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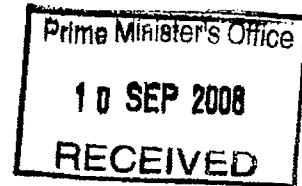
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New Zealand. Inspector-General of Intelligence
and Security.

Annual report.

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INSPECTOR-GENERAL OF
INTELLIGENCE AND SECURITY

THE HON D.P. NEAZOR CNZM

9 September 2008

The Rt Hon the Prime Minister
Parliament Buildings
WELLINGTON

Dear Prime Minister

ANNUAL REPORT

I enclose six copies of my annual report under the Inspector-General of Intelligence and Security Act 1996.

The Directors of NZSIS and GCSB have both seen it as a draft and have indicated that in their opinions it is suitable for public release in its present form.

Yours sincerely

D P Neazor
Inspector-General

Enc:

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 2008

1. This is the twelfth annual report of the Inspector-General of Intelligence and Security, made in accordance with Section 27 of the Inspector-General of Intelligence and Security Act 1996. It covers the year ended 30 June 2008. The mandate and functions of the Inspector-General are set out in Appendix 1.

Zaoui

2. At the end of the last reporting period the review of the security risk certificate issued in respect of Mr Ahmed Zaoui had involved a long preparatory period with difficult issues of disclosure to him of information regarded as adverse to him. Such disclosure was required by Court decisions, but at the same time the security of classified information had to be preserved as required by Part 4A of the Immigration Act 1987 and by the Court decisions.
3. Mr Zaoui was entitled by law to give evidence in the review and to call evidence on his behalf. In the event his counsel indicated that he would wish to call a number of witnesses from New Zealand and overseas as well as to give evidence himself.
4. After four weeks of hearing, a number of witnesses, including Mr Zaoui, had given evidence. At that stage, 10 August 2007, counsel for both Mr Zaoui and the Director of Security indicated that they would like time to consider how the matter should continue.
5. Early in September 2007 the Director of Security decided, as he has power to do under s.114M of the Immigration Act, to withdraw the security risk certificate. The Director publicly stated the reasons for his decision. The withdrawal brought the review to an end.
6. The review was along and expensive exercise. It introduced New Zealand to difficulties arising from disclosure issues which have also arisen in other countries. It is possible to remove such difficulties, but the cost of doing so may be that the person believed to be a security risk is unable to know what is alleged against him or her sufficiently to give an adequate response.

Inspection Function

7. The Inspector-General is not a participant in the work or management of the intelligence and security agencies, but deals with complaints and carries out independently any review programme approved by the Minister. During the reporting period there have been discussions with the Directors of the New Zealand Security Intelligence Service and the Government Communications Security Bureau about the Inspector-General's review work. Particular attention has been directed in the discussions to statutory limitations placed on the Agencies by the NZSIS Act and the GCSB Act. Both Services have been responsive to proposals to develop the effectiveness of the review provided for by the legislation. The Minister has approved what was proposed. A summary of the approved programme is contained in Appendix 2.

Interception of Communications

8. Both Acts provide in detail powers to intercept communications. The Inspector-General's functions include reviewing from time to time the effectiveness and appropriateness of the procedures adopted by the Agencies to ensure compliance with the statutory provisions in the two Acts in respect of the issue and execution of interception warrants and computer access authorisations. It is not part of the Inspector-General's function to make any judgment about whether warrants or authorisations should be, or should have been, issued. That is for the Minister and the Commissioner of Security Warrants, a former Judge of the High Court. Inspection functions are generally carried out in hindsight not in respect of current operations. To do otherwise would risk compromising the independence of the IGIS if some enquiry seemed necessary after the event.
9. The Acts set out criteria on the basis of which interception warrants or computer access authorisations may be issued. They also contain provisions about minimising the impact of interception warrants on third parties, destroying records of intercepted information not related to security, and the communication to other authorities of information, however acquired, that relates to serious crime in New Zealand or overseas.

10. During the reporting period all interception warrants (NZSIS and GCSB) and computer access authorisations (GCSB) and the applications on which they were based were considered. Some particular points of detail in documentation were raised with the Agencies. They were matters of fine tuning, not such as to raise questions about the validity of the authority issued.
11. Enquiry of the NZSIS has also been put in hand about –
 - The way the provisions in respect of minimising the impact of warrants on third parties are given effect to;
 - How the destruction of information not related to security is carried out;
 - How the decision to apply for a warrant is made.
12. This has involved consideration of documentary material and discussions with Service Officers at management and operating levels. I am satisfied at this stage that the NZSIS as a body pays attention to
 - Making a proper case for seeking a warrant;
 - Satisfying the criteria for the issue of warrants and
 - At management and operating levels attends to the statutory provisions related to information so obtained and seeks to carry them out properly.

Some aspects of these matters presently remain under consideration that cannot be reported on in detail without disclosing the Services' methods of operation.

13. There have also been discussions with the GCSB about the issue of computer access authorities provided for by the GCSB Act and the amount of detail which ought to be provided in an authorisation application and document. This consideration is continuing at the end of the reporting period. The object of the exercise is to enhance the information available to the Minister who makes the authorisation and the officers who execute it. Again details cannot be reported without disclosing the Bureau's methods of operation. I am satisfied from these discussions and the documents I have seen that the GCSB also takes pains to keep its activity within the provisions of the Act.

