



## *Inspector - General of Intelligence and Security*

### **PRELIMINARY REPORT ON THE GOVERNMENT COMMUNICATIONS SECURITY BUREAU'S INTERNAL RULES FOR THE COLLECTION AND REPORTING OF FOREIGN COMMUNICATIONS AND ANY ADVERSE OR IMPROPER IMPACT ON THE PRIVACY OF NEW ZEALAND CITIZENS**

Pursuant to the provisions of section 11 of the Inspector-General of Intelligence and Security Act 1996, the Prime Minister, Rt Hon J B Bolger requested that I undertake an inquiry into:

- a) the validity and appropriateness of the GCSB's internal rules for the collection and reporting of foreign communications, and
- b) the adequacy of the safeguards for ensuring that only foreign communications are collected.

The Prime Minister in making his request recorded that he was seeking reassurance concerning the operating methods, procedures, and rules that the GCSB has in place to ensure that its operations and activities are at all times lawful, proper, and have no adverse or improper impact on the lives of New Zealand citizens. I was requested further to report on the adequacy of, and degree of the compliance with, those measures.

Those measures are collectively described as collection and reporting rules. Similar though not identical rules apply within the foreign intelligence community with which GCSB has particular links namely the National Security Agency US, Communications Security Establishment Canada, Defence Signals Directorate Australia and the Government Communications Headquarters United Kingdom. Those measures provide a background for a consistent and common policy and operation in the collection retention and reporting of foreign signals communications. It is appropriate to observe here that those measures are justifiably subject to security classification of a high level which preclude, for national security reasons, any public release.

This is a preliminary report. It is not a final report for two reasons. The first of these is that the GCSB in collaboration with the Officials' Committee for Domestic and External Security Coordination is in the process of reviewing its collection and reporting rules. It is I believe, extremely unlikely that the substance and overall effect of those rules will change, but until the review has been completed and I have considered the effect

of that review I am unable to conclude the inquiry. The second reason for not making a final report is that the inquiry arises out of the Government initiatives announced last year to enhance the foreign signals intelligence collection capability of the GCSB by constructing a second antenna at Waihopai and to extend the authority of the GCSB to collect foreign voice communications. The latter was attended to by the making of the Crimes (Exemption of Listening Device) Order 1997. That exempted the GCSB's station at Waihopai from the provisions of Part IX.A of the Crimes Act 1961 for the purpose only of intercepting foreign voice communications containing foreign intelligence. At this stage the GCSB has not yet embarked upon its projected procedure for voice interception and has not yet settled its rules of procedure or standard operating procedures for that purpose. Again I wish to wait until I have considered these new developments before making a final report.

I believe it is useful to make this preliminary report. It will deal with the current situation embedded as it is in a long established standard and practice in which the New Zealand operations and activities of the GCSB and its collection and reporting rules reflect and correspond with similar rules of the other members of the intelligence community with which New Zealand is allied.

The mandate of the GCSB is to satisfy the foreign intelligence requirements of the NZ Government. The focus of its intelligence activities is restricted to foreign intelligence. It is not concerned with and does not collect information that is not foreign intelligence. It does not intentionally intercept the communications of NZ citizens or collect information of a domestic nature. The collection and reporting rules and the elaborate procedures under which GCSB operate promote those underlying policies and functions. They also provide for the handling of information collected unintentionally.

The GCSB has no authority or enabling power to intercept private communications in NZ between NZ citizens. To do so would be in breach of the law. Limited controlled rights to intercept private communication are available, for example, to the Police under the Misuse of Drugs Act 1975 and to the NZSIS under the New Zealand Security Intelligence Service Act 1969. The GCSB has no such power or authority.

GCSB collects, assesses, produces reports and disseminates foreign intelligence to meet the national foreign intelligence requirements of the New Zealand Government and its agencies. It also has subsidiary functions which assist its collection capability by signals research identification and analysis of signal sources and devices. None of that impinges on the privacy or security of New Zealand citizens.

Collection is made from electronic communication transmitted through satellite, radio waves or other open means. GCSB does not intercept private or other communication transmitted by telephone land lines. It

does not tap telephones. It does not intercept communication made by voice or other means within earshot or eyesight. Its function is to extract from open broadcast transmission those matters of foreign intelligence which it is tasked to do by the NZ Government.

Modern communication by means of radio and satellite is open. Anyone with an appropriate receiver can tune in and listen to any radio broadcast transmitted from anywhere in the world. Anyone with an appropriate satellite dish and equipment can tune in and listen to any signal transmitted through any satellite station in orbit in space.

GCSB operates a satellite monitoring station at Waihopai near Blenheim and a radio receiving station at Tangimoana near Foxton. These are both capable of receiving and collecting foreign intelligence. The equipment is equally capable of receiving signals transmitted by radio and satellite which do not include foreign intelligence and which are domestic concerning and involving NZ citizens.

In order to ensure that the GCSB sticks to its mandate and does not breach the law or trespass into domestic communications between NZ citizens it has set up and operates under its collection and reporting rules.

