



26 July 2018

Simon Mount QC
Bankside Chambers
PO Box 1952, Shortland Street,
Auckland 1140

Dear Simon

**Appointment by the Commissioner and Terms of Reference
SSC Inquiry relating the use of external security consultants (TCIL) on behalf of
Southern Response**

The Minister for Greater Christchurch Regeneration, Hon Dr Megan Woods, referred material to me on 16 February 2018 regarding the use by Southern Response Earthquake Services Limited (SRES) of external security consultants, Thompson & Clark Intelligence Limited (TCIL). My review of that material gave rise to concerns about activities undertaken by TCIL and potential breaches of the State Services' Code of Conduct.

Any unresolved matters relating to inappropriate use of security consultants, or actions by consultants, by State service agencies can have a damaging effect on public confidence in the Public sector. It is critical that public confidence is restored through full examination and reporting of these matters.

On 6 March 2018, I advised Minister Woods that I would undertake an investigation into the matters. I subsequently appointed Doug Martin of Martin Jenkins to lead the Inquiry.

On 19 June on receipt of further information I announced that the Inquiry would now cover all government agencies. I now confirm my appointment of you as an investigator in the Inquiry to work alongside and support Doug Martin. Thank you for agreeing to undertake the Inquiry under my delegation.

Appointment

Pursuant to section 25(2) of the State Sector Act 1988, I appoint you to conduct an investigation in accordance with the terms of reference provided to Doug Martin on 27 March 2018, as expanded on 19 June 2018. For the avoidance of doubt, this delegation enables you to use any statutory powers that are available to me for the purposes of this investigation, including without limitation the power to require production of information by any agency or party; and summon witnesses and receive evidence.

I look forward to receiving your report.

Yours sincerely

Peter Hughes
State Services Commissioner

Donna Fowler [SSC]

From: Andrew Royle [SSC]
Sent: Friday, 27 July 2018 2:55 PM
To: 9(2)(a) privacy; Doug Martin; Simon Mount
Subject: Fwd: State Services Commission Inquiry into the use of External Security Consultants
Attachments: 2018-07-25 SSC Inquiry Letter to State Sector Chief Executives Final.pdf; ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

From: "SSC Enquiries [SSC]" <SSCEnquiries@ssc.govt.nz>
Date: 27 July 2018 at 2:20:49 PM NZST
Cc: "Andrew Royle [SSC]" 9(2)(a) privacy
Subject: State Services Commission Inquiry into the use of External Security Consultants

[IN-CONFIDENCE]

Dear Chief Executives

As you will be aware, State Services Commissioner Peter Hughes launched an inquiry in March 2018 relating to use of private security firms by Southern Response and the Ministry of Business, Innovation and Employment. The Commissioner is concerned about what has surfaced in the inquiry to date and new information now available relating to other government agencies. He has therefore decided to broaden and deepen the inquiry.

On behalf of the inquirers, Doug Martin of Martin Jenkins and Simon Mount QC, please find attached a letter requesting information from your agency.

Kind regards

Andrew Royle
Chief Legal Officer
State Services Commission
9(2)(a) privacy

Fax: +64 4 495 6686

9(2)(a) privacy

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23 July 2018

State Sector Agency Chief Executives

State Services Commission Inquiry into the Use of External Security Consultants

Dear Chief Executive

As you are aware, the State Services Commissioner has appointed me, together with Simon Mount QC, to undertake an Inquiry under the State Sector Act 1988 into the use of external security consultants by state sector agencies. The relevant part of the Inquiry's terms of reference are attached as Appendix 1. They focus on the use of external security consultants including (but not limited to) Thompson and Clark Investigations Limited (TCIL) and its associated entities, as listed in Appendix 2.

Given the breadth of the terms of reference, as a first step we are inviting Chief Executives of state sector agencies to satisfy themselves, through self-evaluation, whether there are any matters that should be brought to the attention of the Inquiry.

