



11 June 2019

Dear [REDACTED]

Official Information Request
Our Ref: 2019-0057

I refer to your official information request received on 6 May 2019 for:

- *Copies of all information prepared by the Deputy State Services Commissioner (including staff at the State Services Commission) in relation to Peter Hughes' conduct regarding the use of private consultants while he worked at the Ministry of Social Development.*
- *A copy of the determination prepared by the Deputy State Services Commissioner in relation to Peter Hughes' conduct regarding the use of private consultants while he worked at the Ministry of Social Development.*
- *All correspondence between the Minister of State Services, Chris Hipkins, the State Services Commission and the Ministry of Social Development relating to Peter Hughes' conduct regarding the use of private consultants while he worked at the Ministry of Social Development.*
- *A list of the "robust policies" government departments have come up with to ensure transparency, following the findings of the investigation by Doug Martin and Simon Mount QC. Please include a list of the government departments that have complied with this request.*
- *A list of government departments who have failed to comply with the directive to come up with "robust policies" to ensure transparency.*

On 18 December 2018 the State Services Commissioner (the Commissioner) released the Inquiry report of *The Inquiry into the use of external security consultants by Government agencies*. Alongside the Inquiry report, the Commissioner released the main findings and the actions he had taken in response.

On 27 February 2019 the Commissioner wrote to the statutory Deputy State Services Commissioner, Mr John Ombler QSO, outlining the findings of the Inquiry in relation to the Crown Law Office and the Ministry of Social Development regarding a 2007 civil case and his actions in response to the Inquiry findings.

The Commissioner's letter stated that as he was the Chief Executive of the Ministry of Social Development during the period in question, he was referring this matter to the statutory Deputy State Services Commissioner to consider and determine the adequacy of the actions he had taken in respect of the Ministry of Social Development (MSD) breach.

On 17 April 2019 the statutory Deputy State Services Commissioner provided his findings to the Minister of State Services. These findings outlined the actions he undertook in his review of the adequacy of the actions taken by the State Services Commissioner in response to the Inquiry's findings in relation to the MSD.

These actions included:

- reading the Inquiry report
- reading the State Services Commissioners response
- meeting with Doug Martin
- meeting with Simon Mount QC
- writing to MSD and obtaining an update on their implementation of SSC's model standards on Information gathering and public trust
- discussing MSD's implementation of the model standards with the SSC Integrity, Ethics and Standards team, which had met with MSD on its implementation activities

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1	27 February 2019	Letter from Peter Hughes to John Ombler QSO	Released in full
2	17 April 2019	Letter from John Ombler QSO to Hon Chris Hipkins	Released in full
3	28 February 2019	Email – setting up meeting with Doug Martin	Withheld in part
4	14 March 2019	Email – setting up meeting with Simon Mount QC	Withheld in part
5	4 April 2019	Email from John Ombler QSO to MSD	Withheld in part

We have made a decision to release the documents listed above, subject to information (phone numbers and email addresses) being withheld under the following section of the OIA:

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

In making our decision, we have considered the public interest considerations in section 9(1) of the OIA.

Information publicly available

The following information is also covered by your request is publicly available on the SSC website:

Item	Date	Document Description	Website Address
1	18 December 2018	Report of the Inquiry into the use of external security consultants by Government agencies	https://www.ssc.govt.nz/inquiry-use-external-security-consultants-government-agencies
2	18 December 2018	Response by the State Services Commissioners	https://www.ssc.govt.nz/inquiry-use-external-security-consultants-government-agencies
3	18 December 2018	SSC Model Standards: Acting in the Spirit of Service: Information gathering and public trust	https://www.ssc.govt.nz/inquiry-use-external-security-consultants-government-agencies

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the OIA – the information requested is publicly available.

In response to the last part of your request where you have asked for “A list of the “robust policies” government departments have come up with to ensure transparency, following the findings of the investigation by Doug Martin and Simon Mount QC”.

Initially the Commissioner had requested assurance from public service chief executives and Crown entity board chairs that their agencies would be fully compliant with these standards by 30 April 2019.

On the 23 April 2019, he extended the date to 30 June 2019 as some agencies needed more time, especially those with multiple and complex information gathering functions.

As we have not yet reached the 30 June 2019 deadline, on 17 July 2019 we will provide you with:

- a list of agencies who have provided the Commissioner with their assurance that they are compliant with the new standards and;
- a link to the location of their transparency or privacy statement on their website (where applicable) as at 30 June 2019

NB: The model standards stated where agencies already publish privacy statements that meet the purpose of a transparency statement, the information did not need to be repeated.

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 – Ministerial Services
State Services Commission



27 February 2019

Mr John Ombler QSO
Deputy State Services Commissioner
State Services Commission
2 The Terrace
WELLINGTON

Dear John,

Thompson & Clark Investigations Limited

Doug Martin and Simon Mount QC have recently completed an inquiry (using powers under the State Sector Act 1988) into the use of external security consultants by Crown agencies.

The Inquiry makes findings in relation to the Crown Law Office and the Ministry of Social Development regarding a 2007 civil case:

In 2007, Crown Law, on behalf of the Ministry of Social Development (MSD), instructed private investigators to assist with a civil case alleging abuse in state care. The Inquiry found the broad nature of the instructions to the private investigators, without explicit controls to protect privacy interests, breached the Code of Conduct. MSD was aware of the potential use of low-level surveillance and a covert approach and the Inquiry did not see any evidence that MSD queried this or sought any assurance that individual privacy would be properly weighed and protected.

Accordingly, the Inquiry found that MSD was in breach of the Code of Conduct, although at a lower level than Crown Law given that Crown Law had primary responsibility to manage the litigation and direct the private investigators.

At the time the Inquiry report was released, I took a number of actions:

- I referred the findings in respect of Crown Law to the Attorney General for his consideration.
- In relation to both Crown Law and the Ministry of Social Development, I referred the findings to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions for consideration.

Because I was Chief Executive of the Ministry of Social Development during the period in question, I am referring this matter to you as statutory Deputy State Services Commissioner to consider and determine the adequacy of the actions I have taken in respect of the MSD breach.

You should report directly to the Minister of State Services on this matter.

Doug Martin and Simon Mount, along with the SSC Integrity, Ethics and Standards team, are available to support you as necessary.

Thank you for your assistance.

Yours sincerely,


Peter Hughes
State Services Commissioner

RELEASED UNDER THE
OFFICIAL INFORMATION ACT



17 April 2019

Hon Chris Hipkins
Minister of State Services
Parliament Buildings
WELLINGTON

Dear Minister

Inquiry into the use of external security consultants by government agencies

On 18 December 2018 the Inquiry into the use of external security consultants by government agencies (the Inquiry), conducted by Doug Martin and Simon Mount QC, reported to the State Services Commissioner. On the same day, the Commissioner issued a formal response document, which, inter alia, summarised the agency specific findings, and the actions taken by the Commissioner in response.

In the case of the Ministry of Social Development (MSD), the Inquiry found that:

In 2007, Crown Law, on behalf of MSD, instructed private investigators to assist with a civil case alleging abuse in state care (the White case). Crown Law's instructions were broad, including seeking any information that could be used to cross-examine a group of similar fact witnesses to be called by the claimants. Crown Law did not rule out low-level surveillance in the lead up to the trial. There were indications in the file that the investigators did use techniques involving low-level surveillance, or something close to it, together with a covert approach for at least one person of interest. The Inquiry found the broad nature of the instructions to the private investigators, without explicit controls to protect privacy interests, breached the Code of Conduct requirement to respect individual privacy and avoid activities that might harm the reputation of the State Services.

The Ministry of Social Development was aware of the potential use of low-level surveillance and a covert approach in the White case. The Inquiry did not see any evidence that MSD queried this or sought any assurance that individual privacy would be properly weighed and protected. Accordingly, *the Inquiry found that MSD was in breach of the Code of Conduct, although at a lower level than Crown Law. The breach was at the lower end of the scale given that Crown Law had primary responsibility to manage the litigation and direct the private investigators.* [Emphasis added.]

In relation to MSD's breach, the Commissioner stated in his response document: "In relation to the Ministry, because I was Chief Executive at the time, I have referred this matter to the incoming Deputy State Services Commissioner to consider and determine. I have also referred these matters to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions for consideration."

On 27 February 2019, the Commissioner wrote to me and asked me "to consider and determine the adequacy of the actions I have taken in respect of the MSD breach." The Commissioner continued to advise that I should "report directly to the Minister of State Services on this matter". This letter is my report to you. The Commissioner's letter to me is attached as appendix 1.

At the outset I wish to note that I have conducted my review in a completely independent manner. The State Services Commissioner has had no involvement.

In undertaking my review of the adequacy of the actions that have been undertaken in response to MSD's breach, I have:

- read the Inquiry report
- read the State Services Commissioner's response
- met with Doug Martin
- met with Simon Mount QC
- written to MSD and obtained an update on their implementation of SSC's model standards on *Information gathering and public trust*
- discussed MSD's implementation of the model standards with the SSC Integrity, Ethics and Standards team, which has met with MSD on its implementation activities.

In the case of each agency specific finding in the Inquiry report, the Commissioner considered the surrounding circumstances and reached a conclusion on the appropriate action to take in response. Those actions are set out in the response document. They range from referring the matter to Ministers and Police in the case of Southern Response Earthquake Services Limited, through to taking no further agency specific action in the case of the Ministry of Agriculture and Forestry (MAF) (as it was known at the relevant time, succeeded by the Ministry for Primary Industries). The full response document is attached as appendix 2.

In the case of MSD, two actions have been taken to date.

First, the complete Inquiry report was referred to the Royal Commission of Inquiry into Historic Abuse in State Care and in the Care of Faith-Based Institutions (the Royal Commission). This action is endorsed as appropriate, as the matters that were before the Inquiry into the use of external security consultants by government agencies, may well be relevant to the Royal Commission's Inquiry.

Second, the Commissioner issued new model standards using his powers under section 57(4) of the State Sector Act 1988. These set out minimum expectations around how public servants should gather information for regulatory compliance, law enforcement and security purposes. MSD, and all other agencies, are required to assure the Commissioner that they are compliant with these standards by 30 April 2019. These model standards are attached as appendix 3.

MSD has provided me with a progress report on its implementation of the model standards. They have identified the areas where the Department is already compliant and the areas where further work is required. One of the areas where work is currently being undertaken is in relation to information gathering in the context of civil litigation. MSD is working with Crown Law to review the policies that govern this form of information gathering. I am

satisfied that MSD is on track to provide the Commissioner with an assurance that it is compliant with the model standards, although I note that an extension of time may be requested given the extent of MSD's regulatory compliance and law enforcement functions.

In my view, the two actions taken to date in respect of MSD have been appropriate. That leaves me to decide whether they are adequate, or whether further actions are required. My conclusion is that no further action is required.

There are two main reasons for that conclusion. One, I consider that the actions taken to date are proportionate to the nature of the breach and consistent with the Commissioner's other responses. The Commissioner's response to the breach of the Code of Conduct by MAF provides a useful comparison. In terms of the underlying facts:

- both breaches occurred over a decade ago (MAF in 2005 and 2006, MSD in 2007)
- both agencies were subsequently provided with guidance on surveillance activity in 2008 by the then State Services Commissioner
- the Inquiry did not find any evidence of subsequent inappropriate surveillance following these historic instances, in relation to either agency
- MSD's breach was less serious. MAF breached the Code of Conduct on two separate occasions by engaging an organisation and an individual to undertake activities that likely amounted to surveillance. MSD's breach was described by the Inquirers as being at "the lower end of the scale" as Crown Law was found to have been primarily responsible.

In terms of the responses, the Commissioner took no action in response to MAF's breach, beyond Ministry for Primary Industries (MPI) being required to comply with the new model standards. (Note that MPI had already referred two former staff to the Serious Fraud Office on matters related to secondary employment, identified in the course of the Inquiry but outside its scope. A stage two investigation is ongoing.) For MSD, the Commissioner took the additional action of referring the matter to the Royal Commission. That seems reasonable.

Two, I am satisfied that going forward MSD's information gathering activities will comply with the model standards and will continue to comply with the Code of Conduct. I have no ongoing concerns in that regard.

I recommend that this report, complete with appendices, is proactively released following MSD providing the Commissioner with an assurance that it is compliant with the new model standards.

Your sincerely



John Ombler
Deputy State Services Commissioner

Mary-Kate McLean

From: Jordan Whitley
Sent: Monday, 18 March 2019 12:09 PM
To: Simon Mount
Subject: RE: Meeting with John Ombler

Hi Simon,

That's great thank you – I'll send through an invite and send him up your way at 4:30pm.

Jordan.

From: Simon Mount 9(2)(a) privacy
Sent: Monday, 18 March 2019 11:49 AM
To: Jordan Whitley 9(2)(a) privacy
Subject: Re: Meeting with John Ombler

Hi Jordan,

Very good - how about 4.30pm tomorrow? If John comes to the lobby of the Grant Thornton Building on Lambton Quay I'll meet him by the lifts and bring him up to our office,

Thanks,
Simon

On 18/03/2019, at 8:05 AM, Jordan Whitley 9(2)(a) privacy wrote:

Hi Simon,

That's fine!

