

UNDER

THE INQUIRIES ACT 2003

IN THE MATTER

A GOVERNMENT INQUIRY INTO

OPERATION BURNHAM AND RELATED MATTERS

Date of Hearing: 15 October 2019

TRANSCRIPT OF PROCEEDINGS

I N D E X

Tuesday, 15 October 2019

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TUESDAY, 15 OCTOBER 2019

COMMENTS FROM SIR TERENCE

SIR TERENCE: Thank you, please be seated.

Good morning everybody. Thank you for coming to this resumed hearing. Just before we start, could I just mention that we published Minute 21 on the website yesterday and that deals with the extension of time that we have been granted for submitting our final report. Our reporting date is now 31 March 2020.

Now that has meant we have modified our programme and that is dealt with in that Minute.

So that's on the website. People can have a look at it.

Now I'd like to get underway on the resumed hearing without further ado. I think all the counsel who attended last time are here and we've got Mr McKnight in a watching brief capacity.

So, Mr Radich?

MR RADICH: Tēnā kōrua kei te rangatira. Good morning Sir Geoffrey and Sir Terence. I'd call James William Blackwell.

May I say two things, just as he's walking in, and someone might at this point ask him to enter the room. One is just to make it clear to you that he's giving evidence absolutely voluntarily. There was a summons that was served, for good measure and good procedure; that wasn't needed. He's very happy to be here. He's very happy to give evidence. He sees that he has things that are relevant to say and he's happy to do so.

The second thing, just quickly, is to note that there are a number of historic matters between Mr Blackwell and other participants, other litigation related matters, and I wanted to make the point at the outset that, certainly, NZDF sees anything of that nature as being irrelevant to the hearing, to the Inquiry's Terms of Reference, paragraph 7.4 and 7.5 which is what was known about civilian casualties; what were the

Ministers told; what was the press told? And so, that's a position that I just want to make clear at the start in case matters stray into other areas.

So if I -- with those comments, and thank you for letting me have them, I call James William Blackwell.

SIR TERENCE: Thank you, Mr Radich. And I -- as you will have gathered from the last hearing, we are not interested in past history in terms of relationships between the parties, other than in connection with the issues in this Inquiry.

MR RADICH: Yes. Thank you, Sir Terence. I am obliged for that.

JAMES WILLIAM BLACKWELL (Sworn)

EVIDENCE-IN-CHIEF BY MR RADICH

MR RADICH: Good morning. Your full name is James William Blackwell?

A. Correct.

Q. ONZM. And you are now the Chief Executive Officer of the Kauri Group Companies, a position you've held for approximately three years?

A. Correct.

Q. You have a Brief of Evidence in front of you, I believe? Would you please now read that Brief of Evidence out to the Inquiry Members, starting at paragraph number 2?

A. Sure. Thank you.

I enlisted into the New Zealand Army in 1984. I commenced my service with the New Zealand Special Air Service regiment in 1992, where I completed some 20 years of service. I held a variety of appointments culminating as the Commanding Officer between 2006 and 2009. I was appointed the Director of Special Operations of the New Zealand Defence Force on 29 March 2011 where I served until 3 July 2015. I then retired from the New Zealand Defence Force.

During my 31 years of service I have seen operational service in Angola, Bougainville, Kuwait, Kosovo, Afghanistan and Iraq.

I have a Master's Degree in Science from the University of Leicester and a Post-graduate Diploma in Strategic and Defence Studies from Massey University.

I was made an Officer of the New Zealand Order of Merit in 2002 for service in Afghanistan.

I was in Iraq in August of 2002 when the NZSAS operation - now commonly referred to as Operation Burnham - was conducted in Baghlan.

Q. Just pause there for a moment, I think you said perhaps inadvertently 2002, was it 2010 in the first line?

A. I'm sorry no, my ONZM was 2002.

Q. Yes, sorry, just in the first line August 2010 was the date, is that --

A. Correct.

Q. Thank you.

A. Yes, I was in Iraq August 2010, I apologise.

Q. Thank you.

A. --when the NZSAS operation - now commonly referred to as Operation Burnham - was conducted in Baghlan. I did not know anything about this operation. I was busy dealing with operational issues in Iraq and the accepted military protocol is that you are made aware of matters on a strictly need to know basis.

I became the Director of Special Operations on 29 March 2011 and my place of duty was at Headquarters New Zealand Defence Force in Wellington. My handover period with my predecessor, Colonel Peter Kelly, was minimal as he had been reappointed and deployed to Christchurch to assist in coordinating the New Zealand Defence Force response to the 22 February 2011 earthquake.

I understand that on 20 April 2011, One News ran a story about Operation Burnham under the headline '*SAS's deadly counter-attack revealed.*' The Deputy Director of Special Operations, Lieutenant Colonel Karl Cummins, managed the NZSAS input into the NZDF response to this story. I was not

involved in drafting or approving the release, or response, I'm sorry.

I believe that, at a later point, Karl provided a debrief on this and many other ongoing matters. I knew, in general terms, that there had been an operation in Baghlan which had been conducted to assist the security situation of the New Zealand Provincial Reconstruction Team, and that insurgents had been engaged. It was at this point that I became aware of the allegations of civilian casualties, and of the investigation undertaken by the International Security Assistance Force, and of the conclusion that there had been no civilian casualties. Karl told me that we did not have a copy of the conclusions of the ISAF investigation, or the IAT Report.

I was of the view that we should try to get a copy of the IAT Report. I was aware that we had not been able to achieve that to date, however, I was not at all surprised. Sharing of classified information within Coalition operations was always a challenge in my experience. I was in constant communication with the Senior National Officer in Afghanistan. I reinforced to him that we wanted a copy of it.

I eventually received a copy of the IAT Report from the SNO. He emailed it to me on our secure email system. I believe that it was the SNO, or the Special Operations Liaison Officer within ISAF, who obtained a copy.

When the email arrived, I would have read the IAT Report, saved a copy of it electronically, and then filed away the email in the appropriate electronic directory. I avoided printing classified material for my own use unless it was for a brief that day, after which I would shred the document. There was no need to put a DSO copy in what was an already overloaded safe. The sheer volume of the classified material coming into my office would have made that completely impractical. Also, I had secure electronic mechanisms for storing it. It is important to note that my office was

virtually a broom closet on the 5th floor. This was an insecure floor and I was not permitted to leave the room with classified material not either in the safe or on the secure electronic system. It was easier to keep the safe constantly locked, as a simple log out of my electronic system was a more practical way of operating. I mainly operated on my secure system, with the NZDF restricted system used for more routine unclassified information or administration.

The IAT Report is a partner-controlled document that remains classified so I am limited as to what I can say about it. However, the conclusions reached in the IAT Report are recorded in the United States AR15-6 investigation report, a version of which is now publicly available. I refer to the NZDF Bundle at page 101.

The investigation concurs with the IAT observation that based on the weapons surveillance video evidence it is possible that CIVCAS occurred, because at the time of the Air Weapons Team engagement, women and children appear to have been present. However, there is no evidence in the video that confirms that there were civilian casualties. The only piece of information that can be confirmed is that rounds impacted the roofs of buildings where it is possible that civilians were located. Based on the evidence I have reviewed, I concur with the IAT findings that civilian casualties are possible, but it cannot be confirmed.

This conclusion is different to what NZDF had understood the position to be, namely, that there were no civilian casualties.

My recollection is that, after reading the IAT Report, I printed a copy of it and I took it to the Office of the Chief of Defence Force. I gave it to Mike Thompson, who was the Deputy Chief of Staff in the Office of the Chief of Defence and who was responsible for coordinating between the Office of the Chief of Defence Force and the Office of the Minister of Defence. I said to him this was a document that the Chief of

Defence Force and the Minister of Defence needed to see. I asked Mike to let me know when the CDF was ready to be briefed on the IAT Report.

Looking now at the Office of Chief of Defence Force's Classified Document Register, which is in the bundle at pages 369-372, I can see that someone has recorded the title as "*Baghlan Province Brief for MINDEF*" and has noted that there were two secret documents.

Q. Just pause there if you will for a moment; I'll ask you to have a look at that bundle.

Now you have to your left-hand there are two spiral bound volumes, go to the smaller one please, the one underneath thank you, and you'll see the page numbers in the bottom right-hand corner, and if you look please at page 369. If you have a look at that page first of all, 369.

A. Yes.

Q. Are you able to identify this as being the register that you're referring to in your evidence?

A. That is the register that I'm referring to.

Q. Thank you.

And then if you turn please to page 371.

A. Yes.

Q. Much of which has been redacted, but do you see the entry at the bottom of the page that remains, of the two entries?

A. Mmhmm.

Q. And you said, and you've just read in your evidence, the title was "*Baghlan Province Brief for MINDEF*".

A. Yes.

Q. Are these the entries that you're referring to?

A. They are.

Q. Yes, thank you.

And now just keeping that page open still, would you go back to your brief please at paragraph 16, and you were at your second sentence.

A. Sure.

I can see that someone has recorded the title as "*Baghlan Province Brief for MINDEF*" and has noted that there were two secret documents. It was not my handwriting on the register. I only supplied one copy of the IAT Report, but it seems, from reading the OCDF Register, that another copy was made so that one could be sent to the Minister's office and the other left in Mike Thompson's safe.

I know that one of the secret documents was the IAT Report because its receipt was the impetus for me to take it to the Office of CDF. I believe that the other secret document was the Operation Burnham "storyboard" because this has the classified register sticker on it, the number of which matches the OCDF Register. I would have provided the "storyboard" because it provides an overview of the Operation and, therefore, some context for the IAT Report. These are complex operations and are not easily briefed to un-trained or operationally inexperienced officers, hence storyboards helped in simplifying the narrative.

In preparation for this hearing I was shown a bundle of documents with the Operation Burnham "storyboard" as the covering page and the IAT Report as the final document. There were a number of documents in between, including draft Notes to the Minister from August and December 2010, and the body of an email from an SNO, the text of which has been incorporated into a word document.

I did not assemble the additional documents. I do not recall ever seeing these Notes to the Minister before and would not have had access to them. I did have access to the SNO email, but I would not have transformed that email into a word document without further information, including the name of the SNO, the date of the email, and that the document had been prepared by the named DSO. I did not give that document to Mike Thompson.

I did not make any markings on the secret documents. I do not consider it to be appropriate to make annotations on

source material placed in a safe; that task is for the reader of the document should they so desire.

Looking at the Office of the Chief of Defence Force Register again, I can see that, on 1 September 2011, one copy of the Operation Burnham "storyboard" and the IAT Report was dispatched to "MINDEF", the Minister of Defence, and signed for by Chris Hoey, who I believe was the Military Secretary to the Minister of Defence at that time; and that the other copy was referred to the "DCOS", which means the Deputy Chief of Staff and was, at that time, Mike Thompson.

Q. Just pause there for a moment please, and would you look back at the bundle you were looking at, page 371, and just to refer to the points you've made, if you look at page 371, do you see the words "MINDEF" on that page, and can you just point out where they are please?

A. I do. They're in the fourth column from the right at the top of that column.

Q. Yes, thank you.

And you've referred also to one going to Mike Thompson, you've mentioned in your paragraph 21?

A. Mmhmm.

Q. Can you refer to the entry that shows you that please?

A. DCOS 1st of the 9th with an initial next to it below the -- and one column to the left of the MINDEF.

Q. Thank you.

And just while we're dealing with the documents, you've mentioned a storyboard

A. Mmhmm.

Q. Now, there's a bundle of documents in front of you, now yours looks differently configured to mine, I think it's in the ring binder that you've got there in front of you?

A. Sure.

Q. Actually, the ring binder in the very front of the desk, yeah that one there. Now, I should have oriented myself with that binder, there might be a tab in there that says "Material for

hearing on Tuesday 15 October", if there are some tabs on the right-hand side?

A. I have two tabs, one is supplementary, I imagine that's supplementary bundle?

Q. Yes.

A. And the other one says October --

Q. Yes, that's -- that will be the October one, if you'd go into there please? Thank you, excellent, and if you turn please to page 127.

A. Yes.

Q. You've mentioned a storyboard, is that the document that you're referring to?

A. It is.

Q. And are you able to explain just in general terms what a storyboard is?

A. A storyboard is effectively a pictorial representation of the area of operations supported by any key elements of information that may have been found on the particular target at the time. It's supported by a narrative, generally down the left-hand column that really gives the base information of what the name of the operation was, who it was conducted by, what dates, and any of the key highlights from the operation that were known at the time.

Q. Yes, thank you.

And in your paragraph 17 you had said that you know that this was the document because it had a Classified Register sticker on it?

A. Yes.

Q. Do you see that sticker on the document, and can you point it out please?

A. It's at the top right-hand corner and it's "Classified Register" with the serial number etcetera, etcetera.

Q. Yes, thank you very much.

Now can I ask you please to go back to your brief and continue reading from the beginning of paragraph 22?

A. The documents that were dispatched to the Office of the Minister of Defence were given the serial number 386/11; and the documents that were referred to the Deputy Chief of Staff were given the serial number 387/11. The ditto marks on the Office of the Chief of Defence Force Register signal that they were copies of the same document.

My usual procedure when providing briefings on matters relating to Special Operations was to brief the Chief of the Defence Force first and then to brief the Minister of Defence. That is how the chain of command works.

I cannot recall when exactly I briefed the CDF. It was a very busy period and I think it is now appropriate that I elaborate on that in some detail. Between 28 June and 28 September 2011, the NZSAS were engaged in some of the toughest fighting that we had encountered to date. Over that three-month period two members of the NZSAS were killed - Corporal Doug Grant on 19 August 2011 and Lance Corporal Leon Smith on 28 September 2011 - and five were seriously wounded. Domestically, the NZSAS was involved in providing counter terrorism support during the Rugby World Cup. I will list those operations below that are available on open source material. It's important to note there were many others.

The Hotel Intercontinental hostage rescue of 28 June. One NZSAS wounded and repatriated to New Zealand. One NZSAS wounded and hospitalised.

The JMK battle of 17 July, three x NZSAS wounded.

The British Council hostage rescue on 19 August, Dougie Grant killed.

Service for Dougie at the regiment, 25 August.

Funeral for Doug at Linton, 29 August.

On 1 September the ISAF report filed in the CDF and the Minister's office by the DSO, myself.

9 September to 23 October, Rugby World Cup support.

10-14 September the Chief of Defence Force's visit to Afghanistan.

NOTE - the Chief of Defence Force was getting briefed on the Hotel Intercontinental hostage rescue when an explosion signalled the beginning of the Grey Palace attack.

13 September, Battle of the Grey Palace.

18 September, Leon Smith killed - Maidan Wardak.

Q. I think just pause there. Was that 28 September?

A. Yes it was.

Q. Yes, thank you.

A. 6 October, service for Leon at the regiment.

7 October, funeral for Leon in Johnsonville.

In addition, the NZDF were dealing with a substantial number of requests made under the Official Information Act 1982. The analyst in the Directorate of Special Operations was spending a significant amount of time responding to them.

If the CDF didn't ask for the briefing immediately because, for instance, he was occupied or offshore, I would have followed it up. I knew that he would be interested to see the IAT Report and it was my duty to do so.

I also cannot recall when exactly I briefed the Minister of Defence, the Hon Dr Wayne Mapp. I briefed him regularly. Sometimes it was on my own if the CDF was unavailable and sometimes it was with the CDF. At other times the CDF would brief on Special Operations matters without me present. The briefing on the IAT Report may have occurred alongside other agenda items, or it may have been the only matter that was discussed. I may have been summoned by the Minister upon his receipt of the IAT Report, or it may have been arranged by NZDF.

Although I do not recall the date or the logistics of the briefing, I do recall explaining to the Minister that the IAT Report did not provide evidence that civilians were killed but that it did conclude that there was a possibility of

unintended civilian casualties as a result of a Coalition AH-64 gun not being slaved correctly to its sight.

The Classified Document Register from the Office of the Minister of Defence, which is in the NZDF Bundle at pages 373-376, records that the document with serial number 386/11, which has been named "*NATO/ISAF (Secret) OP RAHBARI OBJ BURNHAM*", was registered on 2 December 2011 and shredded on 5 December 2011. I do not know why it was received on 1 September 2011 but not recorded in the register until 2 December 2011.

Q. Just pause there please. Now going back to the first bundle you were looking at, the smallest of the bundles there, the spiral bound one, it's probably -- yes, thank you it's the one you have in your hand. And if you go please to page 373.

A. Yes.

Q. Is that the register that you are referring to in that paragraph?

A. It is.

Q. And if you have a look please at page 375.

A. Yes.

Q. Is that the entry that you're referring to?

A. Yes it is.

Q. And could you please point out where the number 386/11 appears on that page, "*OCDF 386-11*"?

A. It is the fifth column from the left, on the bottom.

Q. Thank you very much.

Back to your evidence please, and paragraph 30 now.

A. I understand that, on 27 June 2014, Jon Stephenson approached the NZDF for comment on information he alleged to have that six civilians were killed, and fifteen civilians were wounded during Operation Burnham as a result of a helicopter gunship malfunction.

At the time I was not aware of Jon Stephenson's request. I was not involved in drafting the response. I was not involved in briefing the Minister of Defence, the Hon Dr Jonathan

Coleman, that weekend. I only resided in Wellington during the week at that time so I would have travelled home for the weekend. In any event, if I had briefed the Minister, I would have explained to him what I knew to be the case from reading the IAT Report. I had no reason to say anything different.

I understand that in early July 2014, the Chief of Staff, Commodore Ross Smith, was trying to track down how the IAT Report had come in to NZDF. I don't recall him asking me. Had he done so, I would have explained that it had been emailed to me securely by the SNO in theatre in September 2011, and I would have provided a copy of it to him.

On 23 August 2019, I received a call from Lucila van Dam, who is one of the barristers representing the NZDF. I was driving at the time and contemplating a significant commercial acquisition. In that call, Lucila explained to me that the Inquiry had asked NZDF to address at an upcoming public hearing what it knew - at various points in time - about the possibility of civilian casualties arising out of Operation Burnham and what it had reported publicly and to the Government.

She mentioned that one of the classified registers showed that a bundle of documents, which contained the IAT Report, had been placed in Mike Thompson's safe on 7 September 2011, and that Mike could not recall who had given him the bundle. Lucila asked whether I, as the DSO at the time, had given it to Mike.

When she called, I couldn't recall the IAT Report specifically because, over the years, I had read a huge number of classified reports and it was eight years ago. I told her that, if I had handled the IAT Report, it would be in my secure emails or directory and possibly in the DSO safe. I suggested to her that she contact my then analyst, who was still at NZDF, to conduct the search. I did not hear back from Lucila, so I assumed I wasn't needed as a witness.

I understand that a search of my secure and non-secure emails and documents was conducted in August 2019 and again in September/October 2019. Nothing was found. I no longer work for NZDF so I don't know the technical reason why these documents weren't found. I would have expected they would've been. My understanding is that not all secure communications and documents from that period are accessible today.

It was not until the Office of the CDF Register was found on 19 September 2019, during the course of the hearing, and the media began reporting that I was the person who had 'marched in' the IAT Report, that I gave this matter further and deeper consideration. Generally, to this point, I had no interest in the Inquiry as I know what happened and I remain firmly of the belief that my colleagues had operated to the highest standards in what were extremely difficult circumstances. Clearly my interest was piqued when I became the subject of media reportage where it was suggested that I was unwilling to give evidence to the Inquiry.

Reading this reportage provided some significant clarity for me; in particular, it confirmed that it was a classified report that I had handled. I then remembered that I had indeed received it and that I had made it available to the CDF and to the Minister of Defence. Now that I know I have relevant evidence to give, I am happy to come before the Inquiry to assist in any way that I can.

Q. Thank you very much indeed for your evidence. Please now, would you remain there and answer any questions that my learned friends may have of you.

MS McDONALD: Just before I start, it might be helpful if Dr Mapp's counsel were able to clarify whether he intends to cross-examine Mr Blackwell, at all? I just wonder about that?

SIR TERENCE: What's the position?

MR WORTHY: Sir, Dr Mapp obviously isn't here today, wouldn't be able to hear the evidence that's being given by Colonel Blackwell, apart from the Brief of Evidence.

He -- depending on the evidence given today, my instructions are to consider whether leave should be sought, and at the end of the evidence, inform the Inquiry if Dr Mapp wishes to cross-examine Colonel Blackwell. That could be on Friday, when (inaudible).

SIR TERENCE: Right. Okay, well thank you for that Mr Worthy.

So does that assist?

MS McDONALD: Up to a point it does, I think Sir. The timing may be an issue, if it's Friday, but we can deal with that.

SIR TERENCE: Well I would like all -- you to deal with all relevant matters, because I think our preference would be that matters not be held over and that, by and large, you're doing the cross-examination which should cover all the issues.

MS McDONALD: Yes, thank you Sir.

MR RADICH: Can I just add, sorry to interrupt, but Colonel Blackwell has moved a lot of events to be here today, but I don't understand he would be available on Friday if, for example, there was seen to be a need to recall him. I think that would be a logistical problem; I'll just mention that. Thank you.

SIR TERENCE: Yeah, well we're conscious that Mr Blackwell has changed his arrangements to be here.

MR WORTHY: Sir, it wasn't Dr Mapp's intent to cross-examine; it was only if something unexpected occurred.

SIR TERENCE: Right. Okay, thank you.

Ms McDonald?

CROSS-EXAMINATION BY MS McDONALD

MS McDONALD: Good morning, Mr Blackwell.

A. Good morning.

Q. It's clear, isn't it, from your Brief of Evidence and what you've told us, that you're a very experienced military officer?

A. Correct.

Q. And you have held senior ranks and positions within Special Forces and at Headquarters?

- A. Correct.
- Q. And you've told us that you were the DSO, which I think stands for the Director of Special Operations, doesn't it, between -- was it March 2011 and 2015?
- A. That's correct.
- Q. All right. And, as I understand it, and we've heard some evidence about this already, in -- was it in 2015 that there was some restructuring of that position; it has changed its name at that point?
- A. That's correct. The Directorate of Special Operations was a technical command; it didn't have any command authority per se. There had been a significant amount of work on the command and control restructure of the Defence Force at that time, and on the 1st of July 2015, the Directorate of Special Operations was renamed the Special Operations Component Command, and that was an environmental command that resided within the Joint Headquarters and was more appropriate to maintaining effective command and control of the Special Operations forces.
- Q. And the reporting lines changed at that point and there wasn't a direct line of report from the DSO, your position, to the Minister -- or to the CDF, sorry -- through the CDF?
- A. No, that's not correct. If I could just clarify, the DSO was in an invidious position at the time. He maintained technical authority, but not command. So effectively, he was asked to, I guess, if you like, oversee and conduct operations for the SAS, but under a non-direct command line. Under the Special Operations Component Command, the DSO became the Special Operations Component Commander. He was an environmental Commander, and for purposes of what I would call top secret and higher activities, the Special Operations Component Commander had a direct line to the Office of the CDF, the Minister if required, and the Prime Minister if required.

- Q. It's nonetheless correct, isn't it, that the reporting lines did change when the position changed and was restructured, to some extent?
- A. They became clearer.
- Q. They changed, didn't they Mr Blackwell?
- A. Well, yes. They became -- they changed, and they became clearer.
- Q. All right. But I'm correct, they changed?
- A. Indeed you are.
- Q. And you were the last DSO, as it were, in terms of that title?
- A. I was the last DSO, and the first Special Operations Component Commander, and I held that position for a period of four days.
- Q. Four days, okay.
- And as -- just briefly, before we go on, can you just give us a bit of a sense of what the DSO role was?
- A. The DSO role was effectively to exercise technical control over Special Operations forces. You can appreciate that that was a raft of responsibilities, included capability, in terms of bringing in new capabilities of equipment; personnel restructuring, for example, restructuring what is now the Explosive Ordnance Disposal Squadron from what it was, it came under command, and effectively overseeing all of the operations in Afghanistan that were conducted, which were briefed, not at the Joint Headquarters level, at the operational level. Because of the nature and the sensitivity of those operations, they were briefed to Headquarters NZDF, to the Single-service Chiefs, the Chief of Defence Force, and the Secretary of Defence, and those briefs were every Tuesday morning.
- Q. And you were then effectively the special -- sorry, the subject matter expert at Headquarters on matters to do with Special Operations?
- A. That's correct.
- Q. And you reported, I think you've told us this in your brief, directly at times to the Minister about Special Operations?

