



Te Pourewa Mātaki
Inspector-General of
Intelligence and Security

Review of NZSIS counter-terrorism and violent extremism discovery work

Public Report

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INTRODUCTION

1. I have reviewed the New Zealand Security Intelligence Service's (NZSIS or the Service) approach to discovery work for counter-terrorism and violent extremism purposes (CT discovery).
2. Discovery work is undertaken by intelligence and security agencies to further their understanding of potential threats to national security. It may involve identifying previously unknown threats motivated by a known ideology, or identifying unknown threats arising from unknown ideology. Compared to the investigation of leads referred to the NZSIS, discovery work is more exploratory and uncertain. The Service's CT discovery work was of particular interest to the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain.¹
3. My review sought to answer the following questions:
 - 3.1. What has been the Service's approach to CT discovery and how has it developed since 2019?
 - 3.2. What collection methods does the Service use for CT discovery?
 - 3.3. How has the Service dealt with its obligation to respect freedom of expression when undertaking CT discovery?

WHAT HAS BEEN THE SERVICE'S APPROACH TO CT DISCOVERY?

4. To understand how the Service has approached target discovery my office reviewed a number of CT target discovery projects from 2018 to 2023, alongside reviewing the Service's supporting strategic documents. The details of these projects are classified. In my classified report I described some of these projects and the different approaches the Service had taken to understand the nature of a threat or discover particular individuals of concern.
5. I found that the Service's approach to CT discovery has developed considerably since 2018 and is continuing to develop.
6. Initial projects in 2019 generally focussed on identifying potential persons of interest by looking at existing intelligence holdings and engaging with domestic and international partners to identify leads based on profiles of individuals that might pose a threat. The scope of this discovery work was relatively limited.
7. From 2020 to 2023, the Service began more projects focussed on less-understood groups or communities, to understand what normal or 'baseline' activity is within these groups (eg what expressions and rhetoric are common) and identify indicators for behaviour that could represent a national security threat.
8. I found the Service using a variety of methodologies for CT discovery and continuing to assess and develop its approach as new ideologies and threats emerge. Given the complexities in CT

¹ Ko tō tātou kāinga tēnei: *Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* Vol 3, Part 8.

discovery work, it is understandable that the Service's approach is still maturing and flexibility is necessary.

9. Integral to this work has been the development of internal resources to guide CT discovery work. These are designed to help Service staff identify and assess behaviours of concern and what risk to national security they might represent.² In my classified report I considered these CT discovery resources in detail.

WHAT INTELLIGENCE COLLECTION METHODS ARE USED BY THE SERVICE FOR CT DISCOVERY?

10. I found the Service has used a wide variety of collection methods to conduct CT discovery work. Most tended to be at the lower end of intrusiveness, though at times limited warranted activities have been conducted. The details of the methods used are classified and are not able to be included in this report.

CT DISCOVERY AND FREEDOM OF EXPRESSION

11. A key question for this review was whether and how protection for freedom of expression in the Intelligence and Security Act 2017 (ISA) affected the Service's CT discovery work. The Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain had expressed concern that section 19 of the ISA potentially limited these activities.³ Section 19 states:

Activities of intelligence and security agency not to limit freedom of expression

The exercise by any person in New Zealand or any class of persons in New Zealand of their right to freedom of expression under the law (including the right to advocate, protest, or dissent) does not of itself justify an intelligence and security agency taking any action in respect of that person or class of persons.

12. Generally, from my review of Service discovery projects I find the Service has taken a carefully constructed approach to assessing extremism and violent extremism and identifying individuals or groups displaying behaviour of concern. Section 19 does not appear to be a barrier to the Service undertaking extensive discovery work.
13. In discovery work there is some risk of concerns under section 19, however, because of the focus on identifying "unknown unknowns". To do this it is necessary to estimate where expressions of violent extremism might be found. Often this will be in online forums or on platforms where extreme views are expressed. Extreme views are not in themselves necessarily of national security concern if they have no prospective connection to violence. Much activity in the initial phases of CT discovery, therefore, will be in relation to people not of intelligence interest who are exercising their right to express themselves – perhaps in extreme terms, but without any real intention to act accordingly.

² In October 2022, the Service published an unclassified version of one of its resources on its website, titled "Know the signs".

