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New Zealand. Inspector-General of Intelligence
and Security.

Annual report.

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Prime Minister

- 7 NOV 2005

**ANNUAL REPORT OF THE INSPECTOR-GENERAL OF INTELLIGENCE
AND SECURITY FOR FINANCIAL YEAR 2004/2005**

I have reviewed the Annual Report of the Inspector-General of Intelligence and Security for the financial year ending June 2005.

In accordance with Section 27(3) of the Inspector-General of Intelligence and Security Act 1996 (the Act), I confirm that no matters, as set out in Section 27(4) of the Act, have been excluded from the report.

There are no matters to bring to the attention of the House.

A handwritten signature in cursive script that reads 'Helen Clark'.

Helen Clark
Prime Minister

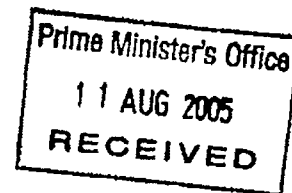


INSPECTOR-GENERAL OF
INTELLIGENCE AND SECURITY

THE HON D.P. NEAZOR CNZM

10 August 2005

The Rt Hon the Prime Minister
Parliament Buildings
WELLINGTON



Dear Prime Minister

I enclose two copies of the Annual Report I am obliged to make under the Inspector-General of Intelligence and Security Act.

Yours sincerely

D P Neazor

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INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 2005

1. This is the ninth 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. The report relates to the year ended 30th of June 2005 and covers my first full year as holder of the office. The mandate and functions of the Inspector-General are set out in detail in an appendix.

General Workload

2. Most of the work is a response to events. The amount of time required in this year has been almost 35% more than was anticipated when I was appointed. A significant factor in the increase was the enquiry into allegations of improper conduct by the New Zealand Security Intelligence Service, referred to later, published by the Sunday Star-Times.
3. As at 30th June, every matter that was alive at the beginning of the reporting year or had been raised during the year, except for the review of the security risk certificate relating to Mr Ahmed Zaoui, had been completed.
4. The matters dealt with have fallen into the following categories:
 - Issues relating to employment by one or other of the services: four cases. Two were disposed of in accordance with my recommendation involving a payment and reconsideration of aspects of practice within the Service. One I considered to be a matter within the power of the Director of the NZ Security Intelligence Service to settle terms and conditions; and one relating to disclosure of employment-related documents was referred to the Ombudsman before being withdrawn.

- Complaints related to security vetting outcomes: four cases. My review led to the production of more information in three cases and reconsideration by the NZ Security Intelligence Service. The fourth did not proceed beyond the original complaint. One of the cases required several interviews and consideration of 21 files of background material. Those files were not generated by the Security Intelligence Service but related to the complainant's background.
- Complaint about non-production of documents related to a refugee status claim. This was not the same as the Zaoui case, no security risk certificate being in issue. The Ombudsman also received a complaint. I declined to take further action on the basis that it was an official information matter within the Ombudsman's jurisdiction.
- Enquiry into newspaper allegations about the NZ Security Intelligence Service.
- Consideration of aspects of the Zaoui matter.
- Several miscellaneous complaints about surveillance by the NZ Security Intelligence Service, which I was satisfied were without foundation.

Interception Warrants

5. The statutes authorising the work of the intelligence agencies provide for the issue of authorisations for the interception of communications or where relevant the seizure of documents. Authority for the issue is in every case in the hands of the Minister in charge of the particular agency. There are statutory criteria for the issue of authorisations. In every case the head of the agency must provide information on oath on which the Minister can be satisfied that those criteria are met. In the case of a domestic interception warrant obtainable by the New Zealand Security Intelligence Service affecting a New Zealand citizen or permanent resident, the warrant is approved and issued jointly by the Minister and the Commissioner of Security Warrants, the Hon. Sir John Jefferies. The Government Communications Security Bureau may not intercept the communications of a New Zealand citizen or permanent

resident unless that person is acting in his or her capacity as an agent or representative of a foreign organisation.

6. The Inspector-General is required to review from time to time the effectiveness and appropriateness of the procedures adopted by each of the intelligence and security agencies to ensure compliance with the statutory provisions relating to the agency in relation to the issue and execution of interception warrants.
7. I have examined all authorisations which have been issued to the two agencies during the year. My function is not to say whether an authorisation should be or should have been granted but to check that the information provided to the decision-maker has covered the statutory criteria and, particularly when the Commissioner of Security Warrants has not been involved, has been enough to justify the decision sought.
8. Both agencies have readily dealt with any query raised about authorisations, and have explained to me the processes which led to applications. On a sample basis I looked at the whole documentation relating to the need for particular NZ Security Intelligence Service warrants.
9. I am satisfied that each agency treats the authorisation process with care and have seen nothing to suggest that any interception authorisation fell outside the statutory authority, or that the procedures used are likely to have led to a wrong decision.
10. Under this head, I should indicate that both agencies invited me during the year to express a view about the legality of particular interceptions. In each case my view was followed: one interception did not proceed; the other became the subject of an application for authorisation. It is in my view significant that the query as to legality in both cases arose and was pursued within the agencies. In addition, on another occasion my view was sought in general terms about the legality or propriety of interception of particular information. Since my broad function is to assist the Minister responsible for an intelligence and security agency in the oversight and review of that agency I have thought it appropriate to express a view in such circumstances when asked.