- A. Directly to the Prime Minister at times.
- Q. Okay, so clearly an important role?
- A. The Prime Minister thought so, because I briefed him many times.
- Q. Okay, and as part of that, given that role and your seniority, you would have understood the importance of openness and candour and accuracy when reporting to Ministers and to the Prime Minister?
- A. I certainly did, and I have understood that since the age of 19 when I graduated from the academy.
- Q. And you would know what I mean when I talk about a no surprises approach or policy when briefing Ministers?
- A. I do indeed.
- Q. And what -- just in case anybody here doesn't understand that, will you tell us what that is?
- A. Well, you know, strategy and politics are two very different things of course, but can sometimes become quite convoluted and mixed, particularly when you're dealing with military operations of the tempo and the intensity that we were conducting. So, a tactical decision from an individual on the ground could very quickly have strategic or political implications. For example, when we rescued some several hundred hostages at the Hotel Intercontinental, that was global news, and clearly the Prime Minister was very keen to be briefed directly on what had occurred.
- Q. So you would accept then it was very important that the Minister of Defence and higher up in the Beehive knew ASAP if anything was going to impact on the reputation of NZDF, the reputation of New Zealand, New Zealand Inc, New Zealand's standing on the international stage, anything of that type?
- A. I accept that, which is why of course the DSO enjoyed access to those officers that most military colonels would not. Having said that, it wasn't unfettered. I was effectively summoned as opposed to in a position to go and volunteer information.

- Q. So you never took the view, for example, that the Minister or the politicians were simply an irritation or an annoyance and should butt out of matters to do with operational -- Special Forces operations?
- A. Quite the opposite. Obviously, Ministers and politicians are elected officials by the democracy of this country, a democracy that I and my colleagues fought very hard to defend.
- Q. And as you say, I think at paragraph 37 of your brief, you and your colleagues operated to the highest standards in extremely difficult circumstances. Are you talking there about operational matters only, or are you talking about how you conducted yourself at Headquarters, in terms of your engagement with Ministers?
- A. I think, to be considered a professional, one must act professionally. My colleagues, of course, were professional military officers, but they were also highly educated, highly experienced and highly capable of identifying points of relevance that may be appropriate to the command chain.
- Q. So to answer my question, are you talking about both operational matters and matters to do with how you conducted yourself at Headquarters, and briefings with Ministers?
- A. So if I understand your question correctly, could we move from tactical through operational to strategic and political? The answer to that is yes.
- Q. No, I'm asking you, Mr Blackwell, I may not have been clear, when you say at paragraph 37 of your brief that you operated to the highest standards.
- A. Yes.
- Q. Does that apply both to operational matters, which is what I thought you were actually talking about there?
- A. Yes.
- Q. And how you conducted yourself at Headquarters?
- A. Okay, let me be clearer then. These were operational matters which I oversaw, but I was at a strategic level in the Headquarters. So, yes.

Q. Right.

A. Very comfortable being clear with Ministers and command about what our operations were and what potentially the implications of those operations would be.

Q. Okay, thank you.

And as you say, when the IAT Report arrived, it was immediately obvious to you that it was very important?

A. Yes, the document was highly relevant. From what I'd spoken with Lieutenant Colonel Cummins in April, I identified that there was still some matters that needed to be cleared up. They were matters that had been investigated by an external party, and it was my very clear suggestion to him and the Senior National Officer in theatre, that we should attempt to obtain a copy of this document to clarify exactly what the situation was.

Q. I'm going to come to all of that shortly. All I'm asking you at the moment is just to confirm for me something which I think seems obvious from your brief, that when you got the report, you recognised it was a very important document?

A. Indeed I did.

Q. All right. And that you needed to brief both the CDF and the Minister on it as soon as possible?

A. Indeed I did.

Q. And not only was it important to brief them on it, but you also believed that it was important that the Minister have a copy of it?

A. Correct.

Q. And as you've said at paragraph 15 of your brief, the IAT report was a document that both CDF and the Minister of Defence needed to see?

A. Correct.

Q. And I think you then asked Mike Thompson, didn't you, to let you know when CDF was ready to be briefed?

A. That's correct.

Q. Now, do you remember whether you were in fact summonsed to the Beehive by the Minister after he'd read it?

A. I'm afraid I don't.

Q. Well, what's your recollection of where you briefed him?

A. I briefed the Minister in his office in the Beehive.

Q. Right, but you don't remember whether you were summonsed?

A. I don't.

Q. Okay.

It would make sense though, wouldn't it, Mr Blackwell if the Minister had read the report, because it would be immediately obvious to him that it was of some significance?

A. I would have thought so, yes.

Q. And I take it that you were completely frank with the Minister and the CDF about the report and its implications?

A. I believe I was.

Q. Well, you say you believe you were; you must have known the significance -- well, you've told me, you'd known the significance of it -- and you've told us too that you were someone who appreciated the very real need to be open and candid with Ministers. So you would have been candid with the Minister and with CDF about the implications of the report, surely?

A. Okay, as a military officer one must be candid; one must be respectful of the higher office that is held. I made the points known, and it was for the Minister and the CDF to determine what they would do with the points that I made.

Q. Well, we're going to spend a bit of time, as we go through the questioning today, about these matters, but you must have had an appreciation of the public statements that had been made by Defence about the allegations of civilian casualties up to that point?

A. Hence my very strong desire to get a copy of the document, and immediately upon receiving the document, having it marched into the office of the CDF and the Minister.

- Q. Of course. And what I'm -- all I'm suggesting to you is given that background, given that you're the subject matter expert, given that you've got an obligation to be utterly transparent with the Minister and with CDF, it follows logically, surely, that you must have pointed out the significance of the IAT Report to them?
- A. The Minister, as I recall, asked me whether there was civilian casualties. I said that the document, which was a standard NATO response, was neither to confirm or deny, was that there may have been, but there was no evidence that I had viewed, including the footage, the storyboards, or the discussions I'd had with my colleagues, that led me to believe that there were civilian casualties.
- Q. All right.
- A. Though it could not be discounted.
- Q. All right. Well, we're going to come to this in more detail, but I just take it from that answer that you did not yourself actually believe there had been civilian casualties; is that what you're saying?
- A. I believed that there may have been, but there was no evidence that I had viewed that suggested that there was.
- Q. All right. Well, we'll remember that answer and we'll come back to it.
- A. If I could just clarify, I think my exact words to the Minister were that, from my time on operations, which are significant, literally conducted thousands of these operations, I said to the Minister that there was no such thing as known knowns as a result of a military operation. These operations generally occur in the dead of night, in very austere environments, with combatants who are using kinetic force against us. So generally, through the process, it's a bit like unpeeling an onion. More information becomes available, but I was very very firm of the view that I would never say never, and never say always, when it came to it, because when men and machinery meet in the dead of night,

there are many things that occur that are not immediately clear at the time.

Q. At that time, Mr Blackwell, did you not actually believe there was a serious possibility of civilian casualties? That's a simple question. Just answer it.

A. I had no reason to believe that there were civilian casualties, but there may have been.

Q. All right. At paragraph 13 of your Brief of Evidence, you've referred to the findings of the AR 15-6 report. I just want to be absolutely clear about that; that's an entirely different report to the IAT, correct?

A. Indeed it is.

Q. All right. And that's not a document that you had at the time?

A. No, it's not.

Q. Who gave it to you, and provided it to you, for the purposes of your Brief of Evidence?

A. It was provided to me by Lucila van Dam, I think two weeks ago.

Q. Isn't the better summary of the IAT report that's contained in the ISAF press release of the 29th of August 2010, which is in fact the document that the Inquiry used at the last hearing?

A. I'm sorry, could you -- I don't understand the question?

Q. You'll be familiar with the ISAF press release from 29 August 2010, which talked about the findings of the IAT report?

A. Not overly, I was in Iraq at the time in 2010.

Q. And you weren't shown that by the NZDF lawyers when you were being briefed?

A. I saw it subsequently, but I wasn't aware of it at the time. In fact, I'd just been blown up in Iraq when the operation occurred in August of 2010, so I was focused on other issues at the time. So I didn't read the report.

Q. So I'm not talking about then, Mr Blackwell. I'm talking about when you did your Brief of Evidence. You weren't in Iraq then.

A. No, no, I saw that document, yes.

Q. Right, so you saw the ISAF press release at the time that you prepared your Brief of Evidence?

A. Yes.

Q. Why didn't you use that as a summary of the findings of the IAT report?

A. I believe that the summary that I provided today is clear about what actions I took with the information I had available to me at the time. I didn't feel that it was necessary to -- it's already 38 paragraphs. I was trying to make my summary as succinct as I possibly could for the Inquiry today.

Q. You accept, don't you, that the IAT report concludes that there was a likelihood of civilian casualties from the US Apache gunship misfiring?

A. I accept that that's what the report says, yes.

Q. And that civilian casualties were possible?

A. Many things are possible in operations, and that was one possibility, yes.

Q. So you accept that's what it said?

A. It says there may have been.

Q. It says they were possible doesn't it?

A. May have been possible --

MR RADICH: I just hate to interrupt, but I think we're looking at the IAT Report wording here, which is a little bit problematic. Unless I'm mistaken and it's in the press release.

MS McDONALD: We're not actually; we're referring, which is what I was about to take Mr Blackwell to, to Mr Parsons' evidence, who is an NZDF witness, and the ISAF press release, and the talking points made by -- prepared by NZDF, which are in the bundle, which I'll also go to.

So, can we take you then first to Mr Parsons' evidence that he gave at the last hearing? And I'll read it to you, because you won't have a copy of this. Do you know Mr Parsons?

A. I know Mr Parsons very well. Mr Parsons succeeded me as the Commanding Officer of the SAS regiment in 2009.

Q. He did. I'll just find the right paragraph. He says, paragraph 27:

"When I finally saw the full report [and he's talking about the IAT report] I realised that other paragraphs that I hadn't seen previously concluded that there was a likelihood or a possibility of civilian casualties. Had I read those paragraphs at the time, I would never have expressed the email as I did, rather...I would have confirmed that the IAT Report had reached the conclusion tentatively expressed in Rian's email that civilian casualties were possible as a result of rounds falling short due to a gun sight issue, but that the New Zealand troops were not responsible."

You accept that, that's what it --

A. Yeah, I accept that.

Q. Okay. And, if we also have a look at -- in the bundle in front of you, in the big black one.

A. This one or this one?

Q. The big black -- no, no, the big black ring binder..

A. This one? Okay.

Q. Hang on, I've got the wrong page number. Sorry, it's the supplementary -- have you got a supplementary -- see where the -- no, just hang on. Pause for a minute. In the black one that you were just with, there's a tag that should say "Supplementary"?

A. "Sups", correct.

Q. Right.

A. "Sups bundle".

Q. It may have a different page number; it's page 71 in mine. Have you got page 71? Does it say -- sorry, page 70, say "Dot point brief for VCDF"?

A. No, I'm sorry, my page numbers start at 200 and something, 230.

Q. You might be under the wrong tab. I'll just ask Ms Wilson-Farrell to assist.

A. Okay, page 70? Yes.

Q. And if you have a look at page 71, this -- just to be clear, this is -- these are some talking points --

A. Mmhmm.

Q. -- which were located on the -- as part of a bundle of documents that we found in the Thompson/Hoey safe?

A. Yes.

Q. And they've been prepared by NZDF; they're dated 22 March 2017, and the reason I'm referring you to this is simply to point out, at the second bullet point, perhaps the -- and perhaps the fourth bullet point on page 71 -- you'll see there a reference to the possibility of civilian casualties having occurred, because women and children were seen in the buildings which were affected or impacted by the gunship firing?

A. I can see that, yes.

Q. Right.

So, you would also, would you not, have been receiving some of the intelligence reporting post the operation, and seeing that back in New Zealand?

A. Well, when I took the office of DSO on 29 March 2011, my recollection is that I was immediately deployed. I think it's important to understand that, at that point, the Task Force had been downsized by Government from [WITHHELD] and our LAVs had been re-deployed to the PRT, which caused me some challenges. I literally had half the force, and at that stage, we were back into the summer fighting season, and we were suffering almost nightly spectacular attacks into Kabul and the six surrounding districts. So effectively half of my combat power had gone. So I had to go and try and identify a way by which we could effectively continue to provide the level of support. We were supporting the Crisis Response Unit there of some [WITHHELD] people, and I had literally

[WITHHELD] SAS individuals to do that. So, it was a demanding time, and I believe my focus was on the safety of my soldiers in theatre to go about their business in a safe and appropriate way, with the limited resources. So, I would admit to the fact that I probably didn't pay it the amount of attention that you would expect in hindsight, but I was probably more focused on more pressing matters at the time.

Q. So -- and I'm not questioning for one moment the significance and the danger of the work that the SAS did at that time and continue to do; I'm simply asking you whether you remember being aware of intelligence reporting about the possibility of civilian casualties?

A. Um, could I --

Q. If you don't know, that's fine?

A. Could I just clarify? Civilians on target are not uncommon. In fact, the majority of the operations that we went on were highly complex and required surgical application of force, because civilians were on target. So, I could tell you hundreds of operations where civilians were on target, so it was not unusual for civilians to be on target, and certainly not unusual for the Taliban to suggest that civilians had been harmed in the prosecution of the target. An effective SAS operation is one which no shots are fired, because unfortunately, when shots are fired, innocent people who are in the location can find themselves in the vicinity of those shots. So a successful operation for the SAS is no shots fired.

Q. Mr Blackwell --

MR RADICH: I'm very sorry to interrupt, but there was just a piece of classified information I wonder if I could ask for a suppression order over, Sir Terence, before we lose the point? And that was -- and it's relevant evidence, but in terms of the suppression it may be relevant to raise it. It was the number of SAS and CRU in the field at the time and I just

wonder if, before too much time elapses, there could be a suppression order just over those numbers?

SIR TERENCE: Yes, well there have been orders in the past about those numbers. So, we'll simply continue that. So those numbers are confidential.

MR RADICH: Thank you very much. I'm sorry to interrupt.

MS McDONALD: Mr Blackwell, did you think there was a possibility of civilian casualties from this operation when you read the IAT report? Or did you dismiss it and think it was wrong?

A. There are a few things that attract the attention of a senior military officer. One of them would be the possibility or suggestion of civilian casualties. Soldiers fight to win the peace. So it's a very serious matter and one that we take very seriously, and I would have been deeply concerned had evidence been produced that civilians were in fact harmed. What I'm saying to you is that I didn't see any evidence that civilians were harmed, but there was a suggestion that they may have been.

Q. Mr Blackwell, ISAF had undertaken, General Zadalis had undertaken, an investigation where he had come out with a report which said there was a possibility of civilian casualties as a result of the misfiring of the US gunship. Women and children had been identified, or had been noted as -- those passages I've just taken you to in the talking points. I'm simply asking you whether you thought he was wrong and you knew better, or whether you accepted there was a possibility of civilian casualties?

A. I've accepted. I thought I made it clear. There was a possibility of civilian casualties. And I accept that, and that's what I briefed the Minister on.

Q. All right.

A. I would have no reason to think anything differently. I was not on the ground. And generally as a military officer, you rely on the information that comes to you from the person most capable of providing it, which is the person on the ground.

Q. Okay.

Now, before you got the report, you were aware, to a greater or lesser extent, I'm not suggesting with great precision, but you were aware, weren't you, of NZDF's position on the allegation of civilian casualties? We know that the Minister had been briefed in December that there were no way there was civilian casualties; there was the press releases and reporting that had come out where the statements had been made that the suggestion of CIVCAS was unfounded. So you were aware broadly that that was the position NZDF had taken?

A. Broadly I was, as a result of being briefed by Colonel Cummins in April on my return to duty. And so I was aware that that is what Defence had said, and hence the impetus that I put on a succession of SNOs in theatre to obtain a copy of the report.

Q. Right.

A. I think my evidence states very clearly that once I was briefed in April, I made every effort to obtain a copy of the report.

Q. And given the significance of the report's findings and the way it had been erroneously, we now know, referred to, but nonetheless, it had been relied on by the Minister of Defence and NZDF up to that point, so before it came in, and NZDF had denied categorically the possibility of any civilian casualties, you must have been very interested to get the report because to your mind, I assume, it was going to reinforce that position?

A. Yeah, I -- if I could clarify? Of the many many operations that I ever saw, the allegation of civilian casualties was a standard response from the Taliban, within 24 to 36 hours. And generally once we'd investigated, the gun footage, the weapons surveillance footage, and found that not to be the case, generally nobody was much interested in hearing about that. This particular report, obviously, was something that

was provided by a third party that gave us more clarity around the details external to our ground forces on that operation.

Q. So before you got the report, there must have been, I assume, some discussion at Headquarters about getting the report, the fact that the report's likely to help provide assurance to the Minister, about those things? Who did you discuss those matters with?

A. Look very much. I mean, again, but one needs to take this in context with the amount of allegations of civilian casualties that we were dealing with at the time. We were asked many many questions on many many operations as to our conduct; this was one of them. And until I had evidence to the contrary, I had no reason to believe, because our ground forces at the time had told us as far as they were concerned, they were unaware of any civilian casualties. And again, my Ground Force Commander, I believed absolutely, and still do, that that, to the best of his knowledge, is what had occurred on that evening.

Q. So you expected -- before you got it, you expected the IAT report to confirm that there were no civilian casualties?

A. No.

Q. You didn't -- you expected it to say different?

A. No, I expected it to clarify the information that was not available to us. This is --

Q. I thought you just said a moment ago that you -- these are not your words -- but that, effectively -- that you were expecting it would reconfirm what your Ground Force Commander had said?

A. No. No, no, what I said was it was not unusual for allegations of civilian casualties and it would take time for the information to be made available in fullness, the fullness of time and the fullness of information. I didn't expect it to say anything. I expected it to give us a fuller picture of the situation. That's what I expected.

Q. But surely, Mr Blackwell, given the position that NZDF had taken about what it said, and you know what I'm talking about,

the Minister had been reported to and briefed on the findings of that report, and public statements had been made that the allegations of civilian casualties were unfounded and words to that effect, we can go to them if you need to, but that was the position NZDF had taken?

A. Correct.

Q. So surely you would have thought, before you got it, that that's the position that the IAT report would show?

A. I had no reason to believe that that wasn't the situation, because I was not in receipt of any information that was contrary to that. When I received information that was contrary to that, I made it immediately available to the Office of the Chief of Defence Force and the Minister.

Q. Yep, and we're going to come to that in some detail.

Who did you talk to at Headquarters about getting the IAT report? Did you talk to the CDF about it? Did you talk to the VCDF about it?

A. At the time?

Q. Yeah, before you got it?

A. No, no. I talked to their Chief of Staff, Mike Thompson.

Q. The only person?

A. Yes.

Q. So I want to now just have a look at some of the things that were going on, and you've talked about some of them operationally, but particularly back here in New Zealand, the context in around about -- through 2011. So 20 April 2011, allegations of civilian casualties resurface, and you tell me if you don't agree with me, and seem to be front and centre in the Minister's thinking and his engagement with the media. We can go to some documents -- I'll take you to some documents shortly, but broadly, that's what I'm putting to you. So do you accept that?

A. I don't know how many times I can say this to you; I was aware in April that there was an allegation of civilian casualties. I did my best to find some documentary evidence to support

those allegations, or not, and on 1 September, that information was made available to me. So I was aware that there had been some allegations made, but I was also aware of many many other operations and many many other allegations.

Q. Mr Blackwell, you might find my questions not quite so irritating if you -- you say you -- I don't know how many times you have to say this to me -- if you actually just listened to a bit more to what I'm saying. I'm putting to you what the position was in the media and for the Minister in New Zealand in April 2011. There were allegations of civilian casualties resurfacing publicly?

A. Mmhmm.

Q. All right?

A. Yes.

Q. You accept that?

A. Yes.

Q. Thank you.

And you, correct me if I'm wrong, had not long taken over as DSO in April 2011?

A. 29th of March I took office and I think I probably deployed a day or two later.

Q. And if we have a look at the big black bundle in front of you at page 180, and that is a draft of a New Zealand Defence Force press release, and I'll take you to the final version shortly, but you'll see if you look down to the penultimate paragraph on that page in this draft, and this is the 20th of April 2011, "the investigation", and that's talking about the ISAF investigation, "concluded that the allegations of civilian casualties were unfounded". Do you see that?

A. Yes, but it also clarifies that nine, not 12 insurgents were killed.

Q. It may well do, but I'm asking you to look at the penultimate paragraph and ask you to confirm that that says the allegations -- that the investigation, the ISAF investigation

concluded that the allegations of civilian casualties were unfounded. That's what it says, and that's not right, is it?

A. Well, I didn't write this.

Q. I know, and we've been through this before. I'm just asking you to focus on that paragraph. Do you accept that that's not right to the best of your knowledge?

A. I think that it's not right as a result of the information that was provided subsequently, but at the time, it was considered that the allegations of civilian casualties were unfounded. That is, there was no evidence to suggest there were. And certainly, with the benefit of the ISAF -- or the IAT report there were, but certainly we reviewed the operational storyboard, we had talked to the soldiers involved, we had reviewed the gun footage and again, there was nothing in there, that led me to believe there were civilian casualties. More investigation of this by properly qualified individuals who could review the gun tapes etcetera have put in that particular piece of information.

Q. Do you accept that it is not correct to say the ISAF investigation concluded that the allegations of civilian casualties was unfounded?

A. I believe that it was a representation of what was considered to be the position by Defence at the time.

Q. I'm not asking you for an explanation of why it was written, and indeed, we've had many witnesses before you who didn't seem to have too much difficulty accepting that that was wrong, but you seem to?

A. Well in hindsight -- so if you're saying in hindsight now, is it wrong? Yes. Did I believe it to be wrong at the time? No.

Q. I'm not even asking you, Mr Blackwell, what you believed at the time; I'm just asking you as a matter of fact, now, looking at that sentence, it's incorrect, isn't it?

A. It is incorrect now with the hindsight of the IAT report, correct.

Q. And just -- if you go over to page 183, you'll see there a quote from Mr Mapp, the last sentence in that page, the report. He's referring to the ISAF report -- sorry, he's referring to the media report:

"The report said there had been -- claims civilians died in the counter-attack, but Mr Mapp said they had proved to be false." So that was Mr Mapp's view at the time, clearly.

A. That's Mr Mapp's prerogative, as the Minister of Defence, to say that, correct.

Q. Oh absolutely, Mr Blackwell. I'm simply asking you that that seems to represent Mr Mapp's view at the time. It's reported in the media; you were briefing the man; you knew what his view was as at the 20th of April 2011, surely?

A. Correct.

Q. And he thought there were no civilian casualties?

A. Correct.

Q. Thank you.

And then, if you turn the page to 184, you'll see the final of the press release -- the draft press release I took you to, just for completeness, and it's the fourth paragraph from the bottom, the same sentence:

"The investigation concluded that the allegations of civilian casualties were unfounded."

Correct?

A. Correct.

Q. Yeah, we do need an answer from you for the transcript.

And then if we go to page 186 and 87, this is an interview, Guyon Espiner interview, with the Minister, and consistent with the material I've just been taking you to, if you look at 187, he's talking there -- the very last question at 186, Guyon Espiner says there were also claims that civilians had died in the Kiwi counter attack. The Minister says:

"That's been investigated and proven to be false."

And then he says, question:

"So no civilians were killed in that? You're satisfied about that? You've seen some reports?"

