



Inspector - General of Intelligence and Security

REPORT ON INQUIRY INTO NATIONAL CONTROL OF SIGINT COLLECTION AND REPORTING BY THE GOVERNMENT COMMUNICATIONS SECURITY BUREAU

- 1 This inquiry was made at the request of the Prime Minister, the Minister in charge of the GCSB pursuant to s11(1) of the Inspector-General of Intelligence and Security Act 1996. The focus of the request was the compliance by the GCSB with the law of New Zealand and the propriety of its activities.
- 2 The express terms of the request by the Prime Minister in her letter to me dated 12 August 1998 were as follows:

"[to] enquire into the manner in which the signals intelligence collection operations of the GCSB generally - and specifically the Waihopai and Tangimoana facilities - are conducted, paying particular regard to:

- a the extent to which the GCSB's collection and reporting activities are driven by the foreign intelligence requirements of the New Zealand government; and
- b the arrangements whereby New Zealand's SIGINT facilities are used to meet the intelligence requirements of our intelligence partners."

In expansion of this request the Prime Minister recorded that she sought reassurance that:

- "a New Zealand's SIGINT collection resources are directed principally to meeting the foreign intelligence needs of the New Zealand Government (rather than, as alleged, the intelligence needs of our partners);
- b New Zealand retains national control over its SIGINT collection and reporting functions; and
- c the extent of the GCSB's cooperation with its international intelligence partners is reasonable and consistent with New Zealand's national interests."

At base and having regard to the practicalities the Prime Minister sought assurance that the New Zealand foreign signals intelligence operations are conducted in such a way as to promote our national interests in the broadest sense.

- 3 In making her request to me the Prime Minister adverted to "public allegations to the effect that the operations of the GCSB - and particularly its stations at Waihopai and Tangimoana - are insufficiently subject to New Zealand's national control, but are instead operating primarily for the benefit (and even at the direction) of our international intelligence partners".

These allegations appear to have international currency. In an article published in 1998 in the Italian newspaper Il Mondo, under the by-line of Claudio Gatti, New York, with the head line "Licence to spy", there are these passages, as translated into English:

"It is a well-known fact also that there is one player who is smarter and stronger than anyone else in this game: the United States. Up until now, however, only a very few experts were aware of the existence of a global monitoring network with extraordinary capabilities and range that the United States manages with the cooperation of a further four English-speaking countries: Britain, Canada, Australia, and New Zealand. This fact has now been officially revealed in a very recent report filed by the Technological Options Assessment (STOA), a department of the European Parliament's General Research Directorate. According to this report, --- called "An Assessment of Technologies for Political Control," [which] does not use any half measures: "Throughout Europe all phone calls, faxes, and e-mail messages are regularly intercepted, and from the British strategic centre of Menwith Hill any information of interest is sent to the Headquarters of the National Security Agency, the US electronic espionage service." (my emphases).

After referring to discussions with Nicky Hager the author of "Secret Power" the reporter states:

"The third and final element in the UKUSA system consists of a grid of networked supercomputers, that have been christened "dictionaries." They are capable of absorbing, examining, and filtering vast quantities of digital and analog messages in real time, of extrapolating those containing one or more of the preprogrammed key words, of decoding them, and of automatically sending them to the intelligence headquarters in each of the five countries interested in any messages that include the predetermined word." (my emphasis).

The article refers to "a well known fact that the telecommunications system used every day by individual private citizens... is not safe" and uses phrases such as "incredible communications vacuum cleaners" and "indiscriminately intercept unimaginable vast quantities of communications".

Closer to home in a review of the book Secret Power by Nicky Hager published in 1996, Jim Rolfe said:

"More problematic is the way in which New Zealand facilities can be used automatically to intercept targets of interest to other states, but not necessarily to New Zealand. The mere fact of information sharing and the use by friendly states of New Zealand's facilities with New Zealand's agreement can not in itself be of any concern. It is possible, though, that the New Zealand facilities could be used to intercept material from a state friendly to New Zealand (not unusual in itself) and the material subsequently used in ways which would be against New Zealand's interests. There seems to be little that can be done about that, short of withdrawal from the whole intelligence sharing arrangements." (My emphasis). (NZ International Review January/February 1997 Vol.XXII No.1 p.24).

He went on to say that the potential problem might be more imaginary than real and gave reasons for that view.

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What may be implied from these examples and what indeed has been claimed is that some of our allies and partners in the intelligence community wield a greater influence over New Zealand intelligence activities and operations than the New Zealand Government.

- 4 It is I think plain that unless intelligence gathering activities are carried out in isolation there can be no absolute national control. The essence of collaboration and cooperation is to give up part of that absolute control in the interests of the benefit flowing from the results and products of that collaboration. Sharing and pooling of information is always beneficial. In the present day with rapid global communication and intelligence and security interests having a wider ambit than the merely domestic it is unlikely that even the largest countries can adequately meet their intelligence requirements without collaboration with others. Certainly New Zealand on its own cannot cover the globe and collect the intelligence which may be of relevance to its interests.

What is plain and obvious is that allies such as USA and UK are greatly more powerful than NZ, have much wider intelligence interests and requirements and have intelligence gathering capabilities far beyond our own. In the intelligence community as much as in any other community the smaller weaker members have less influence but that is not to say that those weaker members diminish or cede any of their sovereign independence and control over their own affairs and activities. Indeed the New Zealand intelligence community makes a small but important and appreciated contribution to the wider community with which we are allied.