Overseas Relationships

11. It has become the practice for representatives of Intelligence Review Agencies to meet in a short conference every two years. I attended the conference in Washington in October 2004. The next is to be in South Africa in 2006 and an offer has been made for New Zealand to host such a meeting in 2008. Not all the review bodies are stand-alone Inspectors-General as in New Zealand. In some countries review is provided only at parliamentary level; in others the Inspector-General operates within the intelligence agency. The range of review activities also differs from country to country. It is helpful for people engaged in the review task, who are relatively few in number, to meet periodically.
12. During the year at the request of the Chairman of the Commission I had a discussion with representatives of the Maher Arar Commission in Canada which is reviewing a particular case, but also the question of oversight of activities of the Royal Canadian Mounted Police in the area of national security. The Commission is considering both domestic and international forms of oversight.

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Vetting Complaints

13. The Inspector-General's relevant function is to investigate a complaint by a New Zealand person that he, she or it has or may have been adversely affected by an act, omission, practice, policy or procedure of an intelligence agency. In the vetting context, I have taken the statutory provision as meaning that I can consider whether there has been adequate and proper enquiry during the vetting process and whether, on the information available to the NZ Security Intelligence Service, its response to the Government body which sought the enquiries should be seen as reasonable and fair, or on the other hand, wrong or unreasonable or unfair to the candidate in some material respect. Sometimes enquiry makes it seem advisable that there should be further vetting enquiries. In no case that I have examined have I come to the view that the Service failed to make proper enquiries or made wrong judgments on the information available to it, but I did suggest review of two aspects of the Service's practice.

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Sunday Star-Times Allegations

14. In November 2004 the Sunday Star-Times reported allegations that NZ Security Intelligence Service agents had been targeting and obtaining intelligence about Māori people and organisations for political purposes. I received a complaint about that from Mrs Tariana Turia MP. In my view, the allegations were not only of a breach of the law, but also of impropriety on the part of the Service. The Inspector-General of Intelligence and Security Act requires that I have the consent of the Minister in charge of the Service for an enquiry going beyond legality and into the area of propriety. I sought and obtained that consent from the Prime Minister as Minister in charge of the NZSIS.
15. My letter reporting to the Prime Minister and the full report relating to unclassified material has been made available publicly. My conclusions were that the newspaper's informants, including the one who was supposed to have been involved in the activity, were not credit worthy and that the allegations were not true.

Security Risk Certificate: Ahmed Zaoui

16. Litigation continued about this matter until judgment was given by the Supreme Court of New Zealand on 21st of June 2005. That judgment covered considerations to be taken into account in the Inspector-General's review, and material which may be taken into account. Substantially, the views of my predecessor on those matters accorded with what the Supreme Court has decided. The review has been taken up again. How long it will take to complete cannot presently be reliably assessed.
17. During the year, after consulting the Attorney General as the senior Law Officer, I arranged for a Queen's Counsel to be briefed to act in the role which has been described in the United Kingdom as a "special advocate". In cases of this sort, and in this one, the giver of the security risk certificate may rely upon information access to which is restricted for reasons of security. The subject of the certificate and his or her lawyers are not supplied with that information.

18. Different countries deal in different ways with the problem of a person suffering detriment in this way but not being told why. The appointment made in New Zealand has some analogy with what is done in the United Kingdom. Counsel who is able and willing to be security cleared is engaged by the Inspector-General. He (in this case) is given access to the classified material. Counsel's task and instructions are to make independent submissions on behalf of the person concerned, particularly in respect of the classified material. The special advocate may not convey to the person concerned what is in the classified material or receive instructions based on it from the person concerned. In that respect the special counsel's work is not done in accordance with the way any lawyer normally acts and is professionally required to act. That has been accepted overseas as a significant disadvantage. The positive aspect of such an appointment is that the person concerned not only has the assistance of counsel who have normal access to him or her, but also has the benefit of scrutiny of and submissions on relevant material by an experienced counsel acting independently. As a corollary, the Inspector-General has the assistance of those submissions in the task of weighing up the questions which arise under Section 114I(4) of the Immigration Act 1987:

- whether the information which lead to the making of the certificate included information that was properly regarded as classified security information;
- whether that information is credible, having regard to the source or sources of the information and its nature, and is relevant to any security criterion;
- whether when a relevant security criterion is applied to the person in light of that information, the person in question is properly covered by that criterion; and
- thus whether the certificate was properly made or not.

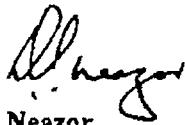
19. However valid the criticisms of this part of the process may be, something of the sort is needed to balance the needs of security with the provision of natural justice to the person affected.

Servicing

20. I have been provided with satisfactory accommodation and staffing for day to day needs. The Ministry of Justice has provided assistance as a supporting agency whenever asked to do so. On the two occasions when it was necessary or advisable, I engaged barristers in private practice to give me legal advice or representation. I see no present need for any expansion in the office. The thrust of the Inspector-General of Intelligence and Security Act has been to provide oversight of the intelligence and security agencies by a person of suitable background and experience. In every case, the judgment of the office-holder is what is looked for. At this stage, if assistance is needed it should be able to be obtained for the occasion, subject to the statutory direction that regard must be had to the requirements of security in the exercise of the Inspector-General's function, personally or with the assistance of other people – ss10 and 13 of the Inspector-General of Intelligence and Security Act.

Funding

The provision of funds for the Inspector-General's work is arranged as agent by the Ministry of Justice. The cost of my operations for the year as advised by the Ministry has been \$200,500.00.



D P Neazor
Inspector-General

August 2005

APPENDIX

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 authorized 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.

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 P.O. Box 5609, Wellington. The telephone number is 04 474 0677 and the fax number is 04 474 0674. 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.