

IN THE MATTER OF A GOVERNMENT INQUIRY INTO
OPERATION BURNHAM AND RELATED
MATTERS

**Memorandum of Counsel for Ministry of Foreign Affairs and Trade
in relation to NATO process regarding release of documents**

Dated 3 September 2018

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MAY IT PLEASE THE INQUIRY

Purpose of this memorandum

1. Via memorandum of counsel dated 10 August 2018, the Ministry of Foreign Affairs and Trade (MFAT) stated its "preliminary views" as to NATO's and other partners' positions with respect to the disclosure of what was termed "Partners' Information", namely information controlled by partners regardless of its provenance or location. In particular, counsel advised:

[23] ... MFAT considers it highly likely that partners will seek assurances from New Zealand regarding handling of Partners' Information. That is because it is MFAT's assessment that NATO and other partners may have significant concerns if there is a possibility that certain Partners' Information in which they hold equity is disclosed to third parties. This is likely to depend on the nature of the information at issue, but may be a blanket concern.

2. This memorandum is provided to update the Inquiry in relation to the process sought by the North Atlantic Treaty Organization (NATO) with respect to information NATO regards as subject to its control.

Position of NATO

3. On Friday 24 August 2018, a representative of the New Zealand Embassy in Brussels met with the head of NATO's legal division. This meeting was at the request of the legal division as a follow up to the earlier meeting with NATO officials referred to in paragraph 26 of counsel's memorandum of 10 August 2018. The legal division advised as follows:

MFAT's views

4. As indicated in counsel's memorandum of 10 August 2018, MFAT too has a clear interest in supporting the Inquiry's efforts to meet its mandate and also an interest in ensuring to the fullest extent possible that the Inquiry's processes do not compromise New Zealand's international relationships or breach New Zealand's international obligations.
5. Following NATO's established process might achieve both these ends.
6. MFAT considers that NATO's turn-around period would likely be affected by:
 - (a) the numbers of documents sought to be disclosed, such that the indicated period of 30 days may be less achievable were New Zealand to request the disclosure of a very large number of documents; and
 - (b) the extent to which the Inquiry is able to provide clarity as to its proposed processes for determining whether to release any NATO-controlled information to inquiry participants.

7. MFAT stands ready to further support the Inquiry by making such enquiries as might assist. To that end, MFAT proposes (i) seeking from NATO a more formal statement of (a) the process outlined at paragraph 3 and (b) information NATO considers should be subject to it and (ii) reporting back to the Inquiry the results of those enquiries.

Dated 3 September 2018



G H Allan

Counsel for Ministry of Foreign Affairs and Trade