



INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY ANNUAL REPORT 2010

Introduction:

1. This report for the year ended 30 June 2010 is made in accordance with s.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. The work programme approved by the Prime Minister as the Minister responsible for intelligence and security agencies is Appendix B.

Complaints:

2. The Inspector-General's function of investigating complaints about the two agencies, the NZ Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB) has two aspects: complaints from people outside the agencies and complaints from those employed in the agencies. In each case the basis of the complaint is the same: that the person concerned has been adversely affected by an act, omission, practice, policy or procedure of an agency. Complaints by an employee or former employee may only be investigated if all established internal remedies have been exhausted or the complainant and the Chief Executive of the agency agree in writing that the Inspector-General should act. In this year both external and internal complaints have been received, some in respect of each agency.

GCSB:

3. A complaint was made by a number of GCSB officers in respect of the way the Bureau has treated the employer's notional contribution to the Government

Superannuation Fund in its internal pay structure. The complainants' contention is essentially that what has been done has shifted to them the burden of the employer's contribution, reduced their take-home pay, reduced the rate on which their superannuation benefits will be calculated and ultimately reduced the value of their superannuation.

4. There has been agreement between the Director and the complainants that I should consider the matter, and the Bureau has facilitated the supply of necessary information. At the reporting date progress has been made but a final conclusion has not been reached.

NZSIS:

5. There have been 16 complaints related to the Service. Of those 11 related to recommendations in respect of access to classified material, two to employment matters, one to information held by the Service, one to dealings by the Service with an individual and one to a recommendation made by the Service under the Passports Act in respect of a New Zealand passport holder.
6. Vetting complaints are considered on the basis of whether on the information available to the Service (with such further information as might become available) the Service's recommendation was reasonable.
7. Of the eleven complaints, four were not upheld, three were resolved during the enquiry and four were incomplete at the reporting date. Two of the unsuccessful complaints related to national connections of the complainant and two to activities by the complainants considered to compromise the protection of personal information, access to which could affect foreign activity in New Zealand. The latter two cases were related and remitted for reconsideration. The Service's recommendation again was adverse, and I did not uphold a subsequent complaint. The case did raise questions about the appropriateness of the level of clearance required by the employing department. It is not within my function to review that, and even at a lower level, the result might have been no different.
8. One of the resolved complaints led to reconsideration by the Service's Special

Assessments Branch. A revised recommendation resulted in the necessary clearance. The other two led to a lower level clearance being enough to satisfy the employing department's requirements and the Service recommending clearance at that level.

9. The internal complaints related to termination of the services of two officers. One related to assurances given to an officer about future employment in the Service after a particular task was completed. Changes in the Service's funding led to a decision which did not accord with the assurances. The complaint involved issues both of employment law and, in my view, of proper public administration in respect of making good on assurances given to achieve a public purpose. The complaint was upheld and a recommendation made for payment of compensation. Because he has responsibility for the expenditure of the funds involved, the Director took legal advice, then accepted the recommendation.
10. The second case related to dismissal of an officer who had been a complainant in 2009 when his complaint was upheld. The current complaint is still under enquiry.
11. The information-related complaint was in respect of events well in the past and to a possible source of information held by the Service. I found that the person suggested had not been the source and that the Service had acted carefully and properly in answering an inquiry from an overseas body. The result had been the exclusion of the complainant from further consideration by the enquirer.
12. The person who complained about dealings between the Service and him published what he had sent to me. After enquiry of the Service I concluded that he had no cause for complaint, told him so, and took the matter no further.
13. The Passports Act complaint relates to Ministerial recall of a New Zealand passport under s.8A of the Passports Act for reasons related to security. The decision was that of the Minister of Internal Affairs, not of the Service but apart from procedural suggestions I found no cause to suggest that the Minister should have been given different advice. This is still in some respects an open matter.

Report: NZSIS Records:

14. In the 2009 year, at the request of the Minister, an inquiry was made into the information about people held by the NZSIS. A particular aspect of the inquiry related to people who became Members of Parliament. A report made in March 2009 was published in full. It contained recommendations about Members of Parliament and generally about the holding and disposal of personal information collected by the Service.
15. The Minister sought a follow-up report which was made in April 2010 and was also published in full. The first report had proposed an agreement between the Speaker of the House, the Minister responsible for the Service and the Director of the Service about any Service activities involving Members. A draft agreement has been under discussion but its terms are not yet settled. It is proposed that the Inspector-General will monitor observance of it if it comes into effect.
16. The second report concerned the needs of the Service to obtain and retain information, the criteria applied and the timing and method in electronic systems of closing access to what is no longer needed.

International Meetings:

17. The biennial conference of intelligence oversight bodies (IIRAC) was held in Sydney in March 2010. The Hon Sir John Jeffries, Commissioner of Security Warrants, and I attended from New Zealand. There were 47 delegates engaged in various aspects of intelligence oversight work in eleven countries. Many of those attending had met before. These meetings provide the only opportunity available to us for exchanging ideas and testing views.
18. There was a short separate meeting of delegates from Australia, Canada, New Zealand, the United Kingdom and the United States of America. That meeting explored the desirability of any wider collaboration amongst the oversight bodies of those countries. Ad-hoc bilateral arrangements seem most likely to be useful in the common primary task of providing assurance to the local community of the legality

and propriety of each national agency's work.