Complaints

14. During the year there have been nine complaints about the activities of NZSIS and one about a decision made by the GCSB. Of the NZSIS complaints, four related to security vetting. The other five related to various complaints of interference by the NZSIS in the complainants' lives. No basis was found for any of those five complaints.
15. Of the vetting complaints, one involved delay caused by administrative oversights in New Zealand and overseas. One led to further investigation about factors considered adverse being made at the request of the complainant, but not to a change in recommendation. In respect of the other two my opinion was that the Service's reasons for the recommendations made were reasonable and the complaints were not upheld.
16. The complaint about the GCSB related to refusal of a security clearance required for employment in the Bureau. In my view the decision was neither wrong nor even arguably unreasonable. The complaint was not upheld.

International Conference

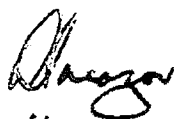
17. New Zealand will be host for the biennial international meeting of oversight agencies later this year. These meetings allow delegates involved in a number of modes of oversight of intelligence and security agencies, both parliamentary and non-parliamentary, to discuss problems in their work, many of which are common even if the mode of oversight is different.
18. For New Zealand the meetings help to provide a measure of comparison for what is done by way of oversight within the provisions of the Inspector-General of Intelligence and Security Act 1996.

Servicing

19. The Ministry of Justice continues to act as my support agency. Its officers have again been very helpful with financing, various aspects of the Zaoui hearing, preparations for the international conference and other administrative services.

Funding

20. The expenditure on the Inspector-General's work has fallen this year. The Ministry of Justice has advised that the total expenditure was \$472,770, compared with \$739,277 last year. Of the \$472,770, \$263,215 was incurred in relation to the Zaoui review. \$209,554 was spent on my remuneration and other costs of the office, compared with \$247,701 last year.



D P Neazor
Inspector-General of Intelligence and Security

9 September 2008

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APPENDIX 1

Mandate and Functions of Inspector-General of Intelligence and Security

1. The Office of the Inspector-General of Intelligence and Security (IGIS) was established by the enactment of the Inspector-General of Intelligence and Security Act 1996 on 1 July 1996. The Inspector-General is required to have previously held office as a Judge of the High Court of New Zealand. He or she is appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Leader of the Opposition. The appointment is for a term of three years and may be renewed. The Inspector-General is subject to removal or suspension from office by the Governor-General for defined cause, upon an address from the House of Representatives.
2. The object of the Act and of the office of the IGIS is to assist the Minister responsible for an intelligence and security agency in the oversight and review of that agency. In particular the IGIS assists the Minister to ensure that the activities of an agency comply with the law. A further object is to ensure that complaints about an agency are independently investigated.
3. The intelligence and security agencies subject to the Act and the IGIS's responsibilities are the New Zealand Security Intelligence Service and the Government Communications Security Bureau. The Minister responsible for these agencies is the Prime Minister.
4. The IGIS is authorised to inquire into complaints by New Zealand persons and persons employed or formerly employed by those agencies who claim to have been adversely affected by the activities of an agency. The IGIS undertakes other inquiries into the activities of those agencies at the request of the Minister or on his or her own motion. Such inquiries may examine the propriety of particular activities of an agency. In addition the IGIS may carry out a programme or programmes of general supervision of the agencies, approved by the Minister.

5. Under Part IVA of the Immigration Act 1987 as amended by the Immigration Amendment Act 1999, the Inspector-General of Intelligence and Security has a function to review the decision to make a security risk certificate issued by the Director of Security. Under the Protected Disclosures Act 2000, the Inspector-General of Intelligence and Security is the only appropriate authority in respect of protected disclosures to be made by employees of the security agencies.
6. The postal address of the Inspector-General is PO Box 5609, Wellington 6145. The telephone number is 04 473 8671 and the fax number is 04 473 8534. Under the Act complaints to the Inspector-General are made in writing addressed to the Inspector-General c/- The Registrar or Deputy Registrar of the High Court at Wellington.

APPENDIX 2

Work Programme, 7 July 2008

This programme will provide for:

NZSIS

- (a) Checking as a matter of procedure that the statutory requirements for the issue of an interception warrant have been met and that the form and content of documentation is sufficient to justify the decision sought, (particularly when the Commissioner of Security Warrants is not involved).
- (b) On a random basis inspection of records of information on which a formal application for a warrant is based, to provide a continuing review of procedures.
- (c) Checking on a random basis that the statutory duty of minimising irrelevant interception is complied with.
- (d) Checking periodically the way the duty of destruction of irrelevant interception records is complied with.
- (e) Checking at least annually the way in which communication with the Police or other persons is handled in respect of involvement of serious crime.
- (f) Annual review of the Service's internal rules about retaining and disposing of information.

GCSB

- (a) Review of the Bureau's means of confining its activities to foreign persons and foreign organisations and excluding New Zealand citizens or permanent residents from surveillance.
- (b) Interceptions without warrant or authority – checking that the required statutory conditions exist.
- (c) Warrants and Authorities
 - i Checking that the form and content of the documentation is sufficient to justify the decision sought.

- ii Checking that conditions for the issue of warrants or authorities have been complied with.
- iii Checking that any special conditions of a warrant have been complied with and that all assistance requirements have been properly sought and recorded.
- iv Checking that consultation with the Minister of Foreign Affairs and Trade has taken place.
- v On a random basis twice yearly inspection of information behind a formal application to see the procedures and basis of the decision that it was necessary to apply for a warrant or authorisation.
- vi Checking on a random basis that the duty in s.23 of the GCSB Act (destruction of records of interceptions subject to justifiable exceptions) takes place.
- vii Checking on a random basis how the duty in s.24 of the Act is complied with (minimising impact on third parties).
- viii Checking on a random basis the way s.25 of the Act (as to the prevention or detection of serious crime) is complied with.
- ix Checking Ministerial authorities for disclosure of information.