And the Minister says:

"I am satisfied around that."

And that's dated 20 April 2014 also.

The reason I'm taking you to this material is I'm just pointing out to you what the context was in the media and politically, here in New Zealand. All right?

A. I don't even think I was in New Zealand on the 20th of April --

Q. No, well that's fine.

A. -- 2011. And I certainly wasn't involved with Defence PR or the Minister's press secretary. I was the Director of Special Operations conducting operations.

Q. And those media statements from the Minister and the press release that I just took you to you'd accept are all consistent with NZDF's advice to the Minister back in December 2010. I'm not suggesting you drafted that advice, but you'll be aware, won't you, that that advice said that there -- it was no way that there could have been civilian casualties? Do you accept that from your knowledge?

A. Yeah, I --

Q. We can go to the briefings if you'd like me to, but --

A. Well, it's 2019; I'm now looking at these documents, right? But at the time in 2011, you're suggesting that I was paying particular attention to this?

Q. No, I'm not even doing that Mr Blackwell. What I'm suggesting to you now is, just looking at the context of 2011, we have the briefings to the Minister saying no way there could have been civilian casualties; we've got press releases from NZDF to similar effect, unfounded; the ISAF report found there were no possibility of civilian casualties; we've got the Minister saying that, right? That's the context, and you accept that?

A. I understand that was the position, absolutely.

Q. And as I understand it, and I'm sure I'll be corrected by Mr Radich if I'm wrong, those media statements in April 2011 seemed to be the first time that the allegations of civilian casualties had hit mainstream media in New Zealand. There had been reporting internationally, but nothing in New Zealand. They were now on the 6 o'clock news and there was a Q&A programme and the Minister was being asked to comment. Do you accept that?

A. Yes.

Q. And your understanding at that time, April 2011, I'm suggesting to you, must have been that the IAT report -- given what was being said by NZDF about what it said -- your understanding must have been that that report cleared both the US air assets and the New Zealand ground force of any civilian casualties, correct?

A. I was aware that allegations had been made; I had no evidence to suggest that those allegations were founded until such times as that evidence became available on the 1st of September.

Q. The material I've just taken you to --

A. Yes.

Q. -- says, erroneously we now know, but nonetheless, it says "that the result of the ISAF investigation was that there were no civilian casualties."

A. That is the information that was available at the time; that is what we understood the position to be.

Q. Thank you, that's what I want to put to you. So you understood that position, at the time, before you got the IAT report?

A. Correct.

Q. Therefore, it follows that you expected that that IAT report, when you got it, would show exactly what NZDF had been saying it said --

A. No.

Q. -- you'd have no reason to suggest --

A. No, absolutely --

Q. -- otherwise?

A. -- not. No, that was the position with the information we had available, right? But I certainly was in the service of the Defence Force for long enough to know that there was -- you never say never and never say always, right? Now, whatever verbiage was used at the time was the prerogative of the PR people at the time. I didn't expect the IAT report to say anything. What I did expect is I would get an IAT report that would clarify for us, one way or the other, the allegations, but I had no preconceived idea of what the report would say.

Q. Are you seriously suggesting that New Zealand's -- the NZDF's press release, in which it said that the IAT investigation concluded that the allegations of civilian casualties was unfounded, was not what you believed the position to be, and not what you believed the IAT report would show?

A. I had no idea what --

Q. Did you think NZDF might have been making that up when they did that press release?

A. No. What I believed was, at the time, by the information that had been provided by some of my colleagues, the information that was available at the time suggested that there was no foundation to the allegation of civilian casualties. That said, the allegation was still there, which is why in April I endeavoured to find the IAT report so that we could clarify that one way or another.

Q. So did you think the IAT report might in fact not say what NZDF had been saying it said? Did you think Mr Parsons' representation of it might be wrong?

A. I had no reason to not believe Mr Parsons, who's an entirely capable professional officer, and it was his assessment at the time that there were no civilian casualties. I had no evidence to the contrary.

- Q. And he said -- he was saying that the IAT report had concluded that there weren't any civilian casualties?
- A. If that's what Mr Parsons believed at the time, then I believed Mr Parsons.
- Q. Right, and logically, as day follows night, you must have thought that the IAT report would say exactly what your bosses were saying it said? Surely?
- A. Again, I literally have conducted, or been involved in thousands of these operations. Ostensibly, I would take the evidence or the advice of my subordinate commanders until such times as there was evidence to the contrary. I had no reason to not believe the Defence's position was correct, and all I had done was to try to find a copy of the report to validate what had been said.
- Q. See, I suggest to you, Mr Blackwell, that when all this was going on in 2011, and we've got media reporting and the Minister saying that no CIVCAS, and he's coming under a bit of pressure, and NZDF are having to make press releases and all of the stuff, that you thought well, we'll get the IAT report because that will put this to bed once and for all. It will provide the Minister with the assurance he needs. Surely that was what was going through your mind?
- A. No. No, you're putting words in my mouth. I said, that that is what I believed that the situation was, but if we obtained a copy of the IAT report, we would know definitively what the position was. This was third party information of which we had no transparency.
- Q. What was not definitive about NZDF's position prior to getting that report?
- A. NZDF's position was representative of what they believed to be the facts at the time.
- Q. So surely, you must have been going to get the IAT Report to confirm that what they were saying was right?
- A. Are you suggesting that I would pre-judge this when I knew that there was information that was available to us, that

existed in theatre, that I could dismiss? Is that what you're saying? Because --

Q. Well, what information existed in theatre that -- what you're talking about?

A. Well, I knew that there was an IAT investigation, and -- which we didn't have a copy of, which is why I tried to obtain it, so I could get a fuller picture.

Q. And you'd been told that the result of that investigation was that CIVCAS was unfounded?

A. At the time.

Q. So I'm just struggling to understand why you were so determined to get a copy of it.

A. Well, for completeness.

Q. For completeness. Okay.

And to provide assurance to the Minister?

A. For completeness so that the information that we had provided was in fact correct.

Q. But Mr Parsons had already seen it?

A. I had no reason to believe that the information was not incorrect, but it had been requested for us to get a copy of the IAT report, and I would do as I was told, and that's what I did. I formed the opinion myself, and I was also requested to obtain a copy of the report, which proved challenging.

Q. Can I suggest to you that that IAT report, to your mind, was the critical piece of information that would put this issue, this public issue, to bed once and for all? Is that fair?

A. I believed, that for completeness, it would provide a fuller picture of what occurred on the operation.

I had no preconceived ideas of what the IAT report would say. I've read hundreds of them.

Q. Well, I'm sorry, I don't want to labour this and I'll move on shortly, but you say you had no preconceived view about what the IAT report would say. That's just what you've said. That just can't be right, because you had been told and you knew from NZDF's position and the Minister's position that it said,

we now know wrongly, that there were no civilian casualties. So you did have a preconceived view about what it was likely to say, or what it would say?

A. I -- my view was consistent with the view of my colleagues and what the Defence position was at the time.

Q. Namely that it would say there were no civilian casualties?

A. I had no reason to believe anything other than that.

Q. All right.

A. Nobody had provided any evidence to the contrary. I had not seen any evidence to the contrary. As I've said to you, I viewed the gun footage; I looked at the storyboards; I spoke to the individuals concerned. There was nothing there that suggested to me that there were civilian casualties. So my view was consistent, until such times as I read the IAT report, which says there may have been.

Q. Which says there is a possibility off civilian casualties?

We know you briefed the Minister on 16 May 2011, and I -- when I say I know, I'm referring to evidence that Dr Mapp is going to give, where he refers to a briefing on that date at paragraph 4.1 of his Brief of Evidence. I can take you to it if you want to, or do you accept that you did brief the Minister on the 16th of May?

A. I briefed the Minister many times in 2011. Many, many times.

Q. And given that timing, less than a month after that press release in April, it's reasonable to assume that there would have been discussion about the media interest in the issue of civilian casualties, is that fair?

A. No, if I recall directly, I think in May of 2011, we were dealing with an article that had been released by Mr Stephenson around allegations of impropriety in Parwan and the Tiger Raid and other operations. I believe in May of 2011, I was probably pretty focused on briefing the Minister around those allegations.

- Q. Okay. So you've got quite a specific memory of that, and what, the -- you didn't talk about the media interest in civilian casualties?
- A. The nature of the briefings with the Minister were generally I would have some information to provide. So specifically, the catalyst for it, probably in about May, would have been as a result of the article "*Eyes Wide Shut*" and then the Minister, when satisfied with those answers, could have asked me a number of questions on a number of operations. Like I've said to you, these operations were almost nightly, and the Minister would have various inquiries of me around a range of things. Whether I spoke to him in May about the allegations of civilian casualties, I certainly can't recall.
- Q. So you can't recall, all right --
- A. But my view would have been consistent with -- my view that has -- I've formed over many years of operations. Never say never, never say always, and there were always known unknowns when you conduct military operations.
- Q. So had you talked to him about it, that's what you would have said?
- A. I absolutely would have said that.
- Q. Right.
- A. If he'd asked me for my opinion.
- Q. And it is reasonable to assume that it would have come up, surely? You're the DSO; there's media around this issue; it seems almost inconceivable, doesn't it, that he wouldn't have raised it?
- A. Well I think -- I think actually -- to be fair, I think the article "*Eyes Wide Shut*" was focusing on the Minister more. The allegations in there were about us dragging bodies through the streets in Parwan. I -- we hadn't been in Parwan for six weeks preceding or six weeks after those allegations. So, the allegations of killing innocent security guards on the Tiger raid, various other allegations, which I had obtained

evidence that clearly exonerated our operation. So I think, probably --

- Q. I'll stop you there Mr Blackwell, because Mr Radich started off today by suggesting that these extraneous matters weren't relevant. Now, I mean, I didn't ask you about these matters.
- A. Well no, you asked me what I'd briefed the Minister on in May, and I'm telling you what I was likely to have been briefing the Minister in May.
- Q. And you don't, I don't think to do that, need to go into vivid detail about it, unless Mr Radich wants to?
- A. Well, I -- to be and honest if I -- I probably wouldn't have, and the result of that is I had no information that was contrary to what the Minister had already previously been briefed on. So I wouldn't have wasted his time.
- Q. Did he ask you to get the IAT report?
- A. No.
- Q. Are you sure?
- A. I believe that the IAT report request was generated via Defence, maybe as a result of the Minister requesting or not, but it was certainly clear to me in my discussions that it would have been useful to obtain a copy of it.
- Q. Well something led you to talk to Karl Cummins about it, and surely -- I suggest to you it was because of the Minister raising it?
- A. Incorrect. I was away. When I got back, my deputy, as he would, as a matter of course, gave me a Commander's Update Brief, which would have a list of 50 things. In that 50 things probably would have been reference to the press release of April.
- Q. So this is Karl Cummins saying to you that you should get the IAT report because of the media?
- A. Karl Cummins suggesting to me that as a result of some further allegations that were made in April, right, there was still allegations of civilian casualties, it would be useful for us to obtain a copy of the IAT report. Whether he said that

specifically to me, or I formed that view myself, I'm not sure; it was eight years ago.

Q. And it's reasonable to assume that the Minister would have an interest in getting the IAT report, given all of this?

A. The Minister had interests in many SAS operations; that was one of them, yes. It might have been Rugby World Cup preparations. I'm not sure.

Q. Well that surely wouldn't have led anybody to ask for the IAT report though, would it?

A. No, but I thought I made it clear that when I came back my deputy suggested that there had been further allegations of civilian casualties. The information that we'd provided was there weren't, but there was an IAT report in play which would be useful to obtain a copy of.

Q. Okay.

A. Now whether I formed that view myself or he told me to obtain a copy, I probably would have thought a combination of the two. He's a smart guy.

Q. Mr Cummins?

A. Yes, he is.

Q. And, well perhaps we can agree at least to this point, Mr Blackwell, that it was important, in your mind, at that time, to get a copy or try to get a copy of the IAT report?

A. I think that the truth is very important, which is why I'm very happy to be here today to clarify this, right?

Q. Okay, and can you answer my question directly? Do you accept that it was important, in your mind, at that time, 2011, to try and obtain a copy of the IAT report?

A. I accept that.

Q. Thank you.

And you'd also accept, wouldn't you, that it was not the first time that there'd been some pressure to obtain a copy of that report?

A. Yes, but significant -- but significant in the context of all of the other requests for information that we were staffing at

that time. I had one person in my office and I think that person was occupied for up to two days a week dealing with OIAs of SAS operations in that --

Q. Sorry, I didn't use the word "significant" in that question. What I said to you, was you would accept that there'd been some pressure to obtain the report previously. Do you accept that?

A. I think any information that you can obtain to further clarify the position of the Government of this country is important.

Q. So is that answer yes?

A. Correct.

Q. And if you look at page 84 of the large bundle in front of you, you'll see there an email from Colonel Peter Kelly to Rian McKinstry dated 31 August 2010?

A. Mmhmm.

Q. And if you look at the first paragraph of that, really the last sentence of the first paragraph, given that he is speaking publicly:

"Can we now expect a copy of the assessment or at least a copy of the findings so we can report back to the Prime Minister, the Minister of Foreign Affairs, the Minister of Defence, they are quite exercised [that's supposed to be] by this and are very keen to hear the official outcome."

So that shows, doesn't it, that back in August 2010 senior politicians wanted to get a copy of the report?

A. Sure, I was in Iraq.

Q. And we know from Mr Parsons' email of 8 September 2010, and you can go to it if you want to, it's at page 104 of that bundle, he had indicated and he's given evidence, that he wasn't able, he says, to get a copy of the report, but he just looked at a bit of it. Do you accept that?

A. Sure.

Q. All right. And you've told us at paragraph 10 of your Brief of Evidence that you were in constant communications with the SNO in theatre at the time that you were the DSO?

A. Which was neither of those gentlemen that you've just referred to.

Q. I understand that. Who was it?

A. I'd prefer not to say. Both of those are both serving SAS officers and I'd rather not say their names.

Q. Well, we might have to pursue this, Mr Blackwell, because we've heard about Mr Parsons being an SNO; we've heard about Mr McKinstry being an SNO?

A. Mhmm.

Q. Why can't we hear about the SNO that you're referring to?

SIR TERENCE: The way to deal with this may be simply for the witness to write it on a piece of paper, give it to us to give it to you, and then you can see where you go from there.

MS McDONALD: Well if we can take it step-by-step sir, perhaps we do that in the first instance?

SIR TERENCE: Yes.

MS McDONALD: Can you write it on a piece of paper please, Mr Blackwell?

A. There is two individuals. I'll write the approximate dates of --

Q. Sir, while that's being done, my understanding of the rules around the PSR to do with this are the connection of the position and the name of the person as they currently are, not historically. So that's why we didn't have this issue with the people we've spoken about previously, and I can't see how it would be an issue with these two people because --

A. Oh, they're both serving SAS officers.

Q. They don't hold the positions that they held at the time, which is the point. If you just write the name down anyway, we'll pursue it one step at a time, Mr Blackwell.

A. I'd prefer not to use their names.

Q. And have you spoken to those two gentlemen recently?

A. No.

Q. When was the last time you spoke to the first one?

A. Six weeks ago. About NZSAS trust matters.

Q. Nothing to do with this Inquiry?

A. No. I had no reason to speak to him six weeks ago about this Inquiry.

Q. Which one of them did you get the report from?

A. The second one.

Q. When?

A. September the 1st, 2011.

Q. How do you know that?

A. Because that's when it was marched into the Office of the CDF and the Office of the Minister of Defence.

Q. And do you say that he has a clear memory -- would have a clear memory of giving that to you, do you?

A. I haven't spoken to him.

Q. Would you expect that he would have a clear memory of giving that to you?

A. Possibly.

Q. Well, surely --

A. Well, I can't speak for him.

MR RADICH: I wonder if I might see the names Sir Terence, do you mind? Thank you.

Yes, but in active service, and deployed?

MS McDONALD: But not holding the roles at the time, but anyway --

SIR TERENCE: Well, we'll proceed on this basis for the moment. If there's some further issue about it, we'll hear argument about it and deal with it formally.

MR RADICH: Yes, thank you.

MS McDONALD: Did you give those two names to the members of the Special Inquiry team when they were preparing your evidence and assisting you to give evidence today?

A. They asked me who I would have obtained the report from.

Q. Did you tell them?

A. Yes, I told them who it would be.

Q. And you can confirm, can't you, that neither of those two gentlemen are giving evidence this week? They're not being called by Defence?

- A. I haven't seen them on the list that you prepared, but I've no idea who's given evidence to this Inquiry, apart from this week.
- Q. And given that you do know who's giving this week, then you can confirm that they're not giving evidence this week, is that correct?
- A. Correct.
- Q. Thank you. And you've said that you were in constant contact with the SNO --
- A. Mmhmm.
- Q. -- when you were back in New Zealand in 2011. Which of the two were you in constant contact with?
- A. Both of them, at the time they held the appointment. So the first one, for the period that he held the appointment, and when he handed over to the next individual, I was in constant contact with him.
- Q. So it follows from that, that from April to August, with the first one, you would have been constantly asking that person for a copy of the report?
- A. Correct.
- Q. And he would remember that?
- A. Correct.
- Q. And he didn't give it to you?
- A. He couldn't obtain it.
- Q. And he'd remember not being able to obtain it and trying to obtain it, presumably, wouldn't he?
- A. You'd have to ask him.
- Q. Well, come on Mr Blackwell. You're telling us that you were in constant contact with this person between April and August trying to get the report. He was trying to get it, according to you, and couldn't get it, and you can't seriously suggest he wouldn't remember that?
- A. I didn't suggest anything of the sort. What I suggested was if you had questions for that individual, you should ask them of that individual, not me.

Q. And you can be pretty confident about that?

And the second one, August to no date?

A. Correct.

Q. How many times did you ask him for a copy of the report?

A. I made it clear to him -- look, we had a task list of some several hundred issues, whether they be uniforms for the CRU, ammunition for the CRU, pay for the CRU. There would have been a list of several hundred issues for that individual to deal with. It would have been on that list.

Q. So just how many requests did you make of these two people between April and September, to get a copy of this report?

A. I was never in the habit of repeating myself. It was normally pretty clear when I asked for something, by my officers, that I required it, and they would do their best to obtain that for me. I had full confidence that they would do so in the fullness of time.

Q. Can you give me an answer though? How many times do you think you asked them? Once, ten, 20?

A. I don't recall.

Q. You don't recall. But it was -- you were in constant contact with them?

A. I think it would have been very clear to those individuals that I was keen to get a copy of the report.

Q. And how did you do that? Did you email them?

A. Yes.

Q. Right, so there will be email traffic showing you asking them for copies of the report?

A. I'd like to think so.

Q. Sir, I would ask that those emails be provided by NZDF; we don't have them.

SIR TERENCE: All right. Well, we'll deal with that at the end of it.

MS McDONALD: And, so that's emails to both the first and the second one?

A. Yeah, I think it's important you understand that in 2011 I had a very finite resource of SAS officers available to me, and at one stage, that I recall very vividly prior to Rugby World Cup, I was the only SAS officer in the country. So, it was a revolving door of officers, such was the tempo of the operation. Some of these officers were doing in excess of 20 months out of 24 deployed.

Q. Sorry, I'm missing the point of that answer, Mr Blackwell?

A. The point is, that it was literally a revolving door of officers to meet the tempo with the minimal resource that we had available.

Q. These are two officers?

A. Correct.

Q. They're Senior National Officers?

A. Correct.

Q. In theatre?

A. Correct.

Q. Between the period April and August, and you are telling this Inquiry that you were in constant contact with them, seeking this report?

A. Correct.

Q. And there will be emails showing that?

A. Emails or --

Q. This Inquiry has been going for 20 months and we have not seen one single email to that effect, and I suggest to you -- hear me out, I suggest to you that that is simply not true. That you never asked, by email, those two men?

A. Did you just -- you've accused me of lying to you, have you?

Q. I am putting to you that what you've said about this is not true, Mr Blackwell?

A. I thought you just accused me of lying to you; I thought that's what I just heard. I've just taken an oath.

MR RADICH: I think this is getting problematic, Sir Terence. I'm sorry to stand, but we do have the issue of the -- we've addressed the fact, I think in the evidence of

Colonel Blackwell, that the emails over this period just aren't available, much to everybody's frustration, our own included, that the way in which the system is worked is that those emails are not there. And when we're dealing now with information alleging other people's involvement that we haven't seen and we don't know about, it becomes very difficult for this witness to be able to answer -- all of us, to be able to answer without the benefit of that information, which just isn't there. I think this is just getting into a problematic area.

MS McDONALD: Could I respond to this, sir? Sorry, but can I respond to that? Because we do have emails, classified emails from theatre, for this period. We don't have these emails.

SIR TERENCE: Well this is, Mr Radich, a difficulty that we face. We do have a wide range of emails earlier than this, later than this, some are classified, but we don't have these ones. It is said they're unavailable. I have to say it's not clear to me, at the moment, why that is so.

MR RADICH: Yeah. I am being told and it's certainly my understanding as well, that it depends very much on the system on which it's sent on and the way in which some systems, of course, are -- the email address will be position oriented rather than individual oriented. Sometimes they'll be individual oriented. Sometimes, if it's the latter, emails are destroyed when a person, as a matter of course, leaves that particular role. These emails, I can tell you, have been searched for. As I say, we would all very much like to have them because we hoped they would assist you, and all of us. These ones, and it does depend very much on the system that it's on at the time, there are multiple systems in theatre and within NZDF, some secret, some classified, some open. Some have been available; some just -- there is nothing there when we look. And, I can assure the Inquiry that the searches that have been made have been extensive, and we would very much

have liked to have had emails from this time. So that makes it very difficult.

SIR TERENCE: All right. Well thank you for that.

MR RADICH: Yes, thank you sir.

SIR TERENCE: Well, you've heard that Ms McDonald, so?

MS McDONALD: There is one further matter though Sir, we do have classified emails from the secure system from this time. So I don't accept everything that Mr Radich has said, and I wonder sir, if we could please have Mr Radich then confirm that there are no classified emails from this witness to the two men known? Perhaps NZDF could confirm that position?

SIR TERENCE: Well, I think effectively that's what's happened, but we could get a written confirmation of it, yes.

MR RADICH: Yes, happy for that Sir.

SIR TERENCE: Thank you.

MS McDONALD: Just on the question of the system, Mr Blackwell, the email system, because we do have emails from DSO Kelly, and he gave evidence last time.

A. Mmhm.

Q. And the SNOs that he dealt with, Mr McKinstry and Mr Parsons, so surely that would be the same system that you would be using?

A. I am as surprised as you to hear that the emails don't exist. All of my emails were --

Q. Would that be the same system, please?

A. Yeah absolutely. The address was DSO@SWAN, it was not to an individual; it was to an appointment. So I'm staggered to find, and I would be delighted if they could be, because it would show you exactly -- it would -- in fact, if the data was available, it would see all of the briefs that I gave to the Minister in written form, which were stored electronically.

Q. I agree with you about that Mr Blackwell. It would be very helpful to have those emails, but Sir, if I can just come back to Mr Radich's position about these emails on SWAN not being available because of the nature of it. It does strike me as

extraordinary that we have emails from another DSO dealing with SNOs in theatre, using the same system, but we don't have these ones?

SIR TERENCE: Well, it is surprising, but, for the moment, we've got to proceed on the basis that we don't have the emails, and we will need to get some form of written confirmation or declaration from NZDF that they don't exist.

MS McDONALD: Thank you, Sir.

SIR TERENCE: But that's the state of play at the moment.

MR RADICH: I would be very happy to provide evidence, Sir Terence, about this particular point, not me provide evidence, but for there to be evidence for you, maybe an affidavit or something that's acceptable, that talks about the different systems that are used and that gives more detail to the points that I've made very generally to you. Very happy to do that.

SIR TERENCE: That would be helpful, thank you.

MS McDONALD: What made you think that the SNO would succeed or be able to succeed in getting a copy of the report where others had apparently failed previously?

