



Inspector-General of Intelligence and Security

Annual Report 2009

1. This report for the year ended June 2009 is made in accordance with Section 27 of the Inspector-General of Intelligence and Security Act 1996. The mandate and functions of the Inspector-General are set out in detail in Appendix A to the report.

Complaints

2. One of the important reasons for the existence of the office is to provide an independent avenue through which investigation may be made of any complaint by a New Zealand person or a person who is an employee or former employee of an intelligence and security agency that he or she may have been adversely affected by any act, omission, practice, policy or procedure of an intelligence and security agency.
3. During the year nine complaints or inquiries which could be regarded as complaints were received. All related to the New Zealand Security Intelligence Service (NZSIS); none to the Government Communications Security Bureau (GCSB).

Of those complaints, one was in respect of an employment-related dispute within the Service, one related to a request for information, three were in respect of security vetting recommendations and four related to believed involvement of the Service in the complainant's life.

4. The internal dispute was resolved by upholding the complaint in part, and by internal arrangements about the employment of the person concerned. Some recommendations for change were made, directed to the procedure which had been followed. The information request was dealt with in consultation with an Ombudsman, that office having general jurisdiction in official information matters. The complaint was not upheld on the bases that the complainant was not a New Zealand person and that to comply with the request for information could present a real risk to security.
5. The vetting complaints all related to the weight to be given to some overseas contacts, for example relationships or associations of the person concerned, when making an assessment for clearance to have access to information classified as Secret and Top Secret or to establishments where such information is held. This is a difficult issue involving risk assessment of the degree of foreign influence or foreign preference and the associated degree of security vulnerability which such relationships or associations could represent. Account is taken of:
 - the fact of contact and the reasons for contact which, for example, may be family-related or related to previous work overseas and

- how the contact or relationship could be used with adverse effect on NZ's security by agencies in the countries concerned.

In none of the cases I have examined has it been suggested that the personal record or views of the applicant would on their own have justified an adverse assessment. I have however been told by a complainant that on occasion potential employers who became aware of the fact appeared to treat a refusal of a security clearance as an assessment of the general trustworthiness of the person concerned, which it is not intended to be. The vetting result is focussed on considerations which may affect national security issues.

6. When a complaint in respect of vetting is under enquiry the assessment of what could happen, made on the basis of experience, and the importance of a possible event in the national security context, are judged in terms of reasonableness. In two of the three cases the complaints were not upheld, the assessment by the Service being regarded as reasonable in the circumstances. At the date of reporting the third is still under consideration.
7. None of the complaints alleging improper involvement in the complainant's life was upheld.

Warrants and Authorisations

8. Both the NZ SIS and the GCSB may intercept and collect information relevant to intelligence and security. Some methods of collection require an authorisation or warrant signed by the Minister and, when domestic interception of communications by the NZSIS is involved, by the Commissioner of Security Warrants.

In the case of both agencies the Inspector-General has the function of reviewing from time to time the effectiveness and appropriateness of the procedures adopted by the agencies in relation to the issue and execution of such authorities. Accordingly, documentation for all applications has been reviewed during the year.

9. In respect of the GCSB, under s.19(1) of the Government Communications Security Bureau Act 2003 computer access authorisations may be given in relation to specified foreign organisations or persons. There have been discussions with the Bureau about what is necessary to satisfy the requirement of specificity and about the amount of information given to the Minister as decision maker. In my view what has been developed will improve the control of activity, and for those who carry it out the clarity of what is authorised. Beyond that, no particular matter of concern has been disclosed by inspection of the authorities obtained by the Bureau and the supporting papers.

10. Inspection of the NZ Security Intelligence Service interception warrants has given rise to nine queries. Most related to the conformity of the

wording of warrants with the requirements of the NZ Security Intelligence Service Act 1969. In essence they were matters of tidying up. One related to a statutory requirement of consultation before the issue of a warrant. An omission which had come about because of Ministerial changes had been made good by the time I inspected the papers. One was an enquiry as to the performance of conditions to which the warrant had been made subject A satisfactory response was provided. One related to a legal issue which was still under consideration as at 30 June.

Oversight and Review Programmes

11. Section 11(1) (e) of the Inspector-General of Intelligence and Security Act 1996 provides for the Minister responsible for the intelligence agencies to approve programmes prepared by the Inspector-General for the general oversight and review of each agency and for the discharge of the functions specified in the Act. The current programme was approved in 2008, and is attached as Appendix B to this report.

Review work in respect of the NZSIS

12. Work related to authorisations required by statute for collection of information has been referred to above.

13. The NZSIS Act has a requirement about minimising the impact on third parties of communication interception. Procedures are put in place to achieve that. They have been examined, taking a particular case as a

sample. I am satisfied that positive steps are taken to comply with the requirement in respect of third parties.

14. The procedure for destruction of irrelevant interception records, which is also a requirement of the Act, was examined at the same time. . The system using computerised records is such that when irrelevant intercepted material is deleted it becomes inaccessible to all but a very few officers of the Service. Those who could recover it are not intelligence analysts, but technical experts, whose work does not relate to content of information. The computerisation of records gives rise to possible difficulties in achieving "*destruction*" which is the word used in S.4G of the NZ Security Intelligence Act 1969 about disposals. The matter is still under review.

15. These matters may be affected by the Ministerial enquiry referred to later in this report.

16. During the year enquiry has been made about the basis on which the Service provides information to the Police, as it is authorised to do by s.4H of the NZ Security Intelligence Service Act 1969 for the purpose of preventing or detecting serious crime. The Service imposes caveats on information conveyed which provide the Service with the ability to control dissemination of information. Such control by the originating agency has been regarded overseas as a necessary aid to ensuring that information collected is used only for an authorised purpose.