Vetting for security clearance:

19. In the report for 2009 three complaints in respect of vetting recommendations were recorded. This year there have been eleven. The number of complaints is very small in relation to the number of vetting inquiries carried out by the Service (over 5,000 in 2009/10), but each one is important because failure to obtain or retain a security clearance at a required level may often mean that the person concerned loses his or her job. To conduct enquiries into whether particular people should be granted security clearances, and to make recommendations based on the enquiries is one of the NZSIS's statutory functions. The level of clearance required in any case is determined by the employing department, and the decision as to the grant of a clearance rests also in that department.
20. The criteria applied by the Service are set down in Government protective security instructions. Last year I recorded aspects of overseas contacts as a possible negative factor in vetting assessments and the way the topic is approached. This year several of the cases disclosed problems the Service has when security clearances are sought for people who have worked outside New Zealand for a number of years but are now recruited for jobs requiring access to classified material. Such candidates' recent background information is not easy to check.
21. In recognition of the problems, the Service prepared a paper for me discussing both issues, which in itself is a worthwhile exercise. The Service has embarked on measures which it is hoped will lessen the chance of people being appointed to jobs requiring a clearance when there is little prospect that a positive recommendation will be made. The Service has also initiated a consideration of a particular area where overseas backgrounds are not uncommon to see whether improved approaches can be found.
22. It may be that in time work should be done on two matters:
 - a. the level of security clearance required by departments eg requiring a Top

Secret clearance for which the criteria are more stringent, instead of a Secret or Confidential clearance;

- b. whether in some areas of work it would be preferable to rely on internal privacy related codes of conduct for the protection of information instead of national security related procedures.

23. Complaints related to vetting may present difficulties in giving the complainant an opportunity to respond to adverse information. Classified material is sometimes involved, and referees are likely to have given information in confidence, but so far ways have been found of dealing with such issues without disclosing sources which should be protected.

Programme of Work:

24. During the year I have visited both agencies and received briefings as to methods of working to enable me to understand their work better. Warrants and other authorities have been inspected for compliance with statutory requirements including those relating to minimisation of impact on third parties.

25. A number of enquiries were put to the GCSB as a check on compliance with statutory requirements in the Government Communications Security Bureau Act 2003: s.16 which allows some interceptions without an interception warrant or a computer access authorisation, s.17 which allows the interception of communications under warrant, and s.23 which relates to the destruction of irrelevant material.

26. Two questions relating to delegation of powers arose from these enquiries. In one case a formal delegation had not been thought necessary, but was obtained. In the second a delegation existed to allow prompt action to be taken in respect of any communication which appears not in fact to be foreign and therefore one the Bureau may not collect.

27. New documentation relating to requests to the Bureau for assistance has been drafted. The design is to ensure that all such requests meet legal constraints. The Bureau has also been reconsidering its standard operating procedures in relation to

agents of a foreign power. Individual applications in this field are open to me for review. The caveats used by the Bureau in responding to requests for assistance have been made available. None of these matters has called for comment.

28. The retention of information by the Bureau, which is related to destruction of what is irrelevant to any task has been raised for inquiry but that is not complete.

Warrants and Authorities:

29. GCSB warrants and authorities have been inspected. None has called for any comment. Internal compliance reports of the Bureau have been made available for inspection.

30. Inquiry was made in the NZSIS about the practice relating to assistance in interception of communications. There is a structured system with check points for authority and correctness along the way to making the interceptions. Following this inquiry some changes were made in the form of authority to bring it more into line with the provisions of the NZ Security Intelligence Service Act.

31. NZSIS interception warrants have been inspected. Any queries were answered satisfactorily. I was advised by the Service of two errors made in the execution of warrants and of the corrective actions taken. No apparent harm to anyone had followed. The fact that the Service told me of the events is an indication of health in the oversight relationship

Additional Matters

32. I visited the Waihopai installation after the damage to it had been repaired and was briefed on the station's operations and on the additional security measures that have been put in place after the damage.
33. From time to time during the year I have been consulted on oversight aspects by people engaged in review of security and intelligence operations and of the NZSIS governing legislation.

Support:


34. There has been little need for support during this year from the Ministry of Justice, but anything needing action has been satisfactorily dealt with.

Financial:

35. The expenditure for the Inspector-General's work as advised by the Ministry of Justice has been \$144,000 for the year compared with \$239,100. 00 in the previous year. Expenditure has covered remuneration and office and secretarial costs and travel to Australia.

Appointment

36. My appointment as Inspector-General has been renewed for a period of three years from 9 June 2010.



D P Neazor

Inspector-General

16.9.10

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 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 further term from 9 June 2010.

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.