A. That's a very good question. Under the terms of the Five Eyes and NATO secret, much of the information that was made available to us was relationship based, and it may be that there was a change of individual, either on our side or on the NATO side, that allowed that information to then be made available.

Q. Do you know that, or are you surmising?

A. I'm surmising. I mean, I obtained information from many different sources over the period of my time in the SAS. Some of it through normal channels, some of it not.

Q. And do you say that the IAT report was emailed to you by the second of those names, and I think you said a while ago, that was on the 1st of September?

A. Yes.

Q. How do you know it was the 1st of September?

- A. Because if I received an email such as that I would have read it and done something with it same day.
- Q. Right.
- A. So let me be clear, the time zones may be a little bit -- it may have come in the night before; I may have read it am, pm, but I can assure you on receipt of it, I printed it and took it to the individuals concerned that I thought it would be relevant to.
- Q. And who were they?
- A. The Office of the Chief of Defence Force and the Office of the Minister of Defence.
- Q. Okay, and who within the Office of the Chief of Defence Force?
- A. Mike Thompson.
- Q. Mike Thompson. Is he the only one?
- A. He was the Chief of Staff at the time. So there were various other individuals with various other appointments, but he was the go to guy if I needed to give any information to the CDF or brief the CDF.
- Q. But surely, it was an important document, you've just told us that, so you would have talked to others in Headquarters -- in that office, surely?
- A. No, it's a classified ISAF report. Most of the people on the fifth floor had no security classifications. Generally, SAS information is not shared widely in Headquarters. It's generally for the purpose of the individuals who need to receive it. I wouldn't make that information available to a whole bunch of other actors.
- Q. Did you make it available to the Vice Chief of Defence?
- A. I made it available to the Office of the Chief of Defence Force.
- Q. And are you saying that the only person in that office that you talked to about it was Mike Thompson, or did you talk to the CDF, the VCDF? I'm not suggesting you talked to people who didn't have security classification, Mr Blackwell, obviously?

A. Okay. If I could be clear, with the incredible amount of correspondence that comes across the desk of the Office of the Chief of Defence Force every day, you would generally give the information to his direct staff, who would determine the priority of that information and make it available to him, if and when he was available to receive it --

Q. Who was that?

A. -- it wasn't for me to determine that priority for the CDF; I didn't work in his office.

Q. So I'm still unclear what your answer is. Are you saying it was only Mike Thompson, or did you give it to anybody else?

A. I gave it to a properly authorised and capable individual to make it available to the CDF. That's who I gave it to.

Q. And that was Mike Thompson?

A. Correct.

Q. And he's the only person you talked to about it in that office?

A. Correct. It was a NATO secret document.

Q. All right. And what did you say to Mike about it?

A. Words to the effect of, it's an IAT report here. Can you give it to the boss and let me know when he's available to talk to me about it?

Q. And presumably you told him why it was important; what was significant about it?

A. Yeah.

Q. And what did you say about that?

A. I said it was the IAT report in terms of the details around Operation Burnham.

Q. Right, that we've been trying to get for over a year?

A. I'm sure I would have said that, yes.

Q. And when you read it, and you said the first thing you did was read it, because it was so important, it would have immediately occurred to you that it didn't provide the assurance that you might have expected it to, given the

reporting and it's briefings that had occurred previously.
That must be so, mustn't it?

A. It was not consistent with the term "unfounded".

Q. Right. So the answer to my question is yes?

A. Yes.

Q. So you knew it was then inconsistent with what CDF had said and NZDF had said, and what the Minister had said?

A. Yes.

Q. And you must have discussed that inconsistency with the Chief of Staff, surely?

A. I don't recall. He's a staff officer; he's not a Commander. It's not for him to determine. It's for him to make the information available to his boss.

Q. Well, you're just telling us how incredibly, and I'm not suggesting he's not competent, but you have been emphasising how competent and important and key he was in that office. You've now got a report which is in stark contrast to what's been said previously; you've got the Minister having said things that are wrong, Defence having said things that are wrong. You've worked out the importance of that. I'm suggesting to you that you would unquestionably have told that to somebody. Mike Thompson, is the only one you talked to?

A. As I said previously, I gave him a copy of the report, said that the boss and the Minister needed to see it, and to let me know when they were available to discuss it.

Q. And, that this report doesn't say what we thought it would say, or what has been said about it?

A. Look, I don't recall the conversation of eight years ago with Mike Thompson. I do recall I gave him the document and told him that the boss and the Minister needed to see it.

Q. And the reason that they needed to see it was because of this inconsistent position, and that was something, given what you've told us about the need for no surprises, needed to be dealt with urgently and significantly?

- A. It needed to be dealt with, along with all of the other priorities that this Office of the CDF and the Minister would determine.
- Q. Well, it was a significant issue. It needed to be dealt with immediately, I would suggest to you.
- A. Which is why I took it immediately to the Office of the CDF and asked that a copy go to the Minister of Defence. It's not for me to set their priorities. It's for me to tell them that I have information that is relevant to them, and for them to determine when they wish to talk to me about it.
- Q. But it is part of your job to make sure they understand the significance of this material, isn't it?
- A. Yeah. Yeah, of course.
- Q. So you've told us, in your Brief of Evidence, that you did three things. That first of all, when you get it, you read it. You've now accepted that you must have immediately understood the significance of it, given the inconsistency with the previous position, correct?
- A. Correct.
- Q. Second thing you did was you saved a copy electronically in the New Zealand Defence Force computer system?
- A. Correct.
- Q. And that was SWAN was it?
- A. SWAN, correct.
- Q. So where did you save it in SWAN? Can you tell us?
- A. DSO's briefs, Operation Burnham.
- Q. DSO's briefs, Operation Burnham. Okay.
- And then thirdly, you filed away the email in an appropriate electronic directory?
- A. Correct. It would have been in the directory under operations under the sub-directory Operation Burnham.
- Q. Okay.
- So the email is saved separately from the report? So in two different places?

- A. Well, the email comes with the report and you'd save a copy of the electronic copy of the report, put it in the briefs, match it to the storyboard, and then it's available to be printed for hard copy. Generally, what would happen is the information would be provided to the Minister's office or the CDF's office; I would then do a supporting brief that I would print out a copy of, so for discussion points, any relevant questions or points that I thought I needed to make, and then I would recover that brief, and shred that brief, but it would be stored electronically.
- Q. So your supporting brief to go along with all of this would be in the electronic system too?
- A. Yes, I would have thought so.
- Q. But anyway, coming back to what I was saying, so you've said in your brief that you saved the report separately to the email? So two different places in the electronic system?
- A. Well, the report would have come with an email --
- Q. Yes?
- A. -- and as you're aware, you file emails in sub-directories, and I would have taken an electronic copy of the report and filed it into the DSO's briefs on SWAN, as a separate document.
- Q. So we should be able to find, though, the email and the report, and saved separately?
- A. If you could get into my directory you could find Minister of Defence's briefs from the March 11 to 15 and every single brief that I gave to the Minister, there would be a copy of.
- Q. I'm not asking about those at the moment; I'm just asking about this document. So, there'd be an email showing who sent it and when they sent it and the report saved electronically?
- A. I would expect there would be.
- Q. And also, you've now told us there'd be a brief, a separate brief that you did to CDF?
- A. Yes.
- Q. Saved in the electronic system?

- A. CDF/Minister I would have been briefing both gentlemen with the same brief.
- Q. Are you aware that there's absolutely no record of you ever receiving the IAT report from the SNO or indeed anyone in -- electronically or otherwise?
- A. I was staggered to find that, because obviously, appearing before this Inquiry, I said I'd be very happy to review the briefs that I made and assist the Inquiry in finding the particular brief concerned. I was told that the information was no longer available on the SWAN terminal. I don't even think SWAN exists anymore. I'm not sure; I haven't been in Defence for four years.
- Q. Does it surprise you that those documents have not been saved?
- A. I'm actually -- to be honest, I'm pretty disappointed. There's decades of operations in there, and I would have thought all of that information would have been particularly relevant.
- Q. So we have no email, no electronic copy of the email having been sent from theatre, at that end, and no email showing its receipt in New Zealand.
- A. What you have now available, I don't know, but what I can tell you --
- Q. I'm telling you. That's what we don't have.
- A. Well I'm sorry to hear that, because what I am telling you is there would have been copies of that in my directory.
- Q. And you can't explain why there's no electronic copy of either the report or the emails, I take it?
- A. I haven't been in the Defence Force for four years. You'd have to ask somebody who's in the Defence Force.
- Q. Because it seems very odd, I suggest to you, Mr Blackwell, that we've got documents immediately -- classified emails, and I've referred to one earlier, from theatre before this period, and we've got them afterwards, but we just don't have these ones, but no explanation for that?
- A. I agree with you.

Q. Sorry Sir, I'm just taking a minute because I've got some matters in here which -- just to be careful about in terms of classification. I just want to check them. I wonder if we could just take the break at this point, Sir?

SIR TERENCE: Yes, we could take the break now. So we'll take a 15 minute adjournment, and we'll resume at 20 to 12.

Mr Blackwell, while you're under cross-examination, you're not permitted to discuss your evidence with anyone else.

A. Understood, Sir Terence. Thank you.

MS McDONALD: Just one thing, we didn't actually confirm the order excluding witnesses at the start of the hearing. I just wondered if we could have that --

SIR TERENCE: Well, I'd assumed that continued, but for the avoidance of doubt, it does.

MS McDONALD: Thank you, Sir.

SIR TERENCE: Thank you.

Right, we'll adjourn for 15 minutes.

(Morning adjournment)

CROSS-EXAMINATION CONTINUED BY MS McDONALD

MS McDONALD: Mr Blackwell, the briefing paper that you told us before the break that you prepared for the Minister and CDF, what did it contain?

A. Like any brief that I gave to the CDF or the Minister, I would have broken down what was a lengthy document into a series of dot points which I thought would have been relevant. So, effectively an executive summary, in civilian terms.

Q. And it would have been faithful to what the IAT Report said?

A. It would have been absolutely consistent with what the IAT report said. It wouldn't have had all of the information, but certainly, it would have had an executive summary, in terms of brevity, and I would have had, obviously, the additional information that may or may not have been requested as a result of questions that would have resulted from my brief.

- Q. And it would have said then, unquestionably, that the IAT investigation or the ISAF investigation and the report had found that there was a possibility of civilian casualties?
- A. My recollection from the brief was I made it very clear to the Minister that it was my understanding that there was an allegation or potential for civilian casualties, as a result of an AH-64 gunsight not slaved correctly, but I didn't have any particular evidence to suggest there were civilian casualties.
- Q. But you would have said in the written briefing note that the report had concluded that there was a possibility of civilian casualties, because that's what the report concluded?
- A. Correct, because that's what the report said.
- Q. So, you wouldn't have hidden that? You wouldn't have obscured that in any way, would you?
- A. I would have no reason to hide or obscure that.
- Q. Just before we move on, I just want to check with you, Mr Blackwell, is there any possibility you got this IAT report unofficially, rather than from the SNO?
- A. There's only one place it could have been sourced from, which was theatre. So there's only one individual that I was in contact with in theatre, which was the SNO. So it couldn't have come from anywhere else.
- Q. Okay. So just to be absolutely clear, in terms of answering that question, did you get it unofficially from anyone other than the SNO?
- A. No.
- Q. No-one brought it back to New Zealand in hard copy, unofficially, which might explain why there's no electronic copy?
- A. No.
- Q. And you didn't get it from any of your contacts in Special Forces over there in theatre?
- A. No.

Q. And you have dealt with it when it's come in, as you've told us, in your electronic system. That's correct, isn't it?

A. Correct.

Q. Now you appear, Mr Blackwell, to have been running an informal do-it-yourself form of classified document management. Is that correct?

A. No.

Q. Was your form of electronic management approved by anybody else in NZDF for the use of classified partner material?

A. I think with the resources available to me, you must understand that nobody else in the fifth floor of Defence had a SWAN terminal. I was the only one with a SWAN terminal, so access to secret information. So I had no ability to be able to move data electronically to anybody else in Defence, so that's why I printed it off, but you must understand that I had total connectivity with the SAS regiment with compatible secret level systems, and that was effectively how we conducted our business, because all of our information was classified.

Q. Was anybody else in NZDF aware that you were managing classified partner documents in the way that you were through your SWAN system, as opposed to managing it through the proper official mandated process called the DFO --

A. I'm sorry, it was the official --

Q. Was it?

A. -- mandated process.

Q. Was it?

A. Look, the reason that I was reluctant to print documents off the SWAN terminal is because I then lost control of those documents. The reason that I took hard copies across to the Minister and recovered those hard copies from the Minister is because I had no control of those documents. It was my responsibility to make sure that there were no secret level documents being distributed outside of the appropriate

channels. Hence, there was one copy made, which went to the Office of the CDF.

Q. Okay.

A. I had no authority to make multiple copies.

Q. All right. So, just let me understand that answer. So what you're saying is that your electronic system --

A. Yes.

Q. -- in your view, was a better and more secure system than the hard copy system, is that right?

A. A hundred percent, absolutely.

Q. All right. And of course, it's unfortunate that your system, in fact, has now demonstrated that it hasn't produced the documents that you say were stored on it?

A. I am as disappointed as you are about that.

Q. So, are you aware with a Defence Force Order number 51, and have a look at page 1 of the -- it's towards the back of the big black bundle, it will be under October?

A. I am very aware of DFO 51. It's basically the procedures for handling classified information.

Q. Right, well that's helpful that you're aware of that.

And your process for dealing with these documents through your electronic system didn't comply with DFO 51, did it?

A. Could you clarify that for me?

Q. Well, we'll go through the provisions. I thought you might be able to just answer the question, but if not, we'll go through --

A. Well, I'm not sure what you're inferring. I mean, they were stored in a classified repository, so they weren't made available outside of a classified safe and/or classified electronic system. So, I'm not sure which part of that is not consistent with DFO 51?

Q. All right. Well, we'll go through it.

So if you have a look, please then, at the first page of it, which is page 1, just to identify the Order. And that is

Defence Force Order 51, and it's a -- if you go to the October tab.

A. Which page?

Q. Page 1, numbered at the bottom right-hand side of the page.

Do you see the Order there? Have you got the Order?

A. Yeah, you're talking paragraph 7.4?

Q. I'm simply at the moment taking you to the start of the Order.

It's got "Security for documents DFO 51-1 chapter 7"?

A. Correct.

Q. All right. And if you go, please, first to paragraph 7.33

which deals, doesn't it, with copy numbering of documents?

A. Yeah, that's correct.

Q. Secret documents are always to be copy numbered?

A. Correct.

Q. And this is on page 9 of the bundle. They need to be marked

on the top right-hand corner of the first page, on the first

page of each annexure, copy number 1 of 20, that's how you

enter copies?

A. Correct.

Q. 1 of 20?

A. Correct.

Q. 1 of 15?

A. Correct.

Q. 1 of 6?

A. Correct. Well, if there's more than one. If you're only printing a single document, you don't need to do that.

Q. And if you're copying that document, you would put on the second copy --

A. I didn't copy that document; I made one copy.

Q. I'm just asking you about the process?

A. Your process is correct. If you were making multiple documents you would have to number those documents accordingly.

Q. Right, and are you saying you didn't make any copies?

A. No, I made one copy to go to the Office of the CDF and I ensured that it was marched in by somebody qualified to do so.

Q. Did you number that copy?

A. I don't believe I did; it was one copy. There was -- generally, it was just the only copy.

Q. So you've got one, and then you've got a copy of that document, so they're both the same and you haven't marked the second one as a copy?

A. No, I didn't make a copy. I made one copy, so I didn't number it. There was only one copy. It wasn't one of two.

Q. All right, so we're just clear. Anyway, you didn't number it. So we won't expect to find a number on it?

A. I didn't feel I needed to number it.

Q. All right. And then if you come to -- I'm not going to go through all of these clauses because other witnesses will deal with this particular document, but we'll just highlight one or two. If you go to 3.75, that's the full distribution showing the disposal of all copies to be recorded on the file copy, correct?

A. Correct.

Q. 7.35, did I say --

A. 7.35, yes. So it has to be authorised by two individuals. You can't destroy a document by yourself. There needs to be two officers to destroy -- or two properly qualified people under the DFO rules -- to destroy a document. I couldn't destroy a document from my office without it being countersigned for.

Q. Okay. They're quite prescriptive, aren't they, these rules for dealing with documents?

A. It's for very good reason -- for extremely good reasons. This is sensitive information that shouldn't be shared outside of people who are duly qualified to read it.

Q. Right, and 7.57 on page 13, accounting and control receipt of documents?

A. Yeah, sure.

- Q. "All incoming documents are to be registered immediately"?
- A. Well, mine came electronically, not in hard copy.
- Q. So what happens in those circumstances?
- A. They're just filed in an electronic system that if you don't have a clearance to, you can't access to. So it's not like anybody else can get a copy of that document.
- Q. So do you not have to comply with the DFO 51 where you're dealing with an electronic copy, is that the issue?
- A. Well, how would you account for them?
- Q. Well anyway, so just dealing -- we'll come to that, so dealing with 7.57 receipt of documents. You say didn't apply to you because it was electronic?
- A. No, it applied, but it was not appropriate to the -- to -- I literally received dozens of classified documents a day that were filed electronically. I wouldn't have marched those documents in individually into an electronic system that it was already filed into.
- Q. So when it says at paragraph c) "all incoming documents classified confidential or above, or magnetic media classified confidential or above"?
- Was this magnetic media or is that something different?
- A. Magnetic media is a hard drive.
- Q. Right, "are to be registered in the MD 392 immediately?"
- A. Yeah, if it was a physical document. For example, had I chosen to print two copies, I would have marked or registered the other hard copy into my safe. I chose not to print one; I didn't need to print one, because it was in my electronic repository.
- Q. And the purpose, amongst other things, of having these orders, and they're actually orders of the Chief of Defence for which you can be disciplined presumably?
- A. Rightly so, correct.
- Q. And the reason for having them is so that there can be a proper accountability for all documents, classified material coming into the office?

A. Agreed.

Q. Traced, audited, accounted for, all of that?

A. Yeah, okay. All right, let me just provide some clarity here. The reality of it is, is that in 2011, the -- the systems in NZDF for the storage of classified information were rudimentary at best. The secure system that existed within the SAS regiment was very mature.

Q. Was very what, sorry?

A. Very mature, because we'd been dealing in this since operations in 2001 in Afghanistan. Defence Headquarters was a strategic level Headquarters; it was not what I would call properly configured for dealing with confidential information.

Q. The purpose -- what I was asking you is -- the purpose -- a significant purpose of having an Order like DFO 51 --

A. Yes.

Q. -- is so there will be proper accountability, tracing, storage etcetera of classified documents?

A. Correct, which is why I didn't print copies.

Q. Why? Did you have no confidence that the register system was reliable?

A. The register system, for the amount of documents, had I printed them all, was completely unwieldy. I would have simply been performing as a chief clerk.

Q. What I'm taking from your answers is, and you correct me if I'm wrong, that you were of the view that your electronic system was a better system, a more secure system, more reliable for accountability, tracing, all the rest of it, than this system?

A. A hundred percent. Could I give you an example? When I was required by various Ministers to go across on various issues, anywhere from one to ten people would be in the Office. I would have copies that I would make. I would ensure that I recovered all of those copies, and I would shred those copies, and my master document would be in the electronic file. I would never leave any hard copy documents when I was briefing

the Ministers. There were press secretaries in there, all sorts of people whom I didn't know even know who they were.

Q. So did you bring the IAT back with you when you'd briefed the Minister?

A. No. So the document went to the Office of the Chief of Defence Force. There was a copy made of it that went to the Minister's office. When I went across to brief the Minister I would have had my own copy printed, with supporting notes etcetera, etcetera. When I came back to my office, I would have shredded those documents because they would have been stored electronically in a much safer and secure way.

Q. So you shredded that version of the IAT Report when you brought it back to NZDF?

A. No, no. The document that I printed off the SWAN terminal, one copy of, went to the Office of the Chief of Defence Force. There was a copy made by someone authorised to do so, to send it across to the Office of the Minister, right. When I went across to brief the Minister, I simply would of printed another copy with supporting narrative, if required, briefed the Minister, recovered those briefs, and shredded them when I got back to my office. Otherwise, the sheer volume of briefs that I was doing I would have needed a room full of safes.

Q. So you are saying that you would have brought it back after your briefing and shredded it?

A. It wasn't the -- the copy that I had to refer to should the Minister have any further questions I would have shredded when I got back.

Q. That's just what I asked you.

A. Well that's what I said.

Q. Right. So the answer is yes. So you shredded that?

A. Well, I am trying to provide some context because you're suggesting that somehow I've been inappropriately handling secure documents. Quite the opposite. I wasn't printing secure documents for anything other than immediate briefing purposes and shredding them and storing them in an electronic

secure file, right. DFO 51 doesn't allow for the absolute volume and tempo of operations that the SAS was doing.

Q. We'll come back to that, but I want to stick with this DFO 51 for a minute. So, I'm not sure which paragraph we got up to now, but 59, 7.59, that says that:

"To reduce the risk or less of compromise of all classified documents they're to be placed in identifiable files."

Correct?

A. Correct. If you go to the SAS regiment and go on to their secure system you'll find that there are no paper copies; they're all held electronically. We lived in a secure environment. Every computer on the desk in the SAS regiment is a secure computer.

Q. And the DFO 51 requires, doesn't it, that there be a record of destruction of every hard copy of a document?

A. Correct.

Q. Why don't we have a record of the destruction of the document that you say you brought back from the Minister of Defence?

A. I never marched it into the safe. I simply made a copy for the purposes of briefing, brought it back and shredded it. It wasn't marched in. It was my responsibility to make sure -- if I kept a copy of the document, I would have marched it into the safe, but what I'm saying to you is there's no need to keep a copy.

Q. Mr Blackwell, you're telling this Inquiry that you brought back a copy of this crucial critical classified partner document and now you're saying you shredded it. The DFO 51 requires a record of shredding of hard copy; we don't have a record of the shredding of that document?

A. If the document was marched into a register, which it wasn't.

Q. So you're saying it can come back into the office and just be shredded?

A. I was responsible for printing that document and making sure that document was properly accounted for. From my

perspective, properly accounted for meant shredded. So it couldn't go somewhere that it wasn't supposed to go.

Q. So you're saying that the system at NZDF works -- like, there's almost two systems, is there? There's one, if you're bringing it into a register, you have to record it's being destroyed, but if you don't bother putting it in the register, you don't have to record it's been destroyed?

A. Well, it's a -- no, no, no. No, it's a third party, right? I'd printed that copy off for a third party. Effectively, the briefs that I would give to the Single-service Chiefs every Tuesday would probably be 20 or 30 pages, right? Those briefs were working briefs. When the briefs had been given, they would be filed electronically and the document shredded. As I say, in four and a half years, if I had marched in every document, I would have needed a room full of safes.

Q. But isn't the whole purpose of having all of these PSR rules and these Defence Force Orders for the management of classified material so that there can be proper accountability, audit trails? I mean, goodness Mr Blackwell, you won't be aware, but this Inquiry has jumped through hoops for 20 months to deal with the PSR and the requirements for classified material. We still don't have a copy of the IAT report, and you're saying you didn't have to make any record of the fact that you shredded it?

A. I made a record of the document that went to the Office of the Chief of Defence Force. The other document was shredded when it was no longer required. So there was only one copy, as far as I was concerned, in play. The other copy was stored electronically, and if you went into my electronic files, you would find it in there.

Q. Can you just be absolutely clear with me? Are you saying that there is no requirement, and there was no requirement on you, to make a record of shredding a copy of the IAT report?

A. That's not what I'm saying. What I am saying is, if the document had been printed off for the use of a third party,

that would have been registered into a register, as it was. If that individual chose to shred that document, it would need that person and one other duly authorised to shred that document. Right? I didn't have to record that I'd shredded the document because it wasn't marched into a register. It was contained electronically, and it was a working copy.