Review work in respect of GCSB

17. Section 8(1)(d) of the Government Communications Security Bureau Act

2003 provides for the Minister to authorise persons to be provided with reports on foreign intelligence. That Ministerial authority for disclosure of information has been renewed since the change of Government.

18. The examination of all warrants and authorisations has been carried out.

In general they have complied with the statutory requirements. The recommended change referred to in paragraph 9 has been put in place.

19. A pattern of attendance at the Bureau's premises is in hand, involving

discussions with the Bureau management and analysts and other officers to understand in detail how measures are put into effect to ensure compliance with the statutory authority under which the Bureau operates.

As an aid to external oversight and review, the Director has made available internal regular compliance reports for inspection and enquiry if necessary.

20. The Bureau is prohibited by s.14 of the Government Communications

Security Bureau Act 2003 from taking any action for the purpose of intercepting communications of a New Zealand citizen or permanent resident. An exception to that prohibition arises if the NZ person is acting in the capacity of an agent or representative of a foreign person. The Bureau obtains internally a particular approval for targeting in such a

situation. I have inspected documentation for such approvals in the year and am satisfied that proper care is taken to ensure that any such interception is lawful.

21. It has been apparent from the review activity that compliance with what the statute law and sub-rules allow or require is a thread which runs strongly through the Bureau's operations and is supported by internal monitoring. The continuing discussions are in part intended to establish useful independent checkpoints as to compliance with the law.

Enquiry into the NZSIS records

22. As a consequence of public comments made after the NZSIS had complied with requests for disclosure of personal information held by the Service, the Prime Minister as Minister responsible for the intelligence agencies authorised an inquiry into the adequacy and suitability of NZSIS policies relating to the creation, maintenance and closure of files on NZ persons in light of the Service's functions under the NZ Security Intelligence Service Act 1969. A special aspect of the inquiry related to information about Members of Parliament. A report with recommendations was made and published in full. Implementation of the recommendations is in the hands of the Service, but I have been consulted about a particular aspect. A further report about developments is to be made after six months.

International Conference

23. In October 2008, New Zealand was the host for the International Intelligence Review Agencies Conference, which is held every two years. It brings together Inspectors-General of intelligence and security agencies and Members of Parliamentary Intelligence Committees from Australia, Canada, New Zealand, the Republic of South Africa, the United Kingdom, the United States of America and, at the discretion of the host nation, representatives of other countries with comparable review or oversight bodies. The extent of oversight of intelligence and security agencies and how it is carried out differs between countries and between parliamentary and non-parliamentary bodies, as does the size of review agencies, depending on local governmental perceptions of what is required. They all, however, have a common purpose of providing a safeguard in an area of government activity in respect of which there is good reason for non-disclosure of information.

24. The conferences I have attended have provided useful insights into ways and means of review and into relationships between intelligence and security agencies and reviewers which are most likely to produce results of value.

25. Fifty-five people participated in the NZ conference over a period of three days as delegates from the six named countries, Belgium and Poland. The Hon Sir John Jeffries, the Commissioner of Security Warrants, Sir Brian Elwood, former Chief Ombudsman and Mr Richard Woods, former

Director of Security took part in the conference. Delegates from other countries shared with them the lead role in discussions. Mr Terence O'Brien was a guest speaker. The organisation was done by my office and the Ministry of Justice, with assistance during the conference period from the office of the Inspector-General of Intelligence and Security, Australia, who will be the next host.

Working Relationships:

26. The aim of oversight and review is to provide assurance, when a substantial measure of secrecy is operationally necessary, that the agencies comply with whatever limitations are imposed on them by law. The Inspector-General's review power is not at large. It is itself defined by law to meet local requirements.
27. The reviewer does not have a part in establishing what agency policies or actions should be, and is neither an advocate for anybody nor a "team player" in intelligence and security activity. The reviewer enquires and acts independently, but there is a necessary framework for effective review. Thus it is necessary that the reviewer understand each agency's tasks and how it actually works, that there be mutual trust between agency personnel and the reviewer, and that the reviewer be satisfied that there will be frank disclosure of all information relevant to a particular issue.
28. It is not, in my view, useful for a reviewer to duplicate what agencies do internally to ensure compliance with legal requirements, but it is the

reviewer's responsibility to find means of being satisfied that agency activity in matters subject to scrutiny complies with the law. The programmes of work are part of that process. If there is a complaint, the reviewer will investigate what happened or what was recommended and whether it was reasonable in the circumstances. The Inspector-General is also available to assist the Minister, if required, by inquiring into the propriety of particular activities of an intelligence and security agency.

29. These understandings underlie the task, and I acknowledge the commitment of the management and staff of the two agencies to making them work.

Servicing:

30. The Ministry of Justice acts as my support agency. Its officers have as usual been very helpful, particularly in respect of the organisation of the international conference.

Financial:

31. The expenditure for the Inspector-General's work as advised by the Ministry of Justice, has been \$239,100 in total for the year, compared with \$472,770 in the previous year.

32. My remuneration and the other costs of the office (mainly secretarial support and rent) amounted to \$155,000. In the 2008 year that cost was \$209,554. Hosting the international conference cost \$84,100.

A handwritten signature in black ink, appearing to read 'D. Neazor'.

D P Neazor
Inspector-General of Intelligence and Security

20 August 2009

APPENDIX A

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 objective 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 oversight and review 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 made by employees of the security agencies.
6. The postal address of the Inspector-General is P O 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.
7. The current Inspector-General was appointed for a second term on 8 June 2007.

APPENDIX B

Work Programme – 7 July 2008

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 warrants 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 interception 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.