

## **REPORT ON USE OF EXTERNAL SECURITY CONSULTANTS RAISES PRIVACY CONCERNS**

Media Statement for immediate release - 19 December 2018

The New Zealand Privacy Foundation has read with interest the Doug Martin/Simon Mount QC report “Inquiry into the Use of External Security Consultants by Government Agencies (“the Inquiry”)

In summary:

- We support the Inquiry which has been undertaken which has led to findings which in our view reveal breaches of the Privacy Act 1993. Some of the conduct revealed could also amount to an unlawful invasion into privacy;
- We support the promotion of new standards issued by the State Services Commissioner, especially in relation to compliance with the Privacy Act;
- We believe this is a timely reminder that trust and confidence in New Zealand’s public servants and state sector agencies not only comes from meeting the State Sector Code of Conduct but following well established privacy standards; and
- We believe further work is needed on the access and use of public registers such as the motor vehicle register. There must be transparency, audit and accountability surrounding the use of public registers.

### *Background*

The Inquiry focused on two key questions:

- a. How and why have government agencies used external security consultants, and in particular have external consultants been used to carry out surveillance?
- b. What relationship have government employees and agencies had with Thompson and Clark?

This inquiry was originally commenced to consider whether an external security consultant (Thompson and Clark), under instruction by Southern Response Earthquake Services Ltd, had conducted surveillance of individual insurance claimants and whether there had been breaches of the Code of Conduct for the State Services. The inquiry broadened when Greenpeace questioned the relationship between the Ministry of Business, Innovation and Employment and Thompson and Clark and the news media discovered there were similar relationships between Thompson and Clark and the New Zealand Security Intelligence Service as well as the Ministry for Primary Industries. The inquiry included 131 government agencies and subsidiaries subject to the Code of Conduct, together with the Crown Research Institutes.

As part of the inquiry, the report writers adopted a wide definition of the terms ‘surveillance activities’ and ‘surveillance’, being any close observation of people, places, things or information, with or without the use of devices. This included closely following or tracking people in public or private places and could also extend to activities that interfere with a reasonable expectation of privacy such as joining a closed social media group under false pretences or an assumed identity.

The inquiry found there was no evidence of widespread surveillance by external security consultants on behalf of government agencies however there was evidence that some agencies had engaged external security consultants to carry out surveillance to varying degrees since 2004. The report writers found 4 Crown agencies breached the Code of Conduct in upholding appropriate standards of impartiality and objectivity in their dealings with private security consultants. The inquiry also found several agencies received information from Thompson and Clark through traditional surveillance (close observation and searches of public registers to which they had access such as the Motor Vehicle Register and the Driver Licence Register) and social media monitoring under assumed identities.

The inquiry set out the legal framework for surveillance by government agencies. Government agencies generally need a warrant or statutory authority (although there are instances where this is not the case). If the surveillance is not sanctioned by law it can amount to a criminal offence, trespass, unlawful invasion into privacy, unlawful warrantless surveillance, an unreasonable search and breach of other rights, and a breach of the collection principles under the Privacy Act 1993.

Government agencies were found, amongst other things, to have not put in sufficient privacy protections in their engagement with external security consultants.

The State Services Commissioner has issued new standards for government agencies under the heading “Information gathering and public trust” (<http://www.ssc.govt.nz/sites/all/files/SSC%20-%20Model%20Standards%20-%20information%20gathering%20and%20public%20trust.pdf>) . These standards set out the minimum expectations for how the public service should gather information or use surveillance for compliance and law enforcement. Government agencies have until April 30 2019 to develop policies on how they would use investigative tools.

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