³ "Above n 1, Vol 3, Part 8, Section 14.10 at [109]-[115]."

How does right to freedom of expression apply to the Service's work?

14. For there to be any question about NZSIS activity affecting freedom of expression there must be protected expressive behaviour at issue.
15. The agency's action must then relate to a person or class of persons. General research into a particular type of extremism, for example, or asking partner agencies for information about that extremism, is not action in respect of a particular person or class of persons, even if information about individuals arises. Similarly, conducting general internet searches⁴ on that type of extremism is broad enough so as to not be action in respect of a particular person or class of persons, even if the results returned might relate to people, such as identifying a social media group where people discuss that ideology. Nor is joining a social media group to determine its nature and whether it is relevant to the Service's project and functions.
16. The 2023 ISA reviewers observed that:⁵

Whether a protest is simply a protest or involves as well activities that justify the attention of the Agencies will have to be determined in the particular circumstances of the protest. That will depend on factors such as the objectives of the protest, its nature, the surrounding circumstances and the way the protest is conducted. Clearly, given s 19 and their obligation to act in a politically neutral way, the Agencies should take a cautious approach in such circumstances. But in our view, s 19 does not prevent an Agency from investigating protesters if there are circumstances that raise a legitimate question as to whether protesters are considering activities that would threaten national security.
17. The reviewers also considered that section 19 would not prevent the agencies from, for example, entering an internet chat room known to host extremist and violent content to "see what was happening and, if someone of interest was identified, looking into that person's background."⁶ I agree with the reviewers' comments about entering an extremist chat room to assess content, however looking into a person's background could involve potentially intrusive investigation and may not be justified in the circumstances. It would likely be more appropriate in the circumstances that the Service look further into that person's online presence to see if it presented a case for deeper investigation.
18. However, once the Service has identified a particular group of interest that it wants to take action on, such as collecting the content of discussion, revisiting the group regularly to monitor its activities or joining the group under a fictional persona, the Service will need to have a connection between what has been expressed and a potential threat to national security, eg a threat of violence. This will be dependent on the circumstances of the case, but the Service will need to record, when it forms a view, what the national security concern is and why it has arisen.
19. Using internal resources like the ones developed by the Service can assist with the assessment of whether expressions have a relevance to national security. Resources that have indicators that are correlated with risks or threats with a strong evidential basis can justify concern arising from expressive behaviour, for example expressing a desire to conduct an attack in support of

⁴ Such as through the use of Google search.

⁵ Terence Arnold and Matanuku Mahuika *Taumarū: Protecting Aotearoa New Zealand as a free, open and democratic society – Review of the Intelligence and Security Act 2017* (31 January 2023) at [5.104].

⁶ At [113].

a violent extremist ideology. If the Service were to conduct searches looking for individuals who have expressed such a desire, or were to monitor and collect on an individual's activities online who has previously expressed that desire, this does not give rise to concerns under section 19. In that case there is a clear link between the expression and the potential for national security related action beyond expression, in this case violence. These kinds of indicators can rightly be a basis on their own for further Service action.

20. However, many indicators predicated on expressions may not be sufficient to enable the Service to take action, due to section 19. For example, merely expressing support for an ideology assessed by the Service as extremist would not seem to be sufficient. The correlation between the indicator and a threat to national security is not as strong. The Service would need a combination of other behaviours to justify why that person's expression has a level of national security concern behind it.
21. For projects aimed at the early phase of discovery, it seems less likely infringement on freedom of expression will be a concern if the Service is undertaking broad, untargeted and minimally intrusive research into a potential extremist threat, eg reviewing domestic and international reports, considering existing intelligence holdings, conducting general open source research. This could include taking actions such as identifying particular groups or forums where violent extremist ideology is expressed and assessing their relevance to the project.