As a result, I invite you to take appropriate steps in your context to assure yourself that:

- any use of external security consultants in general, and TCIL in particular, by your agency is appropriate, well managed and there are appropriate controls and oversight in place;
- any interactions or relationships with external security consultants, including TCIL, are consistent with the professional expectations of the public service as expressed in the Code of Conduct for the State Services.

By "external security consultants", I mean any company or individual contracted to your organisation to provide specialist investigative or security services as further defined below. This includes services related to high-level security assessments and private investigation of individuals or groups. Within this context, it also includes engagement of third parties to gather intelligence from open source documents on security related issues; use of surveillance on individuals, groups or meetings; security or threat assessments of individuals or groups; and analysis of any information or intelligence gathered in the manner described above.

This definition **excludes** investigations related to information technology security (including forensic IT services); and investigations undertaken by auditors or external contractors related to specific cases of



Wellington T +64 4 499 6130

Level 1, City Chambers, Cnr Johnston and Featherston Streets, Wellington 6011, PO Box 5256, Wellington 6140, New Zealand

Auckland T +64 9 915 1360

Level 6, The Chancery Building, 50 Kitchener Street, Auckland 1010, PO Box 7551 Wellesley Street, Auckland 1141, New Zealand

info@martinjenkins.co.nz martinjenkins.co.nz

fraud. It also excludes routine engagement of security guard services, alarm monitoring and general media and social monitoring undertaken by third party providers.

The initial period of interest is from 2008 to the present, but you are of course not precluded from looking beyond this period. We ask that you take all reasonable steps to achieve this assurance including accessing all financial records available and a thorough review of contract registries. The steps you take to assure yourself should include, at a minimum:

- Checking to determine whether your agency has or has had any relationship with external security consultants (including private investigators) delivering the services outlined above. As well as looking in your contract system using key word search terms, we would suggest it would be appropriate to search financial and email systems in case there is a relationship outside of a formal contract. Please ensure your search includes any interaction with TCIL or an associated entity as listed in Appendix 2.
- Checking whether your organisation has used, or is using, platforms such as Wordpress or Slack to exchange information with external security consultants. If these platforms have been used, it is important to clarify the nature of information that has been provided or supplied and assess how that information has been stored and managed.
- Where there is a contract, you may wish to consider whether the services are reviewed regularly, whether the contract has ownership/oversight, whether the work procured matches the work delivered and whether the work delivered seems appropriate. You may also want to ensure that any providers have appropriate qualifications; for example, that they hold relevant licenses or certificates of approval for private security and investigation work under the Private Security Personnel Licensing Authority.
- Where there is not a contract, there may be value in considering whether the interaction seems appropriate. For example is the lack of contract explicable, do emails seem professional, is information exchanged consistent with what you would expect of state servants.

If your organisation has been affected by restructure or merger, we would expect you take reasonable steps to provide the assurance for those organisations that predated establishment where those records are available.

We expect you should be able to undertake this assurance informed by seven years' worth of financial records and, on a best endeavors basis, to seek assurance for at least the last ten years.

Please could you report on the outcome of your internal review to Sarah Baddeley at MartinJenkins: 9(2)(a) privacy [REDACTED]. In particular please advise whether:

- You identify any interactions with TCIL, its associated entities, or other providers, falling within the definition above; and whether
- In your view any of those interactions may give cause for concern.

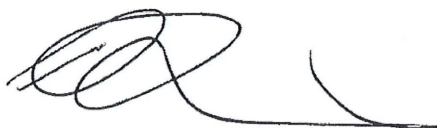
If you find no interactions and/or no cause for concern, please provide a short letter to that effect to Sarah Baddeley and also inform your relevant SSC Assistant Commissioner or, for Crown



entities, commission@ssc.govt.nz. If you wish to discuss this letter or the process, please feel free to telephone Ms Baddeley on 09 915 1360.

To support the Inquiry to conclude within a reasonable timeframe, your response is required at your earliest convenience and no later than 20 August 2018.