Q. So that's what I'm asking you. So you are saying that you didn't have to record the shredding of that particular version of the IAT?

A. The document hadn't been marched into a register, so how could I record that it was shredded? It was in a working file that sat in the front of my safe and every week I would shred all of the briefs that I'd given previously.

Q. So you could just have working -- classified working documents that you didn't have to handle in accordance with the rules?

A. No, no, no, no, so long as they were stored in an appropriate container, for the purposes of what they were being used for, they didn't have to be registered into a register. They were under my control. Had I made copies, then they would have needed to be marched into the register of the person that I'd given it to them. And as I said to you, when I went across to the Minister's office, it was my responsibility to recover all copies of any -- could you imagine, right, can I just give you some perspective here? I go across to brief the Minister; there's eight people in the room, nine people in the room. I've got storyboards; I've got written briefs, right? All of those are 1 to 9. You're suggesting to me then that after that brief I would come back and I would register all nine copies of those documents into a register, which would be no longer of any use, and then I would have to record that I'd shredded them?

Q. Mr Blackwell, how do you explain the copy of the IAT Report that was found in Mr Thompson's safe in 2014?

A. I presume it's the same copy that I marched in, in 2011?

Q. Well, there's two copies you say? One went to the Minister?

A. I --

Q. One went to Mr Thompson's safe?

A. Yes.

Q. And you're saying you made -- you took a copy for your briefing, which is what you shredded later?

A. No. Let me be as clear as I possibly can. The document came in, in an electronic form. I printed one copy off, which I took down to the Office of the CDF. The Office of the CDF decided to print another copy to take across to the office of the Minister. It's not my prerogative to provide source documents to the Minister without going through my boss.

Q. So that's three we've got now, is it?

A. No.

Q. I just want to keep track?

A. No, one. And then a second one that was printed from the Office of the CDF. So there's two documents in play, one that I printed. One that was made a copy of that went over to the -- so there's two documents in play.

Q. Right, and then I thought you told us earlier that you had your working file copy that you used for your briefing?

A. It was sitting on my computer; I used that as a means by which to prepare the narrative, and I would have printed that off, with a copy of the document, put it in a secure container, walked across to the Minister's office, briefed off it, came back, and shredded it, because as far as I was concerned, it was stored already electronically at emails and in digital files.

Q. So that was another one? That was a third one?

A. Yeah, but it wasn't registered into a -- into a classified document register, because there would be no need. You could imagine the scenario, I would literally register in ten documents to go across to the Minister's office for a brief, and then come back and have to find somebody else to then witness me shredding those ten documents. It was entirely impractical.

Q. All right, so anyway, I just want to be clear what we have here though in terms of documents. So this is your -- let's call it your working copy?

A. Mhmm.

Q. And you don't have to do anything formal with that, because it's your working copy?

A. Correct.

Q. And you put it with the briefing for the Minister?

A. Sure I would have printed off any points that I thought relevant for the Minister's clarification, so I could walk him through the mechanics of the operation or something specific. I mean, I may well have printed off some detail on an AH-64 Apache gunship.

Q. Right?

A. In case he asked me about it.

Q. So, you've got -- so we've got your working copy with the briefing?

A. Sure.

Q. And you take that with you when you brief the Minister?

A. Yes.

Q. And then when you come back, you just shred it?

A. Correct.

Q. So that whole working copy pack, if you like, the briefing and the IAT Report, is dealt with completely outside the requirements of the DFO 51?

A. Well, I don't -- no the DFO 51 clearly states that if I make copies of the document to a third party but that document was always under my control.

Q. Where does it clearly state that? Can you have a look at it; you'll be more familiar with it than me?

A. I was familiar with it eight years ago.

Q. Well, paragraph 7.33 deals with copy numbering, so where's the third party reference?

A. Look, the point is that the system that I had, I believed was consistent with the practical application of the DFO 51 for

what was, as I said in my Brief of Evidence, a 12 week period where I was dealing with nightly operations, the death of NZSAS personnel, wounded, the sheer volume of documents, it would have been completely impractical to march those documents into a safe and then get them witnessed and shredded.

Q. Right. So, come back to where we started with this. You had developed a -- for practical reasons, and I'm not suggesting they're not, you know, good reasons -- but practical reasons, a system that was your system, which was an alternative system to the official one?

A. It was entirely appropriate with the rules of the DFO 51 that made it clear that I was responsible for the security of those documents if there were in my possession, and at no stage --

Q. Had anybody authorised your system?

A. Ah well, I was a full Colonel and the Head of Special Operations. I had a certain degree of autonomy as to what I thought would be an appropriate process.

Q. All right. So this was your system, and that's what I said -- suggested. It was your DIYDIY and maybe that's a little pejorative, but it was your system, alternative to the official one?

A. It was a system that proved entirely appropriate over four and a half years, for the retention of information that would be relevant.

Q. For practical reasons?

A. Absolutely practical reasons.

Q. And one that we know, don't we, Mr Blackwell has proven to be wrong and not adequate, because we don't have the documents?

A. I would -- no. No, no, I would disagree with that. When I left the Defence Force, I left so in the knowledge that all of my documentation would have been stored electronically. It's not my responsibility what happens to information that I've stored when I've left the Defence Force; you can't hold me responsible for that.

- Q. Well, I suggest to you, Mr Blackwell, that if you'd entered -- dealt with these documents in the regular official way, in accordance with the Order, we would have a record of your receipt of the IAT into New Zealand; we would have it registered in your DSO register, which we don't, do we? You didn't put it in there?
- A. I am a private businessman at the moment. I can assure you that I have no capacity to store one tenth of the documents that I receive on a daily basis. It's the same in the situation I was in as a DSO; I was literally in a shoe cupboard. It was entirely impractical for me to store vast amounts of classified material.
- Q. You had a safe, a DSO safe?
- A. I did indeed.
- Q. And you had a register with that safe?
- A. I did indeed.
- Q. And you didn't use it for this document, did you?
- A. No, I did not.
- Q. Why?
- A. There was no need; it was stored electronically.
- Q. The rules required you to deal with it in accordance with DFO 51 and put it in your safe, with the register?
- A. I used the rules of the DFO within the spirit which with they were made, which is I was totally responsible for the security of documents that came into my possession. I believed that the most effective, secure means by which to protect information of a sensitive nature was in the way that I went about it.
- Q. You used an alternative system, not in accordance with the Chief of Defence Force DFO Order, to receive a classified partner document which we've lost, correct?
- A. I never lost it; I took it to the Office of the CDF and it went across to the Minister. I didn't lose anything.
- Q. Nothing in your electronic system to show it came in?
- A. Which I'm not responsible for.

- Q. Well, I suggest to you if you'd followed the rules, we'd have a record of when you got that document, who from, and what happened to it?
- A. You do. If you can recover my electronic files it will be there in email and it will be there in a secured digital format. That I can assure you of. Along with, a narrative of a briefing to the Minister. I'm under no illusions about that.
- Q. So, you say the IAT report was combined with at least one other document?
- A. Storyboard.
- Q. Right.
- A. Which I would have obtained separately from my electronic files on Operation Burnham, because that would have been provided in post-operation in 2010.
- Q. And without wishing to repeat things, but I think just to be very clear here, because your electronic system doesn't show us what you say it should show us, we actually have no record -- we have documents being recorded in the OCDF Register, but we don't have anything showing them in your system. We agree on that, don't we?
- A. Well, yeah, but if you went into my electronic system you'd find it.
- Q. Well, we'd have to assume, Mr Blackwell, after this length of time that NZDF have done that. I would like to think.
- A. Me too, because we wouldn't be having this conversation.
- Q. Precisely.
- So, coming now to the process that you went through for briefing of the Minister, and you've told us that you immediately talked to Mr Thompson, realised the importance of things, and you prepared this briefing for the Minister, and I just want to go through sort of slowly what you did then. So you put your -- the IAT report and the storyboard together?
- A. I would have done that when I was requested to brief the Minister.

Q. Right?

A. Because at that stage it was stored electronically; I had no copy, remember?

Q. So how did you get the storyboard?

A. The storyboard, like all operations that the SAS conducts, is post-operation. It has initial Battle Damage Assessment, any relevant information. That would have existed in that operation along with hundreds of other operations' storyboards. I would have simply gone into the electronic system, that I spoke about, of my predecessor, and I would have sought that storyboard and printed it off.

Q. Right. And just to be absolutely --

A. I didn't prepare that storyboard; it was prepared in 2010.

Q. Of course, and that's the storyboard that I think Mr Radich showed you earlier. If you want to look at it again, I can take you to it.

A. I'm familiar with the storyboard.

Q. All right, you're familiar with that, okay?

A. Because I --

Q. In fact though, if you could turn those documents up though please, they are on page 55 of a tab that will say supplementary or sup, in that folder?

A. Yes.

Q. So 55's a storyboard?

A. Correct.

Q. And then if we just go over, the next document on page 57, that, we know is a draft briefing paper for the Minister from August 2010?

A. Sure.

Q. And it's got some handwriting on it, but no highlighting, and I take it that handwriting's not yours?

A. It can't be. The document is August 2010; I was in Iraq.

Q. All right, well that's fine. I just want to ask everybody when we get an opportunity.

And then the next document is a draft of the Minister's briefing paper from 13 December 2010, and that's at page 59, and you will note at paragraph 4 on page 60, there's a portion of it that's underlined, and if you just cast your eye over that you'll see that that's -- the bit that's underlined is the part that's in contrast to what the IAT report says?

A. Yeah, because it was prepared well before the IAT report was produced, so it's no surprise to me that when further information became available, it would have been additional to what was provided at that time.

Q. Well, I think it was prepared after Mr McKinstry -- Mr Parsons's email back to New Zealand, which was 8 September?

A. With the information that was available at the time, correct.

Q. Which is the outcome of the IAT report?

A. I think you have the benefit of hindsight now with an IAT Report, but we're now talking a year previous, with information that was known, like -- and I think I made it very clear that operations have a whole journey of their own in terms of when information becomes available.

Q. In any event, if you go on and have a look at the next document, it's another briefing paper, 10 December 2010. That's at page 62 and following, and paragraphs 7 and 11d) have been marked up, and the bit that's highlighted on 7 and 11d) again show the inconsistency between the report and the Minister's briefing?

A. Sure.

Q. Okay. And then we come over the page, and this document's had to be redacted for security, for PSR reasons, but I can tell you that this is a cut and paste of an email from Rian McKinstry. Have you seen that before?

A. No, I don't believe I have.

Oh, before this Inquiry? Do you mean had I seen it in 2011?

Q. Well, answer -- had you seen it before you came here today?

A. Yes, I did. It was shown to me when I was preparing my Brief of Evidence.

Q. All right. And did you see it in 2011?

A. No, I don't recall seeing that.

Q. Now, we know, and it's been confirmed by NZDF, I think post the last hearing, that the metadata of this document, which is a cut and paste Word document, shows that it was created on 1 September 2011, and if you want to have a look at a document which confirms that, I can take you to the bundle at page 90?

A. No, I'm happy to accept your proposal.

Q. So, and we also know from a letter that was sent from NZDF to the Inquiry on 30 September 2019 that this document was in a DSO folder on the secure network, and the DSO would be a folder in your system?

A. Yeah, there were terabytes of information in the DSO's electronic file. You could have spent months looking at all of the information on there, and probably read a tenth of it.

Q. So this document, given what the metadata shows, establishes, doesn't it, that it was created on the same day that you say you received the IAT report?

A. Okay.

Q. And you would accept, given what you've been telling us previously, that emails from theatre, which the originals of this were, coming back through the SWAN system into the DSO, presumably not available to just everybody?

A. Only the DSO.

Q. Right.

A. It's illegal by DFO 51 to give somebody else your password to your secure electronic system.

Q. Well, that's helpful to know Mr Blackwell. How did this document get created then on your system on 1 September if you didn't create it?

A. I've no idea. I could speculate.

Q. Well, did you create it?

A. I don't recall creating it, no.

Q. Might you have created it?

A. I could possibly have created it. I was probably mining data at the time to try to get my head around that particular operation, which as I say, was one of hundreds.

Q. Right. So you might have created that document on 1 September?

A. I have no recollection, but I may have.

Q. Is there any other possibility that you can think of?

A. Ah, well, the DDSO and the analyst, and my tech had access to the directory. So they could have --

Q. Well are you suggesting that they could have done this?

A. Well, anybody who had access to the secure electronic registry could have, yes.

Q. Well, we know who your analyst was?

A. Correct.

Q. And we don't need to mention her name here, but who was the other person?

A. I had a C4ISR, sorry, Command Control Communications Information Surveillance Tabled Acquisition and Radar Technician.

Q. Who was that person?

A. I don't think it would be appropriate to name him either; I don't think it's fair.

Q. Well, why not? He's not deployed anywhere is he?

A. Well, he's currently in the employment of the Special Operations Component Commander, and I don't think that's --

Q. Well this Inquiry can make a confidentiality order, as Mr Radich well knows. Who was that person?

MR RADICH: I would seek that before we give that piece of information Sir Terence, Sir Geoffrey?

SIR TERENCE: All right, we'll make a confidentiality order in relation to the name that is about to be given.

MR RADICH: Thank you, Sir.

MS McDONALD: Who was it?

A. [WITHHELD]

Q. [WITHHELD]

A. Correct.

Q. And just so the record's absolutely clear, I'm quite happy for a confidentiality order to be made, [WITHHELD] was your analyst. Is that right?

A. That's correct.

MR RADICH: Again, could I ask if that order, Sir Terence, over that name just given -- there was a name given just now in addition to the first one, [WITHHELD]. I'd ask for a --

SIR TERENCE: Has that name not been made public before? No?

MR RADICH: I don't believe so, no.

SIR TERENCE: All right. Well, we'll make a similar confidentiality order in respect of the name of the analyst.

MR RADICH: Thank you, Sir.

A. These are both civilian personnel, by the way, who were under my direct control --

Q. I know, I've met [WITHHELD].

A. -- and I think it would be very unfair to have their names brought into public record.

Q. Well, an order has just been made Mr Blackwell..

A. I appreciate that.

Q. And if those two people say that they didn't create this document, does that suggest to you that it must have been you?

A. It may have been me.

Q. All right, because it shows, doesn't it, that someone with some degree of knowledge and understanding of operational matters has been doing some analysis on these documents, the IAT report, the briefing, and then the McKinstry email dealing with the same issues?

A. I think it would be fair to assume that if you were going to go and brief the Minister of Defence, you would try to find all of the relevant information so that you could brief him effectively.

Q. Right. So it would make sense that you might do that before you brief him?

A. It would make sense if I was doing my job properly that I would attempt to find all of the relevant information to brief the Minister fully.

Q. And you would have been doing your job properly?

A. I'd like to think I did, yeah.

Q. So, can I take you to page 43 of that bundle, still under the supplementary tag, and you'll see there a register? Have you got that, page 43?

A. This is a narrative between a reporter and Mr Mapp.

Q. If you go to page 43 under the supplementary -- under sorry, the October tab?

A. Okay, that's a different vector. Yes, I have that.

Q. And that's a register?

A. DCOORD.

Q. Directorate of Coordination OCDF?

A. Correct.

Q. Okay, just while we're on that front page, you'll see at the very top right, the MD 392?

A. That's the designation for a Classified Document Register.

Q. That's right, and I was just going to point that out to you, and that's the same designation for a Classified Document Register that's referred to --

A. Yeah, I had one in my safe.

Q. Can you just perhaps listen to my question?

A. Sure.

Q. My question was to get you to confirm that that's the same register that's referred to, the 392, in the DFO 351 as being the official register to use when you're dealing with classified documents, isn't it?

A. Correct.

Q. And if you turn to the page 44.

A. Sorry, what page is that?

Q. 44, the next page. Sorry, a bit small to read. There's an entry there for document S116.

A. Okay.

Q. See it?

A. I'm not sure I'm on the right page here.

Q. Page 44, if you turn over from that front page of the register that you were on a minute ago.

A. Aha, yes. There's no page number.

Q. They are page numbered -- if you have a look at the top right-hand corner. Top right-hand corner of the page.

A. I can see a 4, but I can't see a 44?

Q. Oh okay, must be a printing issue.

A. I can see a 4 in the top right-hand corner.

Q. It's the very next page; it's a reverse of the page you were looking at a minute ago.

A. Okay. Yep.

Q. And you'll see there S116, the very left-hand side.

A. Not in the documents I'm looking at, no.

Q. Can I approach the witness? All right, we just have a different one. That's interesting. Can I just have a pause for a minute? I don't know what that is, sorry?

SIR TERENCE: Well here, take mine.

A. Okay, I can see that on this document.

MS McDONALD: You can see that on there? Okay. Now we've heard evidence that a bundle of documents was found in a safe in 2014.

A. Sure.

Q. And those documents were the ones I took you through just a minute ago that were attached to Mr Hoey's affidavit.

A. Okay.

Q. All right. And I just want you to help me now just confirm that what's shown there as S116 shows that it was entered on 7 September 2011, and the date of origin is 1 September?

A. Okay.

Q. That's correct, isn't it?

A. That's what it says, yeah.

Q. And it's described as a briefing pack on civ casualty Kabul August 2010?

A. Okay.

Q. And that's -- that shows us, doesn't it, by looking at that register, that that document wasn't entered into that safe until 7 September 2010, which is six days after it was created?

A. Okay.

Q. And six days after you marched the documents you've referred to into the OCD --

A. I didn't march any documents into the OCDF; I gave them safe hand to Mike Thompson. I didn't control his register.

Q. Right. So you gave them to Mike Thompson on the 1st?

A. Correct.

Q. All right, and if we look at page 48 of the one that Ms Wilson-Farrell is probably going to give you, I don't know which version have you -- you've taken them out now. You need to go over now to page 48, which is a different register; this is the OCDF register.

A. Yeah, 20th of May 2011 -- 26th of May, is that the one I'm looking at, with a post-it note on it?

Q. That's right.

A. Okay.

Q. And if you go to page 48?

A. Got it.

Q. And this is -- documents here showing a number 386 and 387 and you've referred to those numbers in your evidence?

A. Correct.

Q. And the originator for 386 is DSO?

A. Okay.

Q. That's you?

A. That was me.

Q. Yeah? On the 1st of the 9th, and it's called "Baghlan province brief for MINDEF (two separate documents)"?

A. Yeah, the name -- the naming of those documents is the prerogative of the person who's marched it into their register, for reference.

- Q. And just on that, you would accept though generally, the person who's naming the documents, entering the name in the register, generally takes the name from what's on the document or title on the document or something obvious like that, don't they?
- A. Yeah, it would be a sensible thing to do.
- Q. And then the one under that, 387, also 1 September 2011 DSO, and you told us earlier that the dot dot dot, ditto marks underneath it meant that it was a copy?
- A. Yes.
- Q. And then in the column next to that, where it's got the copy column, copy number, have you got that?
- A. Okay.
- Q. It doesn't show it as a copy though, does it? It just shows it as a single document?
- A. You're asking me questions that might be better directed at the person who controlled this register.
- Q. They will be; you can be confident of that, put to that person, but I'm just asking you. You're talking about these documents; you've given evidence about what happened with 386 and 387?
- A. So I provided the document, right, to the Office of the Chief of Defence Force. I didn't watch him march it in to his register. He was a commissioned officer; I would have expected he would have done so having passed his safe hand. What he wrote in that register I only became aware of when it was shown to me as part of the preparation for this brief. I'd never seen what he'd written in there.
- Q. So you're saying though that the -- you said earlier in your evidence that the ditto marks shown there indicated it was a copy?
- A. That's an accepted protocol.
- Q. Sorry, what's an accepted protocol, writing ditto marks?
- A. When there's a copy made, yes.
- Q. Rather than putting "copy"?

- A. Yeah, I mean it's one of a number of protocols you can do to identify there's been more than one document made.
- Q. Where is that official protocol recorded?
- A. It's just understood; it's part of military training.
- Q. Right, that you'd put ditto rather than copy?
- A. You can elect to put something in there that is reflective of a second copy being made and how you do that is entirely up to you, if it's understood. DFO 51 is a guide. It's a very weighty document.
- Q. You see, I suggest to you that the fact that those documents are not entered into the first register that we looked at, the one on page 44, until the 7th of September suggests that they've been worked on, or used, or something's been done with them during those intervening six days. Is that a fair assumption?
- A. Yeah, I guess. Yeah.
- Q. Did you do anything with them during those intervening six days?
- A. No, I'd provided the documents to my Commander. My responsibilities were to brief him on those documents when he was ready for me to do so. I wouldn't have done any further work on those documents in the Office of the CDF. If I did any work on documents that would support a brief down track I would have done that on my own copy, working copy.
- Q. Can you comment on why the date -- the name of the documents has changed between those two registers?
- A. No, I had no oversight of the register that was contained in the Office of the CDF or the Minister. I knew that there was a register in both of those, because DFO 51 says there must be.
- Q. And we know that you briefed the Minister on the 12th of September and that's because it's in Dr Mapp's diary. You accept that?
- A. Yeah, it's interesting to me. I briefed the Minister many times, 12th of September would have been one of them. I think

I was just coming back, and I recall the 1st of September because I had to come back from Dougie's funeral to attend a planning conference with the New Zealand Police for Rugby World Cup.

Q. And I know you touched on this earlier, but I just want to be absolutely clear about it, what documents did you take with you when you went to brief the Minister?

A. I would have taken a copy of the IAT report; I would have taken a copy of the storyboard, and I would have taken a copy of a word document that would have been headed Brief to the Minister of Defence on Op Burnham, dated, and they would have all been in hard copy for me, and I probably would have produced multiple copies if there were other additional people in the room at the time that needed to be briefed. I was never quite sure how many people were going to be in the room when I was summoned to see the Minister.

Q. So you might have taken multiple copies of the classified partner document, the IAT report?

A. Not the IAT report, because I wouldn't have given that out, but I -- certainly the storyboards, for ease of explanation, I may have taken multiple copies of.

Q. And --

A. And I wouldn't have taken multiple copies of the narrative, because that was for the purposes of my briefings.

Q. So there's no -- and there's no way that we know what copy -- and just to be clear, the storyboard is a secret document?

A. Correct.

Q. And we have no way of knowing how many copies of that were made or what happened to them?

A. What I do know is that whatever I printed I would have brought back to my office and shredded.

Q. And we only know that, Mr Blackwell, because that's what you say, and you may be perfectly correct, but there's no audit of

that, is there? There's no record of those -- of what happened with those secret documents?

A. Well, that was an accepted protocol that I did almost daily in the conduct of my duties, so I'm very familiar with what I did. It was an efficient system by which to pass information to those that needed to know, and then secure that information appropriately.

Q. We've heard a lot about the PSR in this Inquiry, trust me. Do you think what you've just described is consistent with the PSR?

A. Sorry, PSR is an acronym for?

Q. Protective Security Requirements, protocols.

A. Okay, so I'm no expert on the PSR. I am an expert on conducting highly classified operations, which if that information was made available could compromise the safety of my men, yes. I accept my responsibilities around that.

Q. So when would you have shredded these documents?

A. As soon as I got back to the office.

Q. So on the 12th. If the briefing was on the 12th, it would have been the 12th?

A. I don't recall when the briefing was particularly on Operation Burnham. As I said, I briefed the Minister multiple times on multiple issues.

Q. And there'd be no record of that shredding, of those secret documents?

A. No, for the reasons that I've stated.

Q. All right. So those two documents, the IAT and the storyboard, one goes to the Minister and the other goes into Mike Thompson's safe, correct?

A. Generally, the document that goes to the Minister is done so as a result of the CDF asking for a copy to be made and sent to the Minister. It's not for me to determine. I can identify that I believe the Minister should see a copy, but any correspondence from NZDF Headquarters to the Minister's office was not my prerogative.

