respect of the Minister's supplementary questions, my conclusions were that:

- (a) no-one appeared to have suffered any personal detriment from what the Bureau had done because the general legal protection of telephone communications and the like in New Zealand relates to content, not the fact of connections between instruments;
- (b) the Act, as already recommended; needs redrafting to provide precise directions as to what the Bureau is expected to do or not do.

**7. Future Operation:**

In October the Dotcom event, the Director of GCSB and the Chief Executive Officer of the Department of Prime Minister and the Cabinet arranged for a review by the Secretary of Cabinet of compliance within the Bureau. The report on the review has been published and has led to a proposal for legislation amending the Inspector-General of Intelligence and Security Act 1996.

**8. Term of Office:**

My current appointment was made in 2010 and expired on 8 June 2013. Under s.6 of the Inspector-General Act the incumbent continues to hold office notwithstanding expiry of the term of appointment until a new Inspector-General is appointed or the Prime Minister directs that the incumbent is not to hold office until a successor is appointed or the incumbent resigns.

**9. Finance:**

Because this report is being completed as at 30 June, the financial figures for the year are not immediately available, but will be on enquiry shortly.

**10. Departmental support:**

The Ministry of Justice has provided me with financial and administrative support in this task. I am grateful to it because that support has met everything I asked.

11. This will be my last report as Inspector-General. I record my thanks to those who have been my secretary/personal assistant and to the staff members of the two intelligence agencies who in respect of complaints, inquiries and matters arising in the programme of work have been forthcoming and helpful in supplying any information I sought, however questioning my approach.

I will leave office with the firm impression of dedicated people who do their best to serve the national interest as the law allows.

D P Neazor

**Inspector-General**

June 2013