How the Service considered freedom of expression in CT discovery projects

22. An issue arises in these early discovery phases when the Service sets out to collect and retain information on individuals or broad groups at the same time that it is trying to understand the nature of the threat and develop evidence-based indicators. In such instances the Service will need to have a clear justification as to why it is collecting on certain groups or individuals. This applies even if the collection is from open sources, as freedom to express views publicly is fundamental.
23. In my classified report I detailed two examples of collection activities for discovery projects where the Service collected information about the online activities of individuals and groups who were parts of fringe political movements. The collection was relatively limited and was at the low end of intrusiveness. However, I was concerned that there did not appear to be any record of consideration of what expression or activities of the group's members warranted the Service's activity.
24. To target these groups I would have expected to see a targeting justification as to the connection between the rhetoric or behaviour of the party and a risk to national security, as well as an analysis of the group, such as how many members are part of the group and any other understanding of the members. The political nature of the group should also be taken into account. This seemed to be what the Service's internal guidance anticipated when considering the targeting of groups, but the request to conduct the activities I reviewed did not set out this analysis.
25. I expect to see the Service taking care, when scanning for possible national security threats, to avoid any appearance of singling out groups and people for attention purely because they have

expressed strong or unorthodox views. I think it obvious it should be particularly careful before singling out specific political parties, lobby or campaign groups, or individuals prominent for their advocacy, protest or dissent. Section 19 of the ISA is directed at protecting such activities from undue attention from the security services precisely because they are fundamental to the Act's purpose of protecting New Zealand as a free, open and democratic society. For the same reasons the agencies are required to be politically neutral.⁷ This careful justification for any intelligence gathering related to political and protest activity should be documented. I did not see this type of analysis being done when deciding to undertake a limited number of collection activities.

26. I asked the Service to explain this activity. It advised that it had relied on international examples of similar events. The Service began its open source collection to understand whether events similar to those overseas might be having a radicalising or catalysing effect towards violent extremism in New Zealand.
27. I consider that this does establish a connection between the rhetoric of the groups/individuals and a national security risk, but the connection is debatable. The activity is therefore still questionable and the Service should have set out the basis for collection information on each entity, and should have done this at the time.
28. The Service has agreed that the specific link between freedom of expression and discovery activities could be strengthened in their discovery work. The Service sees this as being able to be incorporated at the commencement of discovery projects, and supported by the usual necessity and proportionality assessments undertaken by the Service.
29. I agree that freedom of expression should be considered when a discovery project is being set up. However, I also see a need for consideration of freedom of expression for particular activities within a project. I do not see how analysis at the project planning stage would have mitigated my concerns in the instances discussed in detail in my classified report. The Service will need to consider possible conflicts between discovery projects and freedom of expression whenever they arise.

Recommendation 1: I recommend that the Service amend its process for discovery projects so that staff are required to expressly consider section 19 of the ISA at the beginning of a CT discovery project and in relation to specific collection decisions, and document this.

NZSIS' supporting resources for discovery work

30. This places importance on the Service's internal resources being fit for purpose and up to date. My review of these tools finds the results to be mixed. Many of the indicators used are logical in their inclusion and how the Service has weighted them but others seem pitched too low or described too broadly to be anything more than highly conditional indicators. Other indicators appear to be based on single instances of behaviour by previous individuals of concern,

⁷ Section 18(a)(iii) of the ISA.

apparently without analysis of whether they reliably correlate with terrorism or violent extremism.

31. The Service has identified that it needs to review these resources and has committed to doing so. I consider that these resources need to be regularly reviewed to ensure that they are not pitched too broadly or with too low thresholds to justify interest.

Recommendation 2: I recommend that the Service undertake a comprehensive review of its CT discovery resources to ensure that they are fit for purpose and that indicators are appropriately weighted.

32. The Service accepted this recommendation and work is already underway in relation to one of the Service's resources.

CONCLUSION

33. This review has furthered my understanding of how the Service has approached its CT discovery work. I have observed that the approach is continuing to develop, which is understandable given the complexity of the task and the relatively limited resources dedicated to it.
34. I have found that section 19 of the ISA has not been a barrier to the Service undertaking a wide variety of CT discovery work. Generally, I have found that the Service has had a carefully constructed approach to assessing extremism and violent extremism and identifying persons and groups of interest. However, in my review of projects, I identified two instances where I was concerned that the Service had carried out collection activity without recording the analysis I would expect about why that collection activity did not raise concerns under section 19. I have recommended that the Service amend its process for discovery projects so that staff are required to expressly consider section 19 of the ISA and document reasons for carrying out the collection.
35. I have also recommended that the Service review its CT discovery resources to ensure that they are fit for purpose and that indicators are appropriately weighted.