- Q. It's not the question I was asking you; I was just getting you to -- just so that we understand what the position is. As I understand the evidence and what you've said in your brief, one of those documents -- one of those, goes to the Minister and the other goes to Thompson?
- A. The first document went to Thompson. From what I've seen, from the evidence that's been presented, a second copy was made that went to the Minister. I did not make the second copy. I made the first copy and I made sure that it was registered into the Classified Register by giving it to Mike Thompson.
- Q. So you say in that register, as we've just established, that those 386 and 387 are copies of the same two documents?
- A. It appears so, yeah.
- Q. Well, isn't that what you're saying? I mean you --
- A. I think you should ask Mike Thompson. I didn't write those numbers into the classified register. I passed the document to Mike Thompson.
- Q. You've said this in your brief, Mr Blackwell. Are you resiling from what's in your brief?
- A. I think what you're trying to suggest is that I am somehow responsible for registering those documents into a classified document register over which I had no control. I wasn't.
- Q. Your Brief of Evidence says that 386 and 387, one went to the Minister and one went to Thompson?
- A. That's what I assumed to have occurred, because that is consistent with what has been put in the register.
- Q. Right, and neither the storyboard, nor the IAT report, are called Baghlan Province Brief though, are they?
- A. Whatever is on the register.
- Q. No. Neither the storyboard nor the IAT have that title; that's what I'm suggesting to you. Do you want to look at them?
- A. Again, the naming --
- Q. Mr Thompson's issue, not yours. Is that right?

A. Well, I'd love to be able to help you, but Mr Thompson did this, not me.

Q. Okay, and you can't explain, as I think you've said, anything about why there's no copy recorded in the copy column? That's Mr Thompson's issue too?

A. Well if he made a copy, it's his responsibility to annotate that, not mine.

Q. All right. So the originator has changed as well between those two registers. It starts off -- in the OCDF register, it's down as DSO, correct? And then in the other register that we looked at -- sorry?

A. It would be Office of CDF.

Q. Yep?

A. So the DSO was the one who marched the first document, and the second document would have been a copy, and it would have gone from Office of CDF to Minister.

Q. Right. So that's Mike Thompson would have made the copy, not you? That's what you've said, isn't it?

A. Correct.

Q. And we don't know what document 386 was, do we, because it was shredded and presumably those responsible for briefing you have shown you these documents, but we know it was shredded on the 5th of the 12th 2011?

A. I was staggered to find that confidential documents and briefings to the Minister were shredded when Ministers changed. That was news to me.

Q. You wouldn't expect that, would you, particularly where the Government --

A. I wouldn't have expected that, no.

Q. -- particularly where the Government didn't change?

A. No, I wouldn't have expected that at all.

Q. And it was a particularly important document, presumably just as important for an incoming Minister?

A. I am as surprised as you are about that.

Q. If it was the IAT report?

A. Well, it was.

Q. Well, how do you know that document 386 was the IAT report?

A. I know that I took the IAT report down to the Office of CDF on the 1st of September, and I can see from the evidence that a copy was made and gone to the Minister of Defence. So, I don't think it's a giant leap of faith to suggest that it's the same document.

Q. What about this register shows us that it was the IAT report?

A. Well, it was specific to Op Burnham, which occurred in August of 2010, so why would there be something else that was related to Op Burnham that appeared there on the 1st of September, a year later, unless it was relevant to the IAT report?

Q. I know that's what you say it was, but I'm just asking you whether you can help me and point to anything in this register which actually shows it was the IAT report?

A. What I can tell you is that the document, the IAT report, was taken to the Office of CDF by myself on the 1st of September.

Q. Okay, I understand that's what you say you did?

A. Yes.

Q. I'm asking you whether there's anything you can point to in the register which shows us that it was the IAT report as recorded in the register? There may be, I just can't see it?

A. Because it says "Baghlan Province NZDF for Minister of Defence".

Q. That doesn't say IAT report and it's not the title of the IAT report, is it?

A. No, but it's related to Baghlan province and it's for the attention of the Minister of Defence.

Q. It could be any other document related to Baghlan province, couldn't it?

A. I think I've just explained, why would I be -- why would I be sending a document to the Minister on Operation Burnham that occurred in August of 2010 unless it was new and relevant information for the Minister?

Q. So I just want to be absolutely accurate, because this Inquiry has to make decisions based on evidence?

A. Sure.

Q. Your evidence is that you are saying it was the IAT report. It is in fact not the register that shows us it was the IAT report, that's the position, isn't it?

A. Whatever Colonel Thompson or Chris Hoey wrote into their register, in terms of referencing that document, is entirely their prerogative. I gave them the IAT report with a Burnham storyboard, the Burnham storyboard being over a year old, but to refresh the memory.

Q. I understand all of that, and I understand what you say you did with it. I'm focusing on what the register shows us, and I take from your answers that you're not suggesting that the register itself shows definitively that that was the IAT Report. That's the position, isn't it?

A. My position is that I took the IAT report to the Office of CDF on the 1st of September.

Q. I understand that and you've told us that a number of times, Mr Blackwell, and I'm asking you again, and let's hope we don't have to ask it another time, the register doesn't show it as the IAT report, the ISAF investigation report, does it?

A. It doesn't say IAT report, no.

Q. Thank you.

A. But it's the only operation we conducted up there. We didn't go back.

Q. And as you've just said, it's as inexplicable to you as it is to me that the Minister's Office would shred that important document if they received it?

A. I wouldn't have shredded it.

Q. Well, except you did shred your copy later?

A. Well yes, but there was a copy in the electronic register and there was a copy in the Office of the CDF and a copy in the Minister. So, I shredded the working copy. I certainly didn't destroy a copy of the document. I think it's very important

that we clarify that I consider a copy to be either in the electronic or soft form. Not both.

Q. But you don't run an electronic register though, do you, in your electronic system?

A. No, it's a filing system; it's not a register.

Q. Just actually, while I think of it, now we're on this again, if you go back to the bundle that you're in, I think you're under the October tab, are you? Page 17. Still dealing with this DFO 51, at page 17.

A. Sure, got it.

Q. You see that heading computerisation of classified document registers?

A. Yeah.

Q. "Headquarters and units wishing to computerise their classified document registers are to use electronic classified document register the ECDR." Did you do that?

A. No.

Q. Why?

A. Probably wasn't familiar with that paragraph. I felt that I had an appropriate system.

Q. So it rather bears out, doesn't it Mr Blackwell, that what I was suggesting to you earlier about your ad hoc DI -- do it yourself system, was not an official one?

A. Did you -- you said ad hoc? Ad hoc doesn't seem to me -- or suggest a system. I had a very clear system that I used which was appropriate to the task.

Q. Which wasn't in conformity with the orders and which we know seems to have lost documents?

A. I ran four systems, on my desk.

Q. You didn't comply with this order. That's the short point.

A. All right.

Q. Correct?

A. Okay.

Q. Correct?

A. Sure.

Q. Okay. You see what I suggest to you that that register shows is that document 387, which we know is the IAT report, goes into Mr Thompson's safe, and it stays there, and we know it doesn't see the light of day again until 2014.

A. Sorry, did you say light of day, because I -- it was in the Minister's safe on the same day.

Q. Document 387 stayed in Mr Thompson's safe?

A. Okay.

Q. You say document 386 --

A. A copy went to the Minister.

Q. You say document 386 went to the Minister?

A. You'd have to ask Mr Thompson, but the Minister was very familiar with the document when I briefed him. So he can only have received it, because he knew --

Q. So, just on that, so the Minister was very familiar -- so he'd read the IAT report before you briefed him, had he?

A. He asked me specifically about the -- how a helicopter gunsight worked with a slaved reticle on a gunsight.

Q. So you just said a minute ago that the Minister -- your words were that the Minister was very familiar with the IAT report before you briefed him?

A. It was my understanding that the Minister was very familiar with the fact that the IAT report had said there may have been some civilian casualties. That was the purpose of me going to brief him.

Q. Right, so what I've said to you is correct. The Minister -- your evidence is the Minister was very familiar with the IAT report before you briefed him?

A. There would have been no reason for me to brief him if he hadn't been.

Q. Can you just answer my question?

A. Well, I'm trying to provide some context, because you know, if you provide closed questions and you want a closed answer, you're not going to have any context to what I'm saying.

Q. Well, you can provide my context -- maybe we'll do it this way. You provide your context after you give us the answer to the question.

My question is, is your evidence that the Minister was very familiar with the IAT report before -- when you went to brief him? Answer yes or no.

A. Yes.

Q. Right. Now what's the context you want to add to that?

A. I just gave it to you.

Q. Right.

And he talked to you, I think you've said, about the failure of the gunship firing system to slave properly?

A. The Minister was a previous Territorial Force Officer; he had a deep interest in things mechanical and military and often asked me questions about various military platforms and their capabilities. I was a qualified forward air controller so I had a deep understanding of the application of fire power from aerial platforms.

Q. And he's an international human rights -- has an interest -- a particular interest in international human rights issues, as a lawyer, doesn't he? Were you aware of that?

A. So did I. I was with the human rights branch of the UN in Iraq.

Q. I didn't ask you about you, Mr Blackwell. I asked you about the Minister. Do you accept that the Minister had a particular interest in International Human Rights Law?

A. That's his academic discipline; I would have suspected so.

Q. Thank you. And therefore, it would be logical that he would be interested in any suggestion of civilian casualties?

A. I think anybody, military or otherwise, would be very concerned if there was any suggestion of civilian casualties.

Q. Particularly the Minister?

A. No, not particularly the Minister. I would have been concerned as well.

Q. And the Minister then. Can we agree on that?

A. Agreed, but I'm not less concerned than the Minister. We went to extreme lengths in theatre to avoid --

Q. This is not a competition between you and Dr Mapp. I'm simply trying to establish whether you agree that Dr Mapp had an interest in the issue of civilian casualties?

A. He did, as did I.

Q. Right. And he therefore, given he'd read the IAT report, well familiar with it, you're briefing him, you understand candour, transparency, no surprises, he would have been left in no doubt about the significance of that report and the possibility of civilian casualties, that's his position, isn't it?

A. The Minister asked me what my opinion was of whether there were civilian casualties. My answer was very clear. It was, I don't have any evidence to suggest there were, but there may have been, because there were several rounds from the Apache from an incorrect gunsight slaving, but I had no understanding or no evidence to suggest there were, but there could have been.

Q. Well, I mean, you know, are we -- I don't want to get into a semantic argument with you, but you're faced there with an ISAF, an international report, done by General Zadalis which finds that there were possible civilian casualties, or it was possible there were civilian casualties. So that's pretty significant, you've got to accept that?

A. Possible.

Q. Did you not actually believe there were? I come back to where we started today?

A. I had -- no -- I tried to explain this to you. It was possible. I never said it was not possible, but I didn't think it was likely because I hadn't seen any evidence to say that it was.

Q. Ah, so you didn't think it was likely?

A. Well there was nothing to suggest there was. There was a very very very small chance, but in --

Q. A very small chance. Where did you get that from?

A. Well, look, let me be clear. If I had seen gun footage with a hundred rounds of ammunition that terminated between a group of civilians, then it would have been very clear to me. I didn't see that.

Q. That report, and we looked at these documents this morning, that report has shown in the talking points from Defence that are attached to the Hoey affidavit, talk about the fact that there were women and children seen exiting a building which was the building where the misfiring occurred?

A. Okay, if I'd seen the women and children entering the building, it would have been more probable. I didn't --

Q. So did you not believe what was in the IAT report?

A. Why would I not believe what was in the IAT report; it said it was possible?

Q. Based on what -- on the evidence that they discussed in the report?

A. It was possible, but the civilians had exited the building. If they were entering the building and then the rounds terminated there, it would have been probable.

Q. So you were actually -- by the sound of it, Mr Blackwell, you were making your own assessment of the validity of that report and its findings?

A. No, I deal in -- I deal in facts. I deal in facts, and the facts that as they were presented to me, it was possible, but there was nothing that absolutely proved that.

Q. And you put your own complexion on it when you briefed Dr Mapp and you suggested to him it wasn't likely, and the report was probably wrong, is that what you're suggesting?

A. No, I did not suggest that. He asked me for my personal opinion.

Q. Right?

A. And I said of the thousands of operations that I have overseen, it is possible, but I don't have anything that confirms it.

- Q. Possible but unlikely in your view. That's what you said a minute ago, wasn't it?
- A. I don't recall, possible, unlikely, I said to him that it was possible, and I've said it before, there are known unknowns on any military operation and I would never say never and I would never say always. So I would have said to Mr Mapp it was possible.
- Q. And presumably Mr Mapp, being the man that he is with the background that he has, having read the IAT report, would have said well actually, there's quite a bit of reasoning here in the IAT Report. This General Zadalis has come to the view, for the reasons set out in the report, that it was possible. Did he not challenge you on your view?
- A. No, I thought I was very clear when I explained it to him.
- Q. Dr Mapp's no fool, is he, Mr Blackwell? He would have worked out from reading that report what the significance of it is, surely?
- A. I would have thought so, yeah.
- Q. Wouldn't you expect your briefing pack to have been attached or associated with the IAT report and put in Mr Thompson's safe?
- A. There was a storyboard.
- Q. I know that. My question was, wouldn't you have expected a copy of your briefing paper to be associated with the pack --
- A. No.
- Q. -- that went -- why?
- A. Because that was my personal notes to provide clarity to the Minister, and I would not have wanted to have provided those notes preceding the brief should they be misconstrued without the ability to be able to provide clarity on them.
- Q. Is that because they didn't accurately reflect the IAT report?
- A. Well how could they not, the IAT report is pretty clear?
- Q. Assuming the IAT report went to the Minister, and you're sure it did?
- A. Why were we talking about it, if it didn't?

Q. Because you've told us that it did?

A. Well, I'm not saying you and I. Why were the Minister and I talking about it, if it didn't?

Q. And isn't it normal for a briefing note or talking points to be kept with the documents used for briefing --

A. No.

Q. -- to the Minister?

A. No. No, it's not normal at all. They were my personal briefing notes to provide clarity on the information that was provided.

Q. So they're not kept anywhere, officially?

A. Yeah, they're kept on my electronic files.

Q. Which we've lost?

A. I didn't lose them. I didn't lose them.

Q. But no hard copy anywhere?

A. No, there was no need, for the -- we've been through this. I've explained to you why there was no hard copy. It was not practical to do so.

Q. Why, because you didn't have space in your safe? Is that what you've said?

A. No, because of the sheer volume of documents that I was dealing with in briefings.

Q. I thought your brief said something about the reason you didn't use your DSO safe was because it was chocka or something like that?

A. You can add that to the complexity of it, yeah. I mean it was the sheer volume of documents; it was the ability to be able to store them. There was a number of reasons why it was impractical to do it that way.

Q. So did you ever raise that issue with the CDF, that you didn't have any space to store secret partner documents?

A. It's a bit beneath the pay grade of the CDF, but what I did do is write a capability paper to get proper secure systems and storage in the office of the DSO, and a proper office, where I

could have classified conversations and shortly thereafter I moved to the sixth floor, which was a --

Q. When did you move to the sixth floor?

A. Sometime thereafter; I don't recall the exact date, but it went into a secure environment which was more appropriate to those activities.

Q. So because, what I understand from your Brief of Evidence is that the reason you didn't use your safe, for this material, was because you didn't have space?

A. Didn't have the space, no, and was not going -- I had an adequate means by which to store documents. Why would I replicate that?

Q. Well, what is it? Is it that you thought your electronic system was better, or you didn't have space?

A. I know my electronic system was better because I wouldn't have to sift through a whole lot of hard copy documents; I could go to an electronic storage system and go immediately to the operations, as you would with any --

Q. Well, what's the relevance of -- what's the relevance of telling us that your safe -- you didn't have the storage facility for it?

A. Well, it's another factor. It wasn't the determining factor, but it was another factor.

Q. And didn't your analyst and your staff, didn't they have some responsibility, and indeed, I think the DFO 51 talks about clearing out documents at regular intervals?

A. Yeah, we did it every December.

Q. Right. So you know, you're faced here with a very important partner document --

A. Well, important --

Q. -- I would have thought -- just hear me out -- I would have thought it would have been of some priority to put that properly in a safe and record that, of all documents, in accordance with the Order?

A. I dealt with a significant amount of documents, many of which were more important than that one.

Q. Partner documents?

A. Yes.

Q. You kept those all on your electronic system too, did you?

A. Correct.

Q. Did CDF know that?

A. I think it's a bit beneath CDF's pay grade to determine what my filing system was.

Q. Okay. All right. Well, I wonder if we could take the break there, Sir?

SIR TERENCE: All right, so we'll take an adjournment for one hour and recommence at 2 o'clock, thank you.

(The luncheon adjournment)

CROSS-EXAMINATION CONTINUED MS McDONALD

MS McDONALD: Mr Blackwell, can I just take you back to a couple of matters we talked about this morning just so that I can be clear what you meant? You said at one point when you were talking about your electronic system that you ran four systems off your system. What were they?

A. Oh I was on the DIXS restricted system. I was on the SWAN Secret System. I was on [WITHHELD] which is the NZ SAS regiment system. And I was on [WITHHELD] which is the top secret system.

MR RADICH: Could I again, there's just a confidentiality issue, the name of the second to last system that was used is top secret I'm told. So I wonder if there could be a confidentiality order Sir Terence around the name of --

SIR TERENCE: So that was the second to last one?

MR RADICH: The second to last if I'm correct?

SIR TERENCE: All right.

MR RADICH: Thank you very much Sir.

SIR TERENCE: All right, so there's a confidentiality order in respect of the name of the second to last mentioned system.

MR RADICH: Thank you Sir Terence.

MS McDONALD: Thank you. And I'm correct then, based on what you have described earlier, that one of your staff who had access to your SWAN system could have conceivably printed off another copy of the IAT, and there wouldn't be any register to show that, would there?

A. No it would be highly unusual for them to do that without telling me.

Q. But they could?

A. Absolutely they could of.

Q. So theoretically at least we could have someone making multiple copies of a secret partner document?

A. I don't think that's possible. These people held security clearances; they know that would have been illegal to do that.

Q. All right. But putting -- I understand that, but putting that aside, if someone had wanted to operate wrongly, they could have done that and there's no record that would show that, is there?

A. You would have to -- I mean, you could interrogate that on your system. I mean habitually I had -- I did audits on the system to see who was printing what documents and for what purpose. So it's plausible, but highly unlikely.

Q. And you can interrogate those systems, we should be able to -- NZDF should be able to now interrogate the computer system shouldn't it, to find documents that have been lost or deleted, as you say?

A. Well, I asked the same question as you did, and my understanding is that system no longer is in use, it's been replaced by another system.

Q. Well, we might have to get some technical assistance in that regard.

Now this morning you also referred to the fact that you filed, was it the IAT or the email that you filed under the Operation Burnham folder you said?

A. Both.

Q. Both. Okay, why did you use the title Operation Burnham?

A. That was the name of the operation.

Q. Wasn't the name of the operation, Operation Rahbari? And wasn't every other document at that time referring to it Operation Rahbari?

A. No I think you'll find the storyboard was Operation Burnham and that's how we knew the operation.

Q. Let's have a look at the storyboard and just see what it says. I thought it referred to --

A. So operations were designated by a name of the operation, not the location of the operation.

Q. And if we look at the storyboard, page 127 of the October bundle, you'll see it's referred to as "Op Rahbari Objective Burnham". Which seems to be consistent with the other documents describing that operation at that time?

A. Sure, it was all filed under Operation Burnham though.

Q. Why did you use Operation Burnham, because it was Operation Rahbari?

A. No, it was Objective Burnham in Rahbari.

Q. Are you saying --

A. I think you'll find -- let me just give some clarity about how these things are named. Generally there will be a number of issues that you need to understand when you are conducting operations. One will be the nature of the target or the individual that you're seeking out with your partner force. One will be the location. And one will be a name of the operation that is designated. So it would not be incorrect to name it any one of those three, or all three.

Q. Have you had a look at that page, 127, because it's actually Operation Rahbari on the storyboard?

A. Objective Burnham.

- Q. Yeah, but not Operation Burnham. And I don't know of any other documents in 2011 that are talking about Operation Burnham, as opposed to Operation Rahbari?
- A. It's my very clear recollection that we referred to that operation as Burnham.
- Q. As opposed to Objective Burnham? Because Objective Burnham was one of the objectives of the operation, correct?
- A. Correct.
- Q. The operation was called Operation Rahbari?
- A. I didn't conduct the operation. I was in Iraq when the operation was conducted, so I knew it as Objective Burnham -- Operation Burnham, the same thing.
- Q. Why did you call the folder Operation Burnham as opposed to Operation Rahbari?
- A. I didn't call the folder Operation Burnham, that was the folder that I inherited which was called Operation Burnham. I simply added material to it.
- Q. So that folder was already there, was it?
- A. Yeah, it was a named folder; it had all of the information from August of 2010 that had preceded it. So I didn't name that folder, it was already in existence. I simply added information to it.
- Q. Okay. Your briefing note to Dr Mapp, can you explain to us why you didn't send that to him with the file 386, or number 386 that's referred to in the register?
- A. So it was a narrative, right? The way that I briefed Ministers was generally I would be given anywhere from five minutes to 45 minutes and I would have sufficient material available. Some Ministers decided you've got five minutes because I'm too busy; others said talk to me for 30 minutes. So I would have all of the detail that I required and I would then select from that detail as appropriate to the amount of time that I had available and the amount of information they requested from me.

- Q. You've been briefing Ministers and you told us about briefing the Prime Minister?
- A. Correct.
- Q. Isn't it entirely the usual process to provide a briefing note to a Minister?
- A. Generally, yes, except when you're talking about the complexity of operations which are peculiar to SF where there are a number of technical terms that wouldn't be understood in a briefing note.
- Q. And doesn't it follow from that answer that if, as you say, the complexity of this operation and technicalities of it, so you just send the Minister two technical documents without any explanation, that doesn't make much sense does it, Mr Blackwell?
- A. Well I think you'll recall from my evidence I didn't send it to them. What I said is the Minister needs to be made aware of this and I'm happy to brief when he's available for me to do so.
- Q. We'll you're splitting hairs, you know that those documents, and you said in your Brief of Evidence, the Minister needed to see them?
- A. Correct.
- Q. You know and knew then --
- A. In their entirety.
- Q. Fine. And you know and you knew then that they went off to the Minister, according to you, the IAT report, and the storyboard, both technical documents, and you say that it was a proper and appropriate and routine thing, do you, to send them without a cover note or a briefing note?
- A. I would imagine that the IAT report would have been sent with a cover note if it came from the Office of the Chief of Defence Force to the Office of the Minister. But it wasn't normal for me to write covering notes. I was more there to actually brief about the nature on the conduct of the operation.

- Q. So this Minister gets absolutely no explanation and receives two technical complex documents?
- A. Well, I didn't make the decision to send it to the Minister's office. I made the decision to give it to the Office of the CDF who is more than capable of reading that document, understanding its implication, and deciding what happens next.
- Q. Come on Mr Blackwell you're the DSO, you're the subject matter expert, this is entirely within your mandate. You identified the fact that the Minister and the Chief of Defence need this material and now you're saying not my problem that he didn't get a cover note or a briefing note?
- A. Quite the opposite. You're talking about form as opposed to function. As I said to you at the time, I was extremely busy. There were a number of staff officers who were designated to do this sort of stuff. I never wrote any covering notes to the Minister of Defence, it was not -- I wouldn't have been allowed to, I didn't work in the Office of the CDF, I worked in the Office of the DSO.
- Q. So you think we'll find a cover note, do you, somewhere? We haven't seen that either?
- A. Well, I don't know, I didn't work in the Office of the CDF, I worked in the Office of the DSO.
- Q. But you'd expect there to be a cover note?
- A. I briefed the Minister of the Crown for four and a half hours at the SAS regiment on 40 or 50 operations.
- Q. You would expect there to be a cover note?
- A. No, not a covering note, no, it's a verbal brief.
- Q. You would expect -- I thought you said you would expect there to be a cover note that went to Minister Mapp?
- A. If it -- if it was generated by the Office of the CDF, not by the Office of the DSO. I wouldn't do a cover note. It wasn't my role to.
- Q. Would you expect there to have been one sent to them?