John is Wellington based so he can be available any time between 8:30 – 10:15am or 3:30 – 5pm tomorrow if that works for you?

He is happy to come to meet you at your office here.

Thanks,
Jordan.

From: Simon Mount 9(2)(a) privacy
Sent: Sunday, 17 March 2019 11:07 AM
To: Jordan Whitley 9(2)(a) privacy
Subject: Re: Meeting with John Ombler

Hi Jordan,

Apologies for the late response. Very happy to speak to John. Is John based in Auckland or Wellington? I'll be in Wellington Mon-Thurs this week, back in Auckland on Friday.

Best,

Simon

Simon Mount QC
Bankside Chambers
Level 22, 88 Shortland St, Auckland
PO Box 1952, Shortland St, Auckland 1140
New Zealand

9(2)(a) privacy

f: +64 9 280 5398

9(2)(a) privacy

www.bankside.co.nz

9(2)(a) privacy

On 14/03/2019, at 1:14 PM, Jordan Whitley  wrote:

Good afternoon Simon,

John has asked me to arrange a 30min meeting as he would like to follow up from TCIL last year.

He is happy to come to your offices and would only need 15 minutes of your time – he indicated that tomorrow any time between 1:15 – 5pm would be ideal if that works for you also.

If not, what date and time would be most suitable?

Many thanks,

<image001.png>

Jordan Whitley | Senior Executive Assistant to John Ombler, Deputy State Services Commissioner

State Services Commission | Te Kawa Mataaho

9(2)(a) privacy

www.ssc.govt.nz | www.govt.nz

<image002.png> <image003.png>

Mary-Kate McLean

From: Doug Martin 9(2)(a) privacy
Sent: Thursday, 28 February 2019 3:20 PM
To: Jordan Whitley
Subject: RE: Meeting with John Ombler

Either is fine

Doug Martin
Director

9(2)(a) privacy

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From: Jordan Whitley 9(2)(a) privacy
Sent: Thursday, 28 February 2019 3:19 p.m.
To: Doug Martin 9(2)(a) privacy
Subject: RE: Meeting with John Ombler

Hi Doug,

Thanks for your response.

Would 8:45 – 9:15am on Monday 4th March or 4 – 4:30pm on Tuesday 5th March work better for you?

Kind regards,
Jordan.

From: Doug Martin 9(2)(a) privacy
Sent: Thursday, 28 February 2019 3:14 PM
To: Jordan Whitley 9(2)(a) privacy
Subject: RE: Meeting with John Ombler

Hi Jordan

I am actually away tomorrow. Monday morning would be okay, and Tuesday has just freed up. Hope this helps.

D

Doug Martin
Director

9(2)(a) privacy

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From: Jordan Whitley 9(2)(a) privacy

Sent: Thursday, 28 February 2019 3:09 p.m.

To: Doug Martin 9(2)(a) privacy

Subject: Meeting with John Ombler

Good afternoon Doug,

John has asked me to get in touch with you to arrange a meeting as he would like to follow up from TCIL last year.

He is happy to come to your offices and would only need 15 minutes of your time – he indicated that tomorrow would be ideal but Sarah mentioned that might not work for you.

What date and time would be best suitable?

Many thanks,

Jordan Whitley | Senior Executive Assistant to John Ombler, Deputy State Services
Commissioner

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Mary-Kate McLean

From: Jordan Whitley on behalf of John Ombler
Sent: Thursday, 4 April 2019 4:23 PM
To: Nadine Kilmister
Cc: Stephen Moore
Subject: Information gathering and public trust: Model Standards

Dear Nadine,

On 18 December 2018, the State Services Commissioner promulgated "Information gathering and public trust: model standards for information gathering associated with regulatory compliance, law enforcement and security functions".

Agencies were asked to assure the Commission that they are compliant with these standards by 30 April 2019.

I understand that there is soon to be a meeting between representatives from SSC and MSD to discuss MSD's progress with implementing these model standards. The report completed by Doug Martin and Simon Mount QC notes that MSD breached the Public Service Code of Conduct some 12 years ago (at the lower end of the scale). The breach occurred in relation to information gathering for civil litigation. Accordingly, I am keen to understand how you address the questions of information gathering for civil litigation, as you implement the model standards.

I would be obliged if you could ensure that this is appropriately considered, and that you provide my SSC staff with an update at your next meeting.

John.

John Ombler | Deputy State Services Commissioner

State Services Commission | Te Kawa Mataaho

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