



Inspector - General of Intelligence and Security

FINAL 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 then 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.

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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. 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.

I made a preliminary report to the Rt Hon Jenny Shipley the Prime Minister, which was released publicly on 24 June 1998.

I had not been able to make a final report at that time for two reasons. The first was that the GCSB in collaboration with the Officials' Committee for Domestic and External Security Coordination was in the process of reviewing its collection and reporting rules. The second reason for not making a final report was that the inquiry arose out of the Government initiatives, announced in July 1997, to enhance the foreign signals intelligence collection capability 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 that stage the GCSB had not embarked upon its projected procedure for voice interception and had not settled its standard procedures for that purpose.

New collection and reporting rules have been promulgated by the GCSB. The GCSB has commenced the collection of foreign voice communications and has established its operating procedures. I have examined and reviewed the documentation and the operations. I have discussed with officers of the GCSB details of the documentation and the operations.

This final report is to be read with my preliminary report. I do not repeat here all that was said in that preliminary report but it is useful I think to restate some of the fundamental points that I made in it.

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.

The 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 telephone lines. It does not intercept communication made by voice or other means within earshot or eyesight. In its operations at Waihopai and Tangimoana it extracts from open broadcast transmission those matters of foreign intelligence which it is tasked to do by the NZ Government.

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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.

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.

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I have perused the new collection and reporting rules and compared them with the rules they replace.

The underlying principles mentioned above continue to be at the forefront of the new rules. There is an express policy that the purpose of the rules is to ensure that GCSB operations do not compromise the legitimate privacy interest of New Zealanders both human and artificial. The focus remains as before on foreign communications.

The wording of the rules has been improved, clarifying the policy and the practice. Some areas have had their wording tightened and possible ambiguities resolved. In essence the rules are more easily understood and will be easier to apply.

The rules apply to all types of information collected, processed and disseminated by the GCSB including foreign voice communications.

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The collection and reporting of foreign voice communication is thus subject to the same rules and to the same entrenched concern that has pervaded the day to day operations of the GCSB staff in the collection and reporting of other electronic non-voice communication.

I have inspected the operation of foreign voice communication collection. Before any particular operation is commenced there is a mandatory check to ensure that the communication is a foreign communication and that it complies with the collection and reporting rules. In the course of any operation there is a continual check of these pre-conditions.

That process of checking is repeated when the material is being considered and reported upon.

There is in my judgement a well designed process which is effective to ensure that the collection and reporting rules apply and that there are effective safeguards to achieve the purpose and policies of these rules.

I am satisfied that the collection and reporting rules are valid and appropriate and have been improved since I made my preliminary report. These apply to voice communication in the same way as they apply to other electronic communication.

I am satisfied that the application of these rules by the GCSB and its staff and their operating methods and procedures are effective to ensure that the GCSB collects and reports on foreign communications only.

The purpose of the rules as expressed is to ensure that GCSB operations do not compromise the legitimate privacy interests of New Zealanders. I am satisfied that the rules and their application achieve that purpose. The operations and activities of the GCSB do not adversely or improperly impact on the lives of New Zealanders.


L M Greig

Inspector-General of Intelligence and Security

27 April 1999