A. I would have thought if you were sending correspondence to the office of the Minister it would have a covering note, as a general rule.

Q. All right. So that's another document that would be helpful to have from NZDF Sir.

A. Again I'd love to provide some clarity for you, but I was not working in the Office of the CDF, I was working in the Office of the DSO.

Q. Because without some form of briefing note all the Minister's getting is two random documents and no explanation, isn't he?

A. Well I don't think they're random, I think they're pretty clear and if you read them, which somebody obviously did, it would be very obvious to the reader what was the context of the documents.

Q. Exactly, and obvious to the reader would be, wouldn't it, that the IAT report was completely inconsistent with what the Minister's briefings had been previously?

A. Correct.

Q. And that wasn't drawn to his attention in any form of note or memo or cover note by you?

A. I certainly was surprised in 2014 with some of the things I heard in terms of what was remembered and wasn't, because my memory was very clear.

Q. What do you mean by that?

A. Well, I briefed the Minister in 2011 around the IAT report.

Q. What are you suggesting Mr Blackwell?

A. I'm not suggesting -- I'm suggesting that --

Q. Well, no is there something that you're not telling us here, what do you say you were surprised about, what you did and didn't --

A. Well, I was surprised given that I'd briefed multiple Ministers on that Objective Burnham, Operation Burnham, whatever you want to call it, that this was -- that Minister Coleman was unaware. I would have thought he would have been aware.

Q. What about Minister Mapp?

A. Oh he was definitely aware, because I briefed him.

Q. Are you surprised at how he reacted afterwards?

A. I grew less surprised by the reactions of Ministers as I was longer in the job.

Q. Do you think the fact that there was an election looming in 2011 might have had anything to do with things?

A. That's not for me to comment on, that's the Minister's decision, not mine. I am only simply there to provide the information.

Q. But you're certainly saying that you did your job properly and made him well aware of the significance of this?

A. I think it's obvious that the document says that I provided the document to the Office of the CDF and the Minister; so I didn't provide it to the Minister, I certainly provided it to the Office of the CDF.

Q. So what conversation did you have with CDF? We're talking about Mr Jones here, are we?

A. Correct.

Q. What did you say to Mr Jones?

A. I don't recall.

Q. Oh come on Mr Blackwell, you can remember what your -- your conversation you had with the Minister but not with the CDF?

A. Well, I briefed the CDF probably ten times more than I briefed the Minister. The Minister was always an interesting person to brief.

Q. What does that mean?

A. It meant that he asked interesting questions, that were sometimes relevant to what I was briefing him on and sometimes not. The Minister of Defence --

Q. No no, I'll just stop you there, I just want to -- you can come back to what you were going to say in a moment, but I just want to unpack this with you, "interesting questions, sometimes relevant, sometimes not"?

A. Mmm.

Q. So are you being critical of the Minister?

A. No I'm not, I just said that he had an interesting way of accepting briefs and questioning on those briefs. As --

Q. I don't understand that answer, can you explain it to me please?

A. Well it means is that briefing the Minister was quite unique.

Q. What does that mean?

A. In the sense that you would be providing him with information on something and he might ask you information on something completely unrelated over which I wasn't an expert. For example, I might be talking to him about an operation and he might ask me about a P8 aircraft.

Q. All right. So coming back to the CDF, which is what we really were talking about, what did you say to Mr Jones about --

A. I don't recall. I do recall that I briefed the CDF and I would have said the same thing as I said to the Minister. We got the IAT Report. It's clear what the IAT Report says. There is no evidence to suggest civilian casualties, but there may have been.

Q. And, you know, your answers continue to put the emphasis on the no evidence, rather than it's possible there was civilian casualties, is there a reason for that?

A. Well you continue to question me that there is evidence, but I haven't seen any evidence of civilian casualties.

Q. What I'm continuing to suggest to you is the IAT report, and General Zedalis, reached a view that civilian casualties were possible based on the evidence they had seen?

A. Possible.

Q. So do I take it, same question Mr Blackwell, you keep answering in that way which suggests to me, and you correct me if I'm wrong, that you do not believe, and didn't believe then, that there were possible civilian casualties?

A. On the weight of evidence that I had read, and I had viewed, i.e., there was a number, there was some three plus hours of video footage, there was the conversations that I had with

members who were involved in the operation, there was a number of avenues of information that didn't lead me to believe that there was civilian casualties. The only reason that I became aware there may have been civilian casualties is as a result of the IAT report. That is a report -- or may have been civilian casualties, is not dissimilar to dozens of reports that I read previous on other operations.

Q. Mr Blackwell, the IAT report does not say there is no evidence of civilian casualties. It says that on the evidence, civilian casualties were a likely -- were likely or possible?

A. Okay.

Q. It does not say there is no evidence of civilian casualties?

A. I didn't say there was no evidence of it, I said I didn't see any evidence of civilian casualties and I couldn't discount that there may have been, but there was nothing to suggest there were from what I reviewed of the gun tapes and from talking to people involved in the Operation.

Q. So you were putting your analysis ahead of the IAT findings?

A. I was asked for my professional opinion based on overseeing thousands of operations in Afghanistan.

Q. Which meant that you were putting your personal view ahead of what General Zadalis had found?

A. General Zadalis would have made his personal view from what he read from the officer who conducted the investigation. General Zadalis didn't conduct the investigation. He's a General -- General List Officer.

Q. So are you now suggesting that General Zadalis somehow didn't know what he was doing?

A. No I didn't suggest that at all. I'm just saying he didn't conduct the investigation, he simply reviewed the investigation and he suggested as a result of that investigation that there may have been civilian casualties. And I have no issue with that.

Q. Well, I just wonder why you seem to be disparaging about General Zadalis?

A. I don't -- I don't know how you took my comments as being disparaging of General Zadalis? I am in no way disparaging of General Zadalis. I was just outlining to you the position that General Zadalis would have held and what his responsibilities would have been in terms of reviewing the report. He would not have written that report.

Q. And what relevance does that have?

A. The fact --

Q. He's put his name to it?

A. -- of the matter is that he offered his opinion which is right, there may have been some civilian casualties. When the Minister asked me for mine, I said there may have been some civilian casualties because there are always known unknowns.

Q. But there was no evidence of any, that's what you've said you said to the Minister?

A. Well, that's fine.

Q. So that's your opinion as against General Zadalis, and you're saying --

A. So are you --

Q. Let me ask the question Mr Blackwell, you're suggesting your opinion as portrayed and as given to the Minister, had more weight than General Zadalis, aren't you?

A. General Zadalis didn't say there were civilian casualties.

Q. He said there were -- "civilian casualties are likely or possible on the evidence". He didn't say there was no evidence of civilian casualties?

A. I don't see he said likely, did he? He said that it was possible, or there may have been. I didn't say likely.

Q. He certainly didn't say there was no evidence?

A. I didn't say likely. Likely on the balance of probability is a significantly different term to possible.

Q. Do you accept that civilian casualties were a possibility?

A. May have occurred, I accept that.

- Q. Do you accept General Zadalis' conclusion that civilian casualties were a possibility based on the evidence he and his team had reviewed?
- A. Of course I do, which is why I briefed the CDF and the Minister. Of course I accept it.
- Q. Why did you tell --
- A. If I didn't accept it, I wouldn't have briefed it.
- Q. Why did you tell Dr Mapp, "but there was no evidence of it"?
- A. He asked me what my opinion was based on thousands of operations that I'd been involved with over a period of, in excess of, a decade. And I said I can give you plenty of examples, and I think I may have, not at that briefing, in other briefings, of where it be would be obvious that the likelihood of that was significant. But on this particular operation where we're talking about a couple of rounds that we only didn't know where they terminated, we knew they terminated in a hut, we didn't know whether anyone was in the hut, I said it's possible, but -- let me put it this way, if you've got gun footage that effectively shows kinetic force or kinetic strike being used against an insurgent, it's probable, because you can see what happens when kinetic rounds hit an individual. I didn't see any of that. Nor do I believe that any of the footage shows that. I do accept that General Zadalis said there may have been.
- Q. Did you brief CDF in the same way that you briefed Dr Mapp?
- A. I would have been even clearer with the CDF, he's a military officer.
- Q. Clearer about what?
- A. Well, there would have been less -- well, there was no ambiguity about what I briefed the Minister on, my briefing was consistent.
- Q. I don't understand any of that answer, I'm sorry. What do you mean you were clearer about --
- A. It was clearly too ambiguous for you. Look, the reality of it is, is this: I briefed the CDF on what I believed to be the

case, which was line out of an ISAF report that said there may have been civilian casualties. I briefed the Minister that. I would have no reason to brief them differently.

Q. All right.

A. Now if the Minister chose to ask me --

Q. So when you said you were clearer with the CDF, I asked you what do you mean?

A. Well, when you brief a Chief of Defence who is a military officer, the environment is a little less formal than when you're briefing a Minister in the Beehive --

Q. Have you read the IAT report?

A. -- and you generally have more -- of course I have, I read it at that time.

Q. And have you read it recently?

A. Yes. It's entirely consistent with what I'm telling you, there may have been civilian casualties. I have no reason to believe there weren't.

Q. Do you still having security -- do you still hold a security clearance?

A. Do I?

Q. Yeah.

A. No, I don't.

Q. How can you have read the IAT report?

A. It was shown to me.

Q. Who by?

MR RADICH: If I can, I don't want to interrupt but I think I need to clarify that Sir Terence if I may? In the briefing process there are some witnesses here who do not have security clearances and they were -- they did not read, they were shown the report in order to identify whether or not the handwriting or markings were theirs in it. But that was the extent of it, as I understand it. So I think that, you know, when this evidence is referring to having seen it, that's the point.

MS McDONALD: Well I'm sorry, I'm very concerned that Mr Radich is giving evidence about this matter now because I was --

SIR TERENCE: Well, I was going -- I am myself a little concerned about that, because that was not what I understood the witness to be saying.

MR RADICH: Well I'm sorry, I don't wish to give evidence at all, so forgive me if I have. But I think it was important to clarify, least there be any suggestion that other members of the team were doing anything improper.

SIR TERENCE: All right, thank you.

MS McDONALD: Mr Blackwell, you told me a minute ago, despite what Mr Radich has just said, that you read the IAT report prior to giving evidence, didn't you?

A. I observed the IAT report and refamiliarised myself with the document that I'd read in detail in 2011.

Q. Did you read it, or did you identify the writing on it?

A. I observed in identifying the writing on it a paragraph that basically stated what I've said to you today.

Q. Did you read the IAT report in its entirety?

A. In its entirety, no.

Q. What bit of it did you read?

A. I read the -- I read the paragraph that related to the evidence around there may have been civilian casualties.

Q. You read that paragraph?

A. I saw that paragraph, yes.

Q. You read that paragraph?

A. Yeah, of course. How could I possibly give evidence today if I wasn't given access to information that I was given access to in 2011?

Q. Well --

A. I mean it's -- the documents that I'm supposed to be commenting on I haven't even seen, and yet I wrote them.

Q. Well, Mr Blackwell I don't think there's much point you challenging me about that process, because this Inquiry has had to go through all sorts of hoops to deal with the IAT report in a public setting because it's a classified document.

A. Sure.

Q. Now, you said to me a few minutes ago that it was just one line that was relevant. Now that paragraph's more than one line, isn't it?

A. Well, you've got the document that AR15-6 or whatever it is, which I have read, which is submitted here in evidence. And it clearly says the same thing.

Q. Well, we can't get into the IAT report because we're not permitted to, but the Members have read it, and I've read it, and I would suggest to you it doesn't say exactly the same thing. But anyway, we can look at those documents in a private setting.

Coming back to your briefing of the CDF, you would have been very clear with the CDF, I assume, that this report stands in contrast, stark contrast, to the briefings of the Minister previously, and that was a bit of an issue that needed to be thought about and worked through, presumably?

A. No, I simply provided him with what the IAT report had said. I made no comment on what is said previously, it wasn't my role to.

Q. So it was of no interest to you that the former Chief of Defence had provided completely inaccurate briefings to a Minister of the Crown?

A. I would be concerned if any officer, or Minister of the Crown, provided evidence or a statement that was not consistent with information that was readily available. Hence, I provided the document for clarification.

Q. And it defies belief, I suggest to you Mr Blackwell, that the CDF and you, and presumably the VCDF, would not have been quite exercised about the fact that this report showed, without a shadow of a doubt, NZDF's media reporting was wrong and their briefing to a Minister was wrong. Correct?

A. I accept that probably some of the staff work around this was not as tidy as it could have been.

Q. Not as tidy as it could have been?

A. Well, there was a lot of things going on --

Q. It was completely wrong.

A. -- at the time, as I told you, right? So the reality of it is I made it available and I made myself available to brief on any issues that were as a result of that. Whether the Minister decided to change what he said publicly or not is not for me to comment on.

Q. What about whether NZDF decided to come out and change what it said publicly --

A. I was a --

Q. -- that's a matter you could comment on?

A. With respect, this is a three star General; I was a Colonel. You can provide the documentation as you see it; you can provide any recommendations or any context or your opinion if it's asked for. And apart from that, you basically move on to the next task that you have.

Q. So are you suggesting that CDF with full knowledge of the implications and significance of the IAT report made some decision to not do anything about it at that time?

A. No I'm not suggesting that at all.

Q. Well you gave him a recommendation, what was your recommendation?

A. I don't recall.

Q. Did you write it down?

A. It probably would have been in my narrative of the brief that was in my electronic system.

Q. Which we haven't got.

A. Yeah, well as I say, it exists. It exists because I put it there.

Q. But you surely would have given him a recommendation to the effect that NZDF need to do something about this erroneous position that had been put out publicly?

A. I think I left that to the General to determine.

Q. Did he not talk to his DSO, his subject matter expert, about that? You're the man on the spot who was the expert in this area. Did he not talk to you?

A. Sometimes your opinion is asked for. Sometimes it is not. You offer it when it's asked for.

Q. Right, so are you saying it wasn't asked for?

A. I'm saying that it wasn't my recollection from what I said to the CDF that there was anything further that I needed to do, apart from being available for briefings.

Q. What did he say to you when you told him about the IAT report?

A. I don't recall, it was eight years ago and I briefed him on hundreds of operations.

Q. What about the VCDF, was that Jack Steer?

A. It was.

Q. Did you talk to him about it too?

A. I don't recall briefing the Vice Chief.

Q. Did you talk to him about it?

A. I don't recall talking to him about it.

Q. He would have been -- he would have been in the vicinity though, he works out of the same office, doesn't he?

A. He was in close vicinity, but the Vice Chief of Defence Force didn't deal with operations. General Jones kept that very much within his domain, within his office.

Q. But he wasn't -- but General Jones wasn't a former SAS man, that was something that he would look --

A. Neither was the Vice Chief.

Q. Sorry?

A. Neither was the Vice Chief.

Q. All right. So wouldn't they look then logically to you for guidance about this matter?

A. They would ask me for my opinion.

Q. And what opinion did you give them about what they should do about the IAT Report?

A. I didn't tell them what they should do, I told them what my opinion of the report was.

Q. And what was that?

A. That there may have been some civilian casualties.

Q. And you didn't tell them how you suggested they deal with that?

A. It's not for me to tell them how to deal with that. That's up to them. That's what Generals do and Ministers do. It's not for Colonels to tell Generals and Ministers what to do.

Q. It is though for Generals and Colonels to tell Ministers -- to give Ministers advice though, isn't it?

A. Yes, and when it's sought, or asked for, it was always available. Sometimes it wasn't sought or asked for.

Q. Okay. And just to be absolutely clear here, you're saying that CDF Jones didn't ask for or seek your advice, correct?

A. I don't recall.

Q. And the Minister did or didn't seek your advice?

A. He asked me for my opinion.

Q. Not your advice?

A. No, he asked me for my opinion.

Oh, you mean advice as to what he should do with that information?

Q. Mmm.

A. No, he didn't ask me for that.

Q. Did he ask you what NZDF were going to do given their inaccurate -- in fact, erroneous media statement?

A. I didn't represent NZDF, the General did. He wouldn't have asked me that. He would have asked the General.

Q. Okay. The other contextual matter I suggest that was going on at this stage Mr Blackwell was the book, Mr Hager's book *Other People's Wars* which had just come out on the 1st of September, do you remember that?

A. I don't recall when it came out. I do recall the book.

Q. And I can tell you, and I don't think there's any doubt about it, it's a matter of record, that it was on the 1st of September which coincidentally was the same day that you marched the document into OCDF, is that right, same day?

A. From what you've said, yes.

Q. Okay. Were you aware of that at that time?

A. I wasn't aware of the context of the book. I hadn't read the book. I had no idea of the content of the book. I still haven't read the book. I do know aspects of the book from the analysis of the book subsequent by Defence in terms of the factual issues that have been raised in the book. But I had no knowledge of the book on the 1st of September, nor did I read the book, nor did I have any interest in reading the book.

Q. And did you know, though, that there were issues swelling round about the book in terms of responses to it and how the Minister and how NZDF were going to respond?

A. I was only too familiar with allegations that had been made against the Defence Force stemming right back to my early days in the SAS. I probably was a little numb to it at the time and wasn't actually that concerned with anything that was being produced in that book. I was very aware of the facts and how we conducted ourselves since our initial operations in Afghanistan in 2001. There was nothing in the book that was going to be new to me.

Q. All right. If you have a look at page 92 of the bundle, the October bundle.

A. Yep.

Q. And you'll see there an email communication to all New Zealand's Defence Force staff from Vice Chief of Defence Jack Steer?

A. Correct.

Q. And that, I can tell you, is dated 2 September 2011, that communication.

A. Okay.

Q. And so this is sent a day after you have been dealing with this -- received and been dealing with this IAT report. And if you have a look at the penultimate paragraph and you'll see the last sentence of that penultimate paragraph which says:

"After reviewing the evidence, the investigation concluded [and that's the ISAF investigation] that allegations of

civilian casualties were unfounded and the ground force and Coalition air assets were cleared of all allegations."

So that email to all staff is maintaining the erroneous position previously taken by NZDF, but it's gone out after you've received the IAT report into the very same office that Mr Steer works in, isn't it?

- A. No the document didn't go into Vice -- the Vice Chief's Office, it went into the Office of the CDF.
- Q. And Vice Chief works, what, in the next office, next door office is it?
- A. They do. They have totally different responsibilities though, one is leadership, and one is management. Completely different. One exercises command; one doesn't.
- Q. And what if Mr Jones was away, wouldn't the Vice Chief of Defence have responsibility for managing things?
- A. Himself or the elected Single-service Chief, whether it be the Joint Commander or any of the other Single-service Chiefs who would be acting as the CDF.
- Q. And wouldn't it, given the importance of this issue, have been something you would expect the Vice Chief of Defence to have been briefed on by the CDF, if not you?
- A. What the CDF briefed the Vice Chief of Defence on a daily basis, a weekly basis, was of no business to me.
- Q. No, so you didn't -- you don't have any opinion about whether that was -- this was something of sufficient note for that to probably have been done?
- A. These are General Officers, they're capable of deciding what they brief each other on and don't. And what's important and what's not. That's not -- it's not, you know, it would be a very short Colonel career if I started making those sorts of suggestions to General List Officers.
- Q. It's a bit unfortunate, you'd have to accept though, wouldn't you Mr Blackwell, that the very same -- the very next day there's this communication goes out of the Office of the Chief

of Defence Force which says the very opposite of what the IAT shown?

A. Well I can only imagine that if I was to speculate, that the Defence Force was trying to probably answer some of the issues that may have been raised in the book the day before and they had gone back to previous correspondence and used that correspondence to restate the Defence position. I could only assume that that's what they did.

Q. Has someone suggested that to you?

A. No, I'm just assuming if the book came out on the 1st and we made a statement on the 2nd it's, again it's not a giant leap of faith to understand why the Defence Force would be making a statement.

Q. Well, there may be some other explanations? The IAT report wasn't discussed with CDF? Its significance wasn't drawn properly to CDF's attention by you? Or, the Office of the Chief of Defence Force and his senior staff decided not to acknowledge its existence?

A. We're back into the "may" paradigm, aren't we?

Q. Yeah, well you were speculating, I thought I might as well.

A. Why not?

Q. So, now can I take you to another document please? If we go to document 93 in the same bundle. We have a document here dated, I think it's the 8th of September 2011?

A. Okay.

Q. And I can tell you that this is an email in which key messages are set out in response to Mr Hager's allegations from the book?

A. Okay.

Q. And it's involving the Minister of Defence's press secretary and some key points or talking points. And if you look through it, you'll see that on page 95, the bottom paragraph, and this is you'll see, if you look up two-thirds of the way up that page, there's the heading that says: "If asked re

Nicky Hager's book *'Other People's Wars'...*" a number of bullet points, and then the last one, which I'll read out:

"The book goes on to make claims about an operation in the Baghlan region in August last year. This matter was fully investigated by the NATO-led International Security Assistance Force (ISAF), followed by an investigation by a joint assessment team comprising both Afghani and ISAF officials. After reviewing the evidence, the investigation concluded that allegations of civilian casualties were unfounded and the ground force and coalition air were cleared of all allegations?"

So here we have, again, the erroneous position expressed about what the ISAF IAT report found, don't we?

A. I'm not in an addressee on that email.

Q. I didn't ask you that, I asked you, having read that paragraph, that says the opposite of what the IAT report said, you must accept that, surely?

A. Okay, I do.

Q. And that's a document dated 8 September, six days -- seven days after you have sent that report, or that report's gone across to the Minister's office?

A. Okay.

Q. It rather suggests the Minister hasn't had or read the IAT report, doesn't it?

A. I made the IAT report available to the Minister. Whether he chose to read it or not, is entirely up to the Minister.

Q. Because there's something not right here, Mr Blackwell, if everything you say is right, it's extraordinary that all these people are still saying the opposite of what that IAT report shows? Like VCDF?

A. So the IAT report came out on the 1st of September. It was made available to the Office of the Chief of Defence Force and the Vice -- and the Office of the Minister. It is then their prerogative to determine what they do about that.

Q. Well, we've got Mr Jones filing some evidence in this hearing saying he doesn't remember being briefed by you. We've got VCDF --

A. Who wasn't briefed by me.

Q. Who wasn't briefed by you. And perhaps not his job, but he seems to be unaware of it.

The Minister, who you say got a copy of it; his staff putting this together, apparently either not reading it or not understanding it. It's all very strange, isn't it?

A. But the Minister has identified in his Brief of Evidence that he was briefed by me on the IAT report. I have read the Minister's Brief of Evidence. It's very clear that the Minister says in that that he was briefed by me. Even down to the details of me explaining to him the Apache sight.

Q. Did you or your counsel have any discussions with Mr Mapp prior to the evidence that was provided?

A. No, I haven't spoken to Mr Mapp since he left the office of Minister of Defence in 2011.

Q. So is what we have, and I've touched on this already I think, but just to recap, we've got at the -- you see what I'd like you to help me with, because I still, after all of these hours of debating this with you Mr Blackwell, I still don't understand why Dr Mapp who had made public statements four months earlier, had a TV interview on Q&A, why if you had briefed him in the way that you suggest you would have, transparently, openly, honestly, why he would have continued and not picked up on the significance, apparently, of the IAT report? It can only be either that Dr Mapp has made some decision to bury this himself and cover it up. Or, that you have not briefed him properly and you've made him think that the suggestion of civilian casualties is wrong?

A. I think -- let me answer that in two parts.

I think that Mr Mapp's evidence is very clear that I briefed him on the detail of that.

And that the other second part is that if you have a question in particular of what Mr Mapp decided to do as a result, you should direct that question to Mr Mapp, not me.