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I am satisfied from my inquiry and from my knowledge of the GCSB that it is not managed controlled or influenced by USA or other of its intelligence partners contrary to our own national interests.

5. I believe it may be appropriate to deal with the allegation that private communications of New Zealanders are targeted by this "vacuum cleaner". It is not directly within the ambit of this inquiry but it has relevance as part of the implication that NSA or GCHQ are trawling the taxi calls, cell phones, faxes and email of all and sundry private citizens.

As I have reported on my inquiry into the internal rules of GCSB for the collection and reporting of foreign communications the focus of the GCSB is on foreign communication and it is a cardinal rule that it does not deliberately intercept the communications of New Zealand citizens or collect information of a domestic nature. I am satisfied that the GCSB is scrupulous in ensuring that its activities comply with these rules. I am sure that the GCSB operations have no adverse or improper impact on the privacy or personal security of New Zealand citizens.

The question might be asked whether other of our intelligence partners are so concerned about the privacy and security of New Zealand citizens. The answer is that they are. Each of the allies operate their collection and reporting of foreign communications under rules which are independently formulated and differ but which have similar underlying principles to those of the GCSB. These then form part of the

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links between the intelligence organisations of US, Canada, Australia, UK, New Zealand and create reciprocal rights and duties.

In paragraph 21 of my Annual report for 1997-98 I said this:

"These links have been noted in the Annual Report of the Communications Security Establishment Commissioner in Canada and in the reports of the Inspector-General of Intelligence and Security in Australia. In the Canadian report it was noted that "a corner stone of CSE's Sigint policies deals with safeguarding the privacy of Canadians". Reference was made to the corresponding procedures in Australia and New Zealand, United Kingdom and the United States, and the reciprocal undertaking to ensure that the corresponding agencies in each of these various countries "does not target each others' communications at each others' behest. In other words, they do not do indirectly what would be unlawful for them to do directly"¹. I can confirm that such undertaking applies equally to the GCSB."

I am satisfied that neither the GCSB or any of the agencies with which it is allied directly or indirectly intentionally intercept the private communication of New Zealand citizens. Provision is made to ensure the correction of unintentional interception. There are adequate internal controls within the GCSB in New Zealand to ensure compliance with this. That applies with equal effect to the activities of the GCSB carried out at the request of its intelligence partners.

6 I turn then to the kernel of this inquiry which is the control of the GCSB SIGINT collection and reporting and the extent if any by which those activities are driven by its partners and their governments needs and priorities for foreign intelligence. I deal with this by stating a number of propositions.

Proposition 1: There is no access to the collection systems at Waihopai or Blenheim other than by authorised GCSB staff. No one but authorised GCSB staff access or activate the systems.

Proposition 2: Requests for "tasking" of those facilities by an intelligence partner are made through GCSB HQ.

Proposition 3: Requests for tasking are scrutinised and approved by authorised GCSB staff.

Proposition 4: Approval requires satisfaction that the task is justified as foreign intelligence and that it does not contravene the collection and reporting rules. There are mandatory procedures to ensure, before executing the request, that it will not compromise the legitimate privacy of New Zealand persons and entities.

Proposition 5: There are comprehensive procedures for the continued regular checking of any material collected or reported upon to ensure that it continues to qualify as foreign intelligence and that the collection or reporting complies with the rules.

¹ Annual Report 1997-1998 of the CSE Commissioner, P3

Proposition 6: In all cases the tasking conforms with the New Zealand requirements for foreign intelligence as set out in the current New Zealand Requirements for Foreign Intelligence.

Proposition 7: These propositions apply equally to the intelligence collection and reporting activities of the GCSB carried out at Waihopai and Tangimoana and whether on its own behalf or at the request of its intelligence partners.

These propositions are my findings based on my discussions with GCSB staff, perusal of the documents that I have required from them and witnessing actual procedures. Although I have been unable to check some of the technical matter the assurances I have been given from the GCSB staff are corroborated by other material available to me.

7 A considerable quantity of foreign intelligence is transmitted to NZ's intelligence partners both in the form of the actual foreign communication and in the form of reports prepared by GCSB staff from the collected communications. All of it is dealt with in accordance with the 7 propositions. A much greater quantity of foreign intelligence is received by GCSB from its intelligence partners.

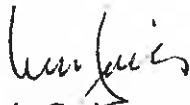
8 New Zealand's SIGINT collection facilities are managed and controlled by GCSB alone for the principal purpose of meeting New Zealand's foreign intelligence needs.

The facilities are useful to and are accessible by the intelligence agencies of New Zealand's intelligence partners. Access to the facilities and to the intelligence material collected is at all times under the control and supervision of GCSB.

Care is taken to ensure that private communications of New Zealand citizens are not intercepted and are not available to the intelligence partners.

There is a substantial balance in favour of New Zealand and its intelligence requirements in the collaboration and sharing of information and intelligence between the partners.

The cooperation between the GCSB and its intelligence partners, both in its procedures and operations, adequately protects the privacy interests of New Zealand persons and entities and is beneficial to New Zealand's national and international interests.



(Sgd) Laurie Greig
Inspector-General of Intelligence and Security

28 April 1999