The collection and reporting rules have two overriding and underlying principles. The first is that New Zealand citizens or New Zealand entities are not to be deliberately targeted that is to say communications between New Zealand citizens are not deliberately selected for collection, assessment and consideration. The second principle is that where there is collection of intelligence or material in which New Zealand entities are identified their identification is suppressed in the finished intelligence reports disseminated by GCSB. These two principles may be excepted in search and rescue operations and in the search and identification of signal sources and devices. The second principle as to identification may also be excepted in certain circumstances where the information in question relates to terrorism and other criminal activities or, with approval at the highest level, when lack of identification would significantly detract from the intelligence value of the report.

The importance of these rules and the obligation to comply with them permeates the whole of the procedures and operations of GCSB. Every member of the staff involved in the operations of the Bureau is not only cognisant of the collection and reporting rules but acts at all times under their sanction. In the course of my discussion with staff members at the stations I was struck by their expressed concern about the primacy of the collection and reporting rules in all their dealings with signals. This is not a perfunctory regard but a deeply entrenched concern that the collection and reporting rules be complied with at all times.

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The importance of the rules is underlined by the fact that all persons involved in the collection, analysis, production and dissemination of foreign intelligence are required to read and to acknowledge the reading of them. That obligation is reviewed each year. Compliance with the rules is an express term of the conditions of service of the various officers whose responsibilities expressly are the collection, assessment and reporting of foreign intelligence. They are required to ensure that their activities and operations do not violate the privacy of New Zealand citizens and are conducted in compliance with the collection and reporting rules. These rules then become a constant standard by which the operations of collection analysis and production of intelligence is carried out.

Collection of intelligence is a matter of selection of material which is required as part of the national foreign intelligence requirements of the New Zealand Government. In making the selection the process involves investigation and review of the raw material to ensure, before the selection process is completed, that it is foreign intelligence and that New Zealand entities are not being deliberately targeted. There is continual checking on a random but regular basis or on a regular sampling basis to ensure that the rules are not transgressed. If transgression occurs then an immediate correction is made and any material which is identified as being a New Zealand communication is destroyed.

The selected material is again scanned either on a sampling basis or in some instances in a total scan basis. The principal purpose of this scan is to ensure that the collection and reporting rules are complied with and that the message does not contravene them. In these areas of selection and scanning I am satisfied from my inquiries and discussions with the officers involved that they are inclined to err on the side of safety that is to say that if there is any question or doubt the message will be rejected and steps taken to ensure no repetition. Evidence and indeed proof of the efficiency of this processing is that there are few examples of inadvertent collection of non-foreign communication. The examples that have been mentioned to me on more than one occasion are always the same, they have stuck in the memory of the operators as unusual and remarkable events. I am satisfied that in these few cases there was no adverse effect on any New Zealanders and the corrective measures were taken quickly and effectively.

The material that then flows from those processes goes to the section which considers and as appropriate reports upon the material. At this stage the material is read both for its value in respect of its content and for the collection and reporting rules. There is an elaborate process of checking, editing and rechecking in the preparation of the final report under which the collection and reporting rules are repeatedly considered and reconsidered.

There are occasions when a New Zealand entity, a real person or an artificial one, is mentioned, named or identified. It is in this area that the name and identity is suppressed. Again great care is taken in this area and it is a very infrequent occurrence which involves the inadvertent disclosure of a name. There is a further

procedure involved which ensures that if inadvertently some infringement in identification occurs then the offending message is recalled. If it has been disseminated an order for destruction is sent to those parties to which it was disseminated. A replacing message, if appropriate, is then sent which is independently disseminated and not linked in any way to the previous message.

The operation of the GCSB is highly technical. The raw material of collections is recorded on computers. It is in effect not until the reporting stage that hard copy is produced. Hard copy, that is the final report as disseminated after the sifting process, is retained. The media on which all the other intelligence is recorded is used again thus destroying the original record.

The procedures adopted and required for selection, analysis, scanning and reporting are in themselves simple though computers are used. They are easily understood and operated. The procedures involve a number of checks and reviews which are designed to exclude errors.

For the purpose of this inquiry I have relied on information I obtained in visits to the stations at Waihopai and Tangimoana and the briefings I received on the operations in each station. I have discussed with a number of staff there the operations and their understandings of the collection and reporting rules. I have visited GCSB headquarters in Wellington and have discussed with staff there the details of collection and reporting of foreign intelligence. I have considered a number of documents pertaining to the definition and operation of the collection and reporting rules.

I am satisfied that I have been given all the information I asked for. I was impressed by the willingness, and indeed the eagerness of the staff to explain and to disclose to me as fully as they can all the intricacies and details of their operations and procedures. I am sure that nothing was done to conceal anything from me or to mislead me. I am convinced that at all levels the operators and officers in the GCSB are anxious to ensure compliance with the collection and reporting rules. Not to satisfy me but to satisfy their own standards and the standards of the community within which they work both nationally and internationally.

I am satisfied that the collection and reporting rules are valid and appropriate. I am satisfied that the operation of those rules more than adequately ensures that the GCSB collects and reports on foreign communication only. I am sure that the rules and their operation have no adverse or improper impact on the privacy or personal security of New Zealand citizens.

L M Greig  
Inspector-General of Intelligence and Security

24 June 1998