Q. Well I certainly will be directing those questions to Mr Mapp, or Dr Mapp, but I thought you might be able to help with the answer. Because, it seems logical, doesn't it, that if you did your job properly and Mr Mapp did his job properly, he would have understood the significance of the IAT report and made a public statement clarifying the portion; presumably briefed the Prime Minister about all of this? CDF would have immediately been concerned and corrected the record because his briefings or the CDF's -- previous CDF's briefings were wrong and the media statements were wrong. And no-one did any of that. So that rather suggests either everybody's trying to cover this up, or you have misled them?

A. As Clausewitz so eloquently said: *"war is the extension of politics by another means. Politics trumps strategy every time."*

Q. What do you mean by that?

A. I mean that I'm a strategist, and a politician will tell me what to do.

Q. So are you suggesting that the politicians in this matter have concealed the true impact of the ISAF report?

A. I --

Q. I don't much mind what the answer is, I'd just like to know what it is?

A. Well, I mind absolutely, because I'm not going to convey any disparaging remarks about any other individual. I would rather that those individuals have the opportunity for that question to be posed to them for them to answer in a full and appropriate way. It's, you know, you're not going to lure me into a position here where I'm saying disparaging remarks about other people when I have no knowledge of such.

Q. What I'm suggesting to you is that what you've told the Inquiry can't possibly be right, because if you have done what

you said you've done and drawn this properly to Dr Mapp's attention, shown him the report, he's read the report, and engaged with it in the way that you have said, then the obvious conclusion from that is that Dr Mapp has not been himself transparent with the public?

A. What I can tell you over the period of four and a half years as the DSO, that I made many suggestions to many senior officers and many politicians, some which were accepted and some which were not. Some very strong suggestions that I made were not accepted, and there were actions that resulted, which I had predicted. It's not for me to determine whether the decision was right or wrong at the time. They made the decision. I was a professional soldier and, as such, I would obey the instructions of the General List Officers and the politicians, because that's what professional soldiers do.

Q. So, look Mr Blackwell, I don't want to be unfair to you, if the position is you actually did really bring this home to Dr Mapp and this -- the responsibility for this lies at Dr Mapp's feet, then let's have that clearly stated now.

A. Well you've got Dr Mapp's Brief of Evidence. I've seen it. It's pretty clear.

Q. Both you and -- your Brief of Evidence and Dr Mapp's Brief of Evidence both downplay the significance of the IAT report.

Now, I want to know whether you or Dr Mapp made a decision to cover this up and play it down for the public? Was it Defence, or was it Dr Mapp? Because it seems to me you can't have it both ways.

A. I certainly didn't cover up anything.

Q. Did Dr Mapp, in your view, did you -- did you tell him in a way that drew home to him the significance of it? Because if you did, then he didn't do what you'd expect him to do, you'd have to accept that?

A. I don't wish to make any remarks on what Dr Mapp may or may not have done.

Q. Why?

A. It's not for me to do that. It's inappropriate. And unfair to do so.

Q. Well, we'll put it this way, so your evidence then is that you drew to Dr Mapp's attention in a clear, proper, fulsome way, the implications of the IAT report. You gave him a copy of it; he read it, to your knowledge, true?

A. I believe so.

Q. You had a briefing with him in which you talked about the findings in the report?

A. I answered the questions that Dr Mapp put to me, yes.

Q. You had a briefing in which you answered his questions about the findings in the report?

A. Correct.

Q. Right. And you were left in no doubt that he understood the significance of it?

A. I believe that Dr Mapp was fully aware of what I briefed him on.

Q. And you were also aware yourself, and I suggest you would have -- you must have been clear with Dr Mapp, because it must have been part of the discussion, that what had gone on previously and what had been said publicly was inconsistent with what the IAT report was showing, that must be the case Mr Blackwell?

A. Correct. It's why I asked for the IAT report in the first instance in April.

Q. So why didn't NZDF, putting the Minister to one side, why didn't NZDF come clean with the public at that point and make a public statement, can you answer that question?

A. Primacy of public statements generally are conveyed from the office of the Minister of Defence, unless he delegates that to the Chief of Defence Force.

Q. So you're saying that that was Mr Jones' prerogative?

A. I would suggest that that was something that Mr Jones may have discussed with Mr Mapp, but nothing that I was aware of those discussions.

- Q. So do you have some reason to think, or know that they did have a discussion about it?
- A. No, I would be unaware of a discussion they had. As I said to you, often I briefed the Minister by myself; sometimes I briefed him with General Jones; sometimes General Jones briefed him without me present.
- Q. Were you involved in any discussions at Defence about whether NZDF should make a public statement correcting the record?
- A. No. I wasn't a public relations expert, I was a Special Forces Commander.
- Q. So that would be Mr Jones' call would it?
- A. Or his PR staff or any of his other advisors. But certainly not for me to determine General Jones on what his public position was going to be or not.
- Q. Did you not have any interest given you were the DSO in this issue and how it was playing out publicly? I mean, it was about Special Forces; it was about the SAS; this was your subject matter?
- A. Correct.
- Q. You must have had an interest in it?
- A. And it's one of probably 30 or 40 issues I was dealing with around allegations of the SAS. Mr Hager and Mr Stephenson's book clearly made a number of allegations. Mr Stephenson's allegations in *Eyes Wide Shut*, there were literally dozens and dozens of allegations that had been made against the SAS and the Defence Force that I believed I disproved at the time. Literally dozens and dozens of allegations made by Mr Hager and Mr Stephenson.
- Q. Can I take you to document 117 in that bundle please?
- A. Sorry what page was that?
- Q. 117.
- A. Okay.
- Q. So this is a document dated 1 July 2014?
- A. Aha, yes.
- Q. It's an email from Rian McKinstry?

A. Yes.

Q. To you?

A. Correct.

Q. Where he's telling you that he's seen the report, the IAT -- that he hasn't seen the IAT report, sorry. And this is all around the time of Minister Coleman, and we'll come to that shortly, but you will remember that in 2014 Minister Coleman discovers, his staff discover the IAT report in the safe, and I'm going to come to that.

A. I'm very aware, because I spoke to Dr Coleman about it.

Q. Right, okay, well that's good. And we'll come to that in a minute, but this email I just want to take you to first because this is Rian McKinstry telling you that he hasn't seen the report and he's referring -- you know, attaching below that previous email and pointing that paragraph out to you. So he's telling you he hasn't seen the report?

A. As at 2010.

Q. Well, I don't know about that Mr Blackwell. Why is he telling you -- why are you not saying to Mr McKinstry when you're involved in this investigation, for want of a better word, in 2014, at Minister Coleman's request, why aren't you telling Rian "don't worry about it mate I've got the report, I've had it since 2011"?

A. Maybe I did. Have you got the email that follows the one that --

Q. Well no email to that effect has been disclosed.

A. Maybe I did. That's telling me in that that his flights are booked and he's coming back. I don't know how I replied to him, but maybe my email said "thanks Rian I'm aware of this"?

Q. Oh well, we -- I'm sure that NZDF will provide us with that email if it exists.

Let's come then to 2014. So, I think you just said a minute ago that you were involved in briefing the Minister, Minister Coleman?

A. Yes.

- Q. And that was on the 28th, wasn't it, on the Saturday?
- A. No. No, I didn't brief Mr Coleman on a Saturday. I briefed Dr Coleman at his insistence, he visited the SAS regiment; myself and Lieutenant Colonel Cummins briefed Dr Coleman for in excess of four hours.
- Q. Sorry when was that?
- A. 2014, post this. I think as a result of this, Dr Coleman wanted to see for himself what the SAS activities were in detail in Afghanistan since 2011. I assume that's why he asked for me to brief him. And I briefed him for in excess of four hours with Lieutenant Colonel Cummins present, at the SAS regiment.
- Q. But we know that Dr Coleman was called out of a National Party Conference and went to New Zealand Defence Headquarters for a briefing on Saturday the 28th of June, and that was by you, wasn't it?
- A. No I didn't brief Dr Coleman on a Saturday.
- Q. Well, who briefed Dr Coleman on Saturday the 28th?
- A. I have no idea who briefed him on Saturday the 28th. It wasn't me. You'll see from my Brief of Evidence that I spent all of my weekends outside of Wellington. I am sure that the staff assembled some documents and somebody briefed him. I can only assume it would be somebody within the Office of the Chief of Defence Force, but it certainly wasn't me.
- Q. All right. So you were still the DSO at the time of the discovery of the documents, the bundle of documents in Mr Hoey's safe in 2014, weren't you?
- A. Correct.
- Q. And without getting into any detail, it's fair to say that the relationship between NZDF and Minister Coleman and you and Minister Coleman wasn't all that great?
- A. I had no reason to believe I didn't have a good relationship with Mr Coleman. I socialised with him on numerous occasions.
- Q. Didn't he have concerns about the transparency and openness of the reporting by NZDF?

- A. Good question. Certainly not from my perspective he didn't. Because when he came up to the SAS regiment I briefed him for four and a half hours. And the basis of those briefings was every briefing I gave to all the Single-service Chiefs and the Secretary of Defence every Tuesday morning.
- Q. Did he ever express concerns about the quality and openness of the briefing he got from you or others?
- A. He was deeply concerned that I filled some gaps in his knowledge that perhaps shouldn't have been there.
- Q. What does that mean?
- A. It means that I briefed the Single-service Chiefs and the Chief of Defence Force; what they decided to brief the Minister on was up to them.
- Q. Who was the Chief of the Defence Force at this stage?
- A. General Jones.
- Q. So you, I think you're accepting from me that Mr Coleman had some issues with the quality and openness of the briefing that he was getting?
- A. I'm accepting that that -- I'm accepting yes, but not with me.
- Q. All right.
- A. When Dr Coleman visited the SAS regiment I effectively trundled out three years' worth of Tuesday morning briefs. I went through every operation the SAS had done in Afghanistan since 2011 in intimate detail. And I was surprised when I returned to Defence Headquarters the next day that I was not required or requested to brief the Chief of Defence Force on what I briefed the Minister on.
- Q. So you became aware that the bundle had been located by Mr Coleman's -- Minister's Coleman's staff in Mr Hoey's safe and provided to him?
- A. Yeah, I was aware, because as I understand it, that was probably the catalyst for him then demanding a brief from me directly up at the SAS regiment. There was no other senior Officers present. There was only myself and the Commanding Officer.

Q. So he immediately realises that the public statements and the briefings to the Prime Minister and the Minister of Defence have been misleading on the issue of the IAT findings about civilian casualties, doesn't he?

A. I can assume that was the catalyst for him demanding a full brief from me. Ministers seldom give me four and a half hours. More like four and a half minutes. He gave me four and a half hours. So I assumed he was upset about something.

Q. All right. And he was upset, you will agree, I'm just trying to find the notes from -- there are notes of meetings with him, they're in the supplementary bundle, which is under supplementary in that tag.

I think Mr Short's notes are easier to read than anybody else's, so if you go to page 9 first, that's where it starts.

A. 209?

Q. No, it's under the tab "supplementary".

A. I'm under that tab.

Q. Right, Ms Wilson-Farrell will assist you. It's page -- it should be page 9 or 10.

A. Sorry top right-hand corner, there's multiple numbers here. It's 211, 7, 39, 9, this one here, "hand written notes"? Okay.

Q. So you'll see there at the bottom of page 10, "Minister felt let down", this is on 1 July:

"Minister felt let down by his Saturday brief. This was casual and did not contain all the information held. Critical piece left out."

And you don't know who did that brief?

A. No, it certainly wasn't me.

Q. Did you subsequently try and find out who else was involved in any of this over that weekend?

A. No. I assumed that Defence was handling this as they would with any interaction with the Minister or the public.

- Q. So Minister Coleman demanded that some investigation be undertaken as to how the IAT report came into New Zealand, you're aware of that?
- A. No I'm aware that Minister Coleman demanded that I brief him in some detail on all the operations in Afghanistan. And I presume that that was as a catalyst as a result of being not fully informed on this.
- Q. All right. If you have a look then, just to demonstrate that what I've put to you is correct, on page 11, top of the page, these are Mr Short's notes: "Assessment team summary. When? How did NZDF get this document?" And he's got "Rian McKinstry interviews. What did he know? How did he interpret?" Then there's a section on SAS accountability. "Credibility eroding over time. Not fallible. No question of core skills. Political judgment. Lack of insight. Confusing [something or other] of activities having a particular shielding effect. Look at position not being SAS. Jim leaving soon." And presumably that's you?
- A. I was leaving the Defence Force. So that's a statement of fact.
- Q. And then "Actions Taken" underneath. "Notes that the Prime Minister spoke to the media saying there were no civilian casualties killed and that Stephenson was wrong again. The Minister of Defence wants a brief on how the assessment team summary document was not available to CDF." And then a few bullet points down: "Report back in two days on McKinstry interview, ATS document, how did we get it? Handled by whom? Request for full assessment document. Assurance on veracity of briefs particularly involving SAS."
- So you were the DSO at the time; so I assume that you would have been spoken to about this, because this is clearly the Minister expressing concern about SAS briefings, isn't it, without any doubt?
- A. No, not SAS briefings, briefings from the Office of the CDF.

- Q. He wants assurance on the veracity of briefs, particularly including the SAS?
- A. Well, again, let me assure you that at 9 o'clock every Tuesday morning I gave a full and frank brief for some 45 minutes to an hour to all the Single-service Chiefs and the Secretary of Defence. Those briefs were full and Frank to the point that some of the graphics within those briefs I had to have removed because of the sensitivities of some of the individuals in the room.
- Q. Okay, that may be correct, I'm not disputing that with you Mr Blackwell. What I'm suggesting to you, and what seems abundantly clear from what we've heard from other witnesses and what these notes show, is that Minister Coleman, rightly or wrongly, is expressing a view about the quality and veracity of his briefings, particularly from the SAS?
- A. No, from --
- Q. You don't think that's what this shows?
- A. No, I don't believe that is. I mean, I briefed Minister Coleman in absolute detail on all of these operations when I was required to. I briefed the Single-service Chiefs and the CDF and the Secretary of Defence in full detail. They had every opportunity to ask me whatever questions they needed and follow-up actions. What the CDF then decided to brief the Minister of Defence on was of no business of mine.
- Q. All right, well that's your position.
- A. Well it's a very clear position and I'm sure you could call Helene Quilter or any of the Single-service Chiefs and they would verify that those briefs were incredibly detailed and held weekly.
- Q. We may need to talk to Mr Coleman, because it seems to be --
- A. But Mr Coleman wasn't at those briefs. But those briefs occurred every Tuesday morning. I briefed every operation that the SAS conducted for the week preceding, every week for the entire time that I was the DSO. Except when I was deployed overseas, and my deputy would do that. Full

transparency. And when required, I would also be paraded across to the Beehive to brief other Ministers and, in fact, the Prime Minister on activities that took their interest.

Q. If you look at page 112Z in the October bundle, so it's under the October section. And as I understand the evidence that's been given and that the emails show, you were asked by Ross Smith I believe, as part of his doing this investigation that Mr Coleman had asked for about matters to do with the IAT Report, do you remember that?

A. Yeah -- well, the -- if you're pointing me to this email, it's an email from my analyst --

Q. I'm going to come to the email in a minute, I've got -- my question precedes the email?

A. Okay.

Q. Do you remember being questioned by Ross Smith and asked any questions about the IAT report?

A. No I don't recall that.

Q. Do you remember any discussion with Ross Smith or Kevin Short about what happened and what the circumstances were about the IAT report?

A. No I don't recall.

Q. So this email, as I understand it, is from you to Rian McKinstry attaching the marked-up version of the IAT Report that had been in the bundle of documents in the Hoey safe?

A. No this email is from my analyst to me.

Q. Is it? So, your analyst, this is [WITHHELD]

A. Correct.

Q. Right?

A. So I would have asked her --

Q. Yes, you're correct, it's from your office, I'm sorry I said "you"?

A. Yeah, well, I would have asked her, and we get back to my electronic files, I would have said to [WITHHELD] please go into my electronic files and send me a copy of the IAT report

that's there. That's the IAT report. She would have simply gone into my electronic files and sent it to me.

Q. Right. So why would she be doing that?

A. Because I would have asked her to find it to make it available to me and email it to me because I was probably doing something or briefing somebody and I would have come up -- got a copy of that. I couldn't transfer it electronically, probably printed it off and said here it is, it's been here since September the 1st 2011.

Q. So that's what I want to understand. So I just want to understand -- so you're saying -- so who asked you to -- how did you know to come and try and find it? I thought no-one talked to you?

A. I don't recall a conversation -- no no no, not nobody. You said do I recall a conversation with Ross Smith? I don't.

Q. Who did you talk to then?

A. I don't recall who I talked to, but somebody clearly asked me for a copy of it, and I asked my analyst to find a copy from my electronic files. And there it was, sitting there.

Q. Oh, so you're saying this is your electronic copy?

A. Yeah, that's -- well how else could it be anything else? It was emailed to me. You can't email a hard copy.

Q. This is the electronic copy from your system?

A. Correct, from the electronic files where I said I stored it in September the 1st, 2011.

Q. All right.

A. I knew it would be there.

Q. And what did you do with it?

A. I passed it to whoever asked me for a copy of it. I would have --

Q. Well, who would that have been?

A. I don't recall. I do know that at around that time I suspect, if my memory serves me correct, I was probably endeavouring to get three and a half years of operations collated so I could

brief the Minister of Defence on them. Which is not an insignificant amount of material.

Q. Can I just pause for a moment if I can?

All right, so -- and this is [WITHHELD] email, not yours, is that right? [WITHHELD]

A. It is from Headquarters NZDF.DSO/SOanalyst, that is the designation of [WITHHELD], it is to Headquarters NZDF.DSO, that's me.

Q. All right.

A. And the file would have come from the electronic files in the DSO's electronic register.

Q. And if you go then to page 77 of the supplementary bundle, have you got that page, page 77?

A. Yes.

Q. Now, that is from you to Rian McKinstry, isn't it?

A. No that's to Karl Cummins, the CO.

Q. Right, but it's from you?

A. Yes, it's from my email address to the CO which was on his classified system which was compatible with the SWAN system.

Q. So you're saying that's not going to Rian McKinstry?

A. It's going to the CO of the SAS regiment on the 1st of July 2014. My recollection is the CO at that time was Karl Cummins.

Q. Well, we can check that. My understanding it was Rian McKinstry, but you've seen this email --

A. Or Rian McKinstry. I had, I think worked with -- had worked for -- or I had worked for 12 COs, I might have got the dates wrong.

Q. And that's attaching the IAT report?

A. Correct.

Q. So why were you sending that to Rian if it was Rian or Cummins without -- what was the purpose, there's nothing on the email? What was the conversation, which I presume there was one, that went alongside this?

A. I'd like to see the email preceding it, because he probably asked me for a copy of it.

Q. We don't have that.

A. If you went to my electronic files, you'd find it.

Q. Well, that's a matter that should be directed at NZDF. We have this one, which I'm told is the only one we have, and nothing that preceded it.

A. I may have elected to send it to him for clarification of my own volition or he may have requested a copy of it from me. I don't recall.

Q. So in any event, you didn't tell Ross Smith or any of the people that were involved in this issue with Minister Coleman in 2014 that you'd obtained the IAT report back in 2011, did you?

A. I wasn't aware of what was going on at the time. I don't know where I was or what I was doing. But nobody rang me and asked me.

Q. But you were clearly involved in issues to do with the IAT report on 1 July 2014, these emails show that?

A. Correct.

Q. Well, did you not have any -- were you just completely not curious about what you were being asked about or what was going on?

A. I wasn't concerned about it, because I'd made the report available on the 1st of September 2011.

Q. But you were the DSO, you knew Minister Coleman had gone, you know, got very angry?

A. Yes.

Q. And it was all to do with the IAT report being found in a safe and him not being briefed about it?

A. Okay.

Q. All right. And are you saying that you didn't at that time see any need to come clean and say "hi guys actually I've had it since 2011", anything like that?

- A. Well, there's nothing to come clean about it. I'd made the report available on the 1st of September 2011.
- Q. Well, forget the words "come clean" why didn't you tell anybody in 2011 -- in 2014 that you'd had this report since 2011?
- A. I don't recall --
- Q. Because you weren't asked? You answer the question?
- A. I don't even recall where I was on the 1st of July 2014; what I was doing.
- Q. Well you were emailing an IAT report to either Rian McKinstry or did you say Mr Cummins?
- A. It had obviously been requested, so I would have made it available. But I had no reason to do anything other than provide another copy of a report that I'd already provided three years previous.
- Q. But you told us that you were aware of -- you knew about the issues that Coleman was so exercised about?
- A. I became aware that Mr Coleman was exercised about the level of information that he had received from the CDF. I didn't say it was particularly about this report. I said it was about all of the operations that the SAS had done in his time as the Minister. So he queried me on a vast number of operations.
- Q. Are you seriously suggesting that as the subject matter expert in 2014 at NZDF, the person responsible for SAS operations, matters to do with SAS; we've got a Minister of the Crown going ballistic about not getting this report and being misled, and you don't engage with that?
- A. I didn't know he'd gone ballistic on that. I had no idea that he wasn't aware.
- Q. Well, you certainly knew something about the IAT report because on the 1st of July --
- A. I knew that I'd been asked to provide a --
- Q. -- you're emailing it?

A. I'd been asked to provide a copy of it. That's what I did. I had no idea that the Minister had gone ballistic about that report. I became aware subsequently that the Minister was concerned about the level of transparency he had, which is why I then ended up briefing him for in excess of four hours at the SAS regiment on all of the operations, this one included. If this was the catalyst for the briefing, then fine, but I was told to brief him on everything that we had done in theatre Afghanistan over an extended period of time.

Q. But the position is then in 2014 you never told CDF that you received the report in 2011, didn't see any need to, is that what you're saying?

A. I told CDF's predecessor and CDF's staff and told the Minister at the time.

Q. So you're the DSO?

A. Yeah.

Q. You say you're in a bubble or something, that you don't know any of this fallout's happening, and you don't tell anybody about it?

A. Look, this was clearly -- this was clearly going on between the Office of the CDF and the Minister of Defence and I wasn't even on the same floor. There were many activities that went on in those offices that I would be unaware of. I could only become aware of these things if somebody requested that information from me. But I wouldn't have known that the Minister and the CDF were having issues in the Minister's office. That's none of my business and it's above my pay grade. I was staggered to find myself briefing the Minister for some four plus hours with no other senior Officer in the room, with just the CO of the SAS regiment in the room; that I found extraordinary.

Q. When was that?

A. Sometime in 2014. I mean, I'd have to go into my electronic files to find my calendar to tell you exactly when that brief occurred.

- Q. So just to be absolutely clear, because we will need to talk to Minister Coleman about this?
- A. Sure.
- Q. Are you saying that you never had any knowledge of Minister Coleman's concerns about being misled about the IAT Report?
- A. Well I didn't think he had been misled. I told the Minister, and the CDF, in 2011. I was unaware that this position was not known to the Office of CDF and the Minister until they asked me for a copy of the report.
- Q. So is it your evidence that Minister Coleman never -- you had no knowledge that he felt let down about his briefings and about the existence of this IAT report in the end of June, beginning of July 2014?
- A. I was very aware that Mr Coleman -- Minister Coleman was upset with the Office of the CDF, because I flew to Auckland to brief him at the SAS regiment for in excess of four hours.
- Q. And were you aware that he was upset, possibly about other things as well, but upset, at least one thing, was being misled about the IAT report and the issue concerning civilian casualties? Are you saying he never -- you never knew about that?
- A. I don't -- I don't -- I believe that the conversation was words to the effect of "I don't believe I have full visibility to the level that I wish to have on SAS operations. I would like you now to brief me on everything you've been doing in theatre Afghanistan."
- Q. All right.
- A. Which included subsequent operations post the initial deployment, the drawdown of the forces, the whole thