



12 March 2019

[Redacted]

Dear [Redacted]

**Official Information Request
Our Ref: SSCOIA 2019/0021**

I refer to your official information request received on 31 January 2019 by phone for:

“copy of previous TCIL investigation report in 2008 which has been referenced on Page 4 of the State Services Commission’s Report of the inquiry into the use of external security consultants by government agencies 2018”

On 26 February 2019, we advised you that we had extended the timeframe to make our decision to 22 March 2019, due to consultations required before a decision could be made on your request.

The Report into the Inquiry into the Use of External Security Consultants by Government Agencies that was released on 18 December 2018, referenced that Thompson and Clark’s activities were last considered by the State Services Commissioner in 2008.

The State Services Commissioner at the time, warned departmental Chief Executives in February 2008 that purchasing covertly obtained information beyond what is required for statutory functions risks bringing the State Services into disrepute.

Information being released

Please find enclosed the two documents outlined in the table below that fall within scope of your request. An email that the State Services Commissioner sent to Chief Executives and a copy of a briefing provided by the State Services Commission to the Minister of State Services.

Item	Date	Document Description	Decision
1	1 February 2008	State Services Commissioner’s briefing to Minister of State Services	Release in Part
2	15 February 2008	Email from SSC to Chief Executives	Release in Part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the OIA, as applicable:

- section 9(2)(a) – to protect the privacy of natural persons, including deceased people

- section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information

If you wish to discuss this decision with us, please feel free to contact Ministerial.Services@ssc.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) and enclosed documents, on the State Services Commission's website.

Yours sincerely



Nicky Dirks
Managing Principal
State Services Commission

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1 February 2008

Minister of State Services

Contracting of Thompson and Clark Investigations Limited by the Ministry of Agriculture and Forestry

Purpose

- 1 This paper provides you with information about the use of private investigation company Thompson and Clarke by the Ministry of Agriculture and Forestry (MAF).

Background

- 2 MAF has specialist enforcement functions & responsibilities under the following pieces of legislation
 - o Biosecurity Act
 - o Animal Welfare Act
 - o Forests Act (e.g., illegal harvesting of indigenous forest)
 - o Hazardous Substances and New Organisms Act (Act administered by ERMA, MAF the designated enforcement agency in respect to new organisms)
- 3 In the past two years, MAF has had a relationship with a private investigations firm, Thompson and Clark Ltd. Under this arrangement, Thomson and Clark Ltd have provided reports on trends and developments in areas relevant to MAF's enforcement role, along with occasional and specific pieces of information. ^{9(2)(b)(ii) prejudice commercial position}
There is a verbal agreement between MAF and Thomson and Clark Ltd that the information provided is gathered only by lawful means. This information is available only within the MAF Enforcement Group.
- 4 MAF's policies and procedures relating to the use of paid informants were last reviewed in 2007.

Current situation

- 5 In 2007 MAF received an Official Information Act request from Mark Eden requesting, among other things, information as to whether MAF had any engagement with Thompson and Clark. Initially MAF sought to neither confirm nor deny any engagement with the company but a subsequent Ombudsmen's ruling means that MAF is obliged to release this information and intends to do so by 5 February 2008.
- 6 MAF has now undertaken a review of the reports provided by Thomson and Clark Ltd and has decided to terminate the arrangement. The Ministry has made this decision because they believe the information provided extends beyond their enforcement requirements and that the tenor and tone of the reports is inappropriate for a Public Service Department to hold.
- 7 In no case has MAF sought to have informants placed within activist or protest groups and has no reason to believe that this has occurred.

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SSC view

- 8 State services agencies with enforcement roles may appropriately use lawful but covert means to obtain information where this is closely related to their legitimate enforcement functions in relation to actual or intended breaches of the law.
- 9 We do not believe that State services agencies should pay third parties for covertly obtained information on the lawful political activities of groups or individuals.
- 10 We consider that where agencies contract with third parties for the provision of information it should be made clear that the agency does not wish to receive information on lawful political activities which is obtained by covert means.
- 11 MAF has now identified areas in which their policies, procedures and controls can be usefully refined and strengthened. They advise us that work has commenced on making these improvements.
- 12 We do not have direct knowledge of the operations of Thompson and Clarke. However, we do know from the earlier Solid Energy case that this firm has placed an informant within an activist group. Given this general context the State Services Commissioner has decided to use the next regular Public Service chief executives' meeting as an opportunity to restate the standard set out above.

Recommendation

- 13 It is recommended that you:
 - 1 **Note** the contents of this briefing note.

Iain Rennie
Deputy State Services Commissioner

Out of Scope

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[Redacted]

[Redacted]

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From: CROWLEY, Kylie On Behalf Of PREBBLE, Mark
Sent: Friday, 15 February 2008 9:29 a.m.
To: 9(2)(a) privacy

9(2)(a) privacy

Subject: Use of Private Investigators

An issue arose in the last couple of weeks regarding the purchase of information, by a department, from a private investigator. This can be a sensitive matter, and incidents can lead to some public controversy. Though this is a matter that probably has no application to most recipients of this email, it seems helpful to let everyone know about it. In particular, Ministers have asked that I communicate with you about standards in this area. Consequently, this note summarises my views on agencies paying for information from third parties, including private investigation companies.

I do appreciate that there are circumstances in which agencies may source covertly (but lawfully) obtained information where this is directly relevant to their lawful responsibilities. That is quite proper.

However, it risks bringing the State Services into disrepute, and is unacceptable, for departments or agencies to purchase covertly obtained information which is broader than, or different from, that reasonably required to meet their statutory functions. This includes information on the political views or lawful actions of groups and individuals. I urge you to satisfy yourselves that any purchase of information by your agencies, from third parties, meets the above standard.

Sometimes departments and agencies may be concerned about possible threats to the safety of their staff. In that case the best approach is to seek advice from the Police.

If you have any thoughts or views on the position set out above I would welcome you making these known to me.

Mark Prebble