Yours sincerely



Doug Martin
Inquiry Head

Proactively released by
the State Services Commission



APPENDIX 1: EXTRACT FROM INQUIRY TERMS OF REFERENCE

All agencies

- The circumstances, reasons and outcomes of the engagement with or of external security consultants by state sector agencies with a specific focus on the relationship between organisations and Thompson and Clark Investigations Limited, and its associated companies and entities.



APPENDIX 2: THOMPSON AND CLARK AND ASSOCIATED COMPANIES

THOMPSON & CLARK INVESTIGATIONS LIMITED (1287169)

EYELA LIMITED (5679387)

CYCLOPS MONITORING LIMITED (4458600)

BIKINI RED LIMITED (2354132)

9(2)(b)(ii) prejudice commercial position

CLARK CAPITAL LIMITED (6276850)

9(2)(b)(ii) prejudice commercial position

THOMPSON CAPITAL LIMITED

THOMPSON TRUSTEE (2011) LIMITED (3430191)

Associated URLs

<http://www.fcil.co.nz/>

<http://www.cyclopsmonitoring.com/>

9(2)(b)(ii) prejudice commercial position



MEMO

To: Robert Liberona
State Services Commission
Copies: Simon Mount
From: Doug Martin
Date: 16 August 2018

Subject: SSC Inquiry into the use of External Security Consultants: Fortnightly report

Purpose

This note provides a fortnightly update on the Inquiry into the use of External Security Consultants commissioned under section 24 of the State Services Act.

Activity update

Inquiry team activity has focussed on:

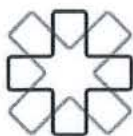
- Review of documentation provided by Ministry for Primary Industries (MPI), Department of Conservation and the Ministry of Health
- Support to agencies to satisfy the requirements of their self-assessment consistent with the guidance provided
- Scheduling of interviews with individuals of general and specific interest to the Inquiry and activities related to MPI

The Inquiry team also had meetings with the Privacy Commissioner, the General Manager of the Independent Police Conduct Authority, and had a regular liaison discussion with the Serious Fraud Office.

Upcoming activity

- Interviews to be held at MPI
- Introduction to the new oversight team at SSC
- Interviews with interested individuals who have previously raised concerns about the use of external security consultants including 9(2)(a) privacy and 9(2)(a) privacy

Doug Martin
Director



Wellington T +64 4 499 6130

Level 1, City Chambers, Cnr Johnston and Featherston Streets, Wellington 6011, PO Box 5256, Wellington 6140, New Zealand

Auckland T +64 9 915 1360

Level 6, The Chancery Building, 50 Kitchener Street, Auckland 1010, PO Box 7551 Wellesley Street, Auckland 1141, New Zealand

info@martinjenkins.co.nz martinjenkins.co.nz

Our ref 472942 (Complaint ground: 472943)
Contact 9(2)(a) privacy
20 August 2018

Mr Peter Hughes
State Services Commissioner
State Services Commission

By email: commission@ssc.govt.nz

Dear 

Official Information Act complaints relating to Thompson & Clark

I am currently investigating a number of complaints under the Official Information Act 1982 (OIA) about requests for information concerning private security consultant Thompson & Clark (TCIL).

I enclose in the **Appendix** a list of cases and the information sought by the complainants.

These cases appear pertinent to the State Services Commission (SSC) inquiry into the use of TCIL by state sector agencies. At present, two key issues that have arisen from my investigation that may relate to the SSC inquiry:

1. the existence of information about the contractual relationships between agencies and TCIL, the terms of the contracts, and how those relationships came into being; and
2. the decision of at least one agency (Southern Response) to withhold information pursuant to section 6(c) of the OIA, on the basis that the release of information would prejudice the SSC inquiry.

In these circumstances, I consider it would be prudent to consult with the SSC as part of my investigation, pursuant to section 18(3) of the Ombudsmen Act 1975.

On 31 July 2018, Sarah Baddeley of Martin Jenkins emailed Aimee Bryant of my Office to request a meeting between myself, and inquiry heads Doug Martin and Simon Mount. I understand that a meeting has now been arranged for **30 August 2018**. Should Ms Baddeley or other SSC representative wish to make further enquiries prior that date, they can contact Principal Advisor Gareth Derby (DDI: 9(2)(a) privacy ; 9(2)(a) privacy).

Yours sincerely



Peter Boshier
Chief Ombudsman

Appendix 1.

Case ref.	Agency	Information sought under the OIA
474654	Southern Response	Name of staff member who made the decision to engage TCIL, and supporting documents relating to this decision.
480535	Southern Response	<p>Emails between Southern Response staff and TCIL, between December 2013 and April 2017.</p> <p>Recording of a meeting held on 13 March 2014, relating to a potential class action against Southern Response.</p>
481017	Southern Response	Report or documents on ' <i>Attendances re Threat Exposure and Analysis – 12 May 2016</i> ', as per TCIL invoice.
472942	Southern Response	Information withheld from Security Risk Management Proposal, dated 15 January 2014 – pursuant to section 9(2)(b)(iii) of the OIA.
477841	Southern Response	<p>Information withheld from an email dated 19 March 2014 from TCIL to Southern Response – pursuant to section 9(2)(a) and 9(2)(ba)(i) of the OIA.</p> <p>Information on TCIL '<i>fieldwork completed on 13/14 March 2014</i>', thought to be contained in the email chain preceding the 19 March 2014 email.</p>
476831	Department of Conservation	Full information from the ' <i>Fusion Centre</i> ' Slack channel ¹
476842	Ministry of Business, Innovation and Employment (MBIE)	Information received by MBIE from TCIL from 2012-2017, including procurement and contracts information.

¹ <https://www.radionz.co.nz/national/programmes/checkpoint/audio/2018648974/doc-withholds-information-after-demands-from-thompson-and-clark>

Leanne Kelly [SSC]

From: Catherine Williams [SSC]
Sent: Friday, 24 August 2018 11:56 AM
To: Peter Hughes [SSC]; Debbie Power [SSC]
Cc: Kellie Coombes [SSC]; Erik Koed [SSC]; Geoff Short [SSC]; Heather Baggott; Chappie Te Kani [SSC]; Ken Stephen [SSC]; Robert Liberona [SSC]; Liz Sinclair [SSC]
Subject: Update re TCIL inquiry

[IN-CONFIDENCE]

Hi,
Robert Liberona (who has been seconded to us by [redacted] to help with the inquiry), has been setting up some regular reporting and meetings to keep people up to date with the inquiry.
Below is the first weekly report from Martin Jenkins, for your information. You will note the mention of meeting with the Ombudsman. This relates to a letter you have received regarding complaints to the Ombudsman about OIA requests to agencies involved in the inquiry. Ken is across those discussions and will attend the Ombudsman's meeting on your behalf.
We have also been progressing the A3 framework/guidance and will have an updated version of that to share at our meetings next week.
Kind regards,
Catherine

Catherine Williams | Deputy Commissioner, Integrity, Ethics and Standards

State Services Commission | Te Kawa Mataaho

9(2)(a) privacy

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We lead, we serve**

From: Sarah Baddeley [redacted]
Sent: Wednesday, 22 August 2018 6:23 p.m.
To: Robert Liberona
Cc: Doug Martin; Simon Mount
Subject: SSC Inquiry Weekly Report

Hi Robert

Key activities week to date:

The Inquiry team has managed the deadline for those entities who have undertaken self evaluation. Of the 124 required to undertake the evaluation, 31 remain outstanding. We are currently analysing the results from entities and engaging with them to clarify any outstanding issues. We are also testing the completeness of the original list to ensure all entities have been covered. On average the quality of response has been high, with most chief executives demonstrating a thorough approach has been taken. A reminder will be sent to those Chief Executives who have not yet responded tomorrow.

Once analysis has been undertaken, we expect to approach entities to provide further information to the Inquiry should that be seen as relevant to the terms of reference. As you know, the Department of

Conservation and the Ministry of Health already fall into that category although they have not yet been formally informed. Based on the response to date, we expect a limited number of other entities will be further included.

The Inquiry team commenced formal interviews with MPI. These interviews focused on senior managers and those with relevant functional responsibilities including legal and internal audit. Interviews with specific individuals identified by the Inquiry, whose conduct is in question, will occur over the next two to three weeks.

Discussion with wider regulatory authorities continue. We have had discussions with the SFO regarding their preliminary inquiry and have also approach NZTA to discuss matters related to access of the Motor Vehicle Registry. A meeting with Ombudsman is also scheduled to discuss the relationship between the Inquiry and issues considered by his office. Meetings are also scheduled with two members of the public who have been critical of the State's use of surveillance historically in order to ensure the Inquiry is well informed of their perspective.

Please let me know if you need any further clarification.

Kind regards

Sarah

Sarah Baddeley
Manager, Consulting
9(2)(a) privacy

T 09 915 1360
9(2)(a) privacy

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Leanne Kelly [SSC]

From: Robert Liberona 9(2)(a) privacy
Sent: Monday, 27 August 2018 2:17 PM
To: Catherine Williams [SSC]; Ken Stephen [SSC]; Andrew Gane [SSC]
Subject: Fwd: OIA requests TCIL - incoming - multiple
Attachments: image002.png; image004.jpg; image005.png; image006.png

Sent from my iPhone

Begin forwarded message:

From: Sarah Baddeley 9(2)(a) privacy
Date: 27 August 2018 at 2:04:15 PM NZST
To: Robert Liberona 9(2)(a) privacy, 9(2)(a) privacy
9(2)(a) privacy
Cc: Simon Mount 9(2)(a) privacy, Doug Martin
9(2)(a) privacy
Subject: OIA requests TCIL - incoming - multiple

Hi both

We have become aware that an individual called 9(2)(a) has made multiple OIA requests to multiple entities regarding the use of TCIL. These have become due in the last half of last week. See link below.

[https://fyi.org.nz/user/9\(2\)\(a\)](https://fyi.org.nz/user/9(2)(a))

Many of these are falling due about now.

As previously indicated to you, both Doug and Simon continue to be of the view that OIA requests should be considered on their own merit, in line with the Act, by the entity that is subject to the request. Consistent with the principal of availability, neither of the Inquiry heads consider that the fact the Inquiry is underway should be considered as a blanket grounds for withholding information.

Robert – you may also want to note the link above makes mention of CRIs. We will need to bring this issue of scope to a head this week if possible. I note Toni Vincent is seeking a time to set up a meeting between Peter and Doug and Simon.

Cheers

Sarah

Sarah Baddeley
Manager, Consulting

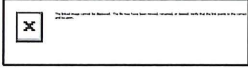
9(2)(a) privacy

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T +64 9 915 1360

Level 6, The Chancery Building, 50 Kitchener Street, Auckland 1010
PO Box 7551, Wellesley Street, Auckland 1141, New Zealand

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Stephen Moore [SSC]

From: Greg Nicholls [SSC]
Sent: Wednesday, 29 August 2018 11:22 AM
To: Robert Liberona [SSC]
Subject: FW: Use of Private Investigators

[UNCLASSIFIED]

Rob – I can't remember it but found it. Hugh Oliver and Frank Peek may remember more

From: OLIVER, Hugh
Sent: Friday, 15 February 2008 9:36 AM
To: NICHOLLS, Greg 9(2)(a) privacy
Subject: FW: Use of Private Investigators

This is out with CEs now. Could you please talk to CCMAU about it and forward it to them. CRIs, in particular, are likely to be facing these kinds of situations.

Thanks

Hugh

--
Hugh Oliver
Senior Advisor
State Services Commission
9(2)(a) privacy
Fax: +64 4 495 6702
9(2)(a) privacy
www.ssc.govt.nz

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From: CROWLEY, Kylie **On Behalf Of** PREBBLE, Mark
Sent: Friday, 15 February 2008 9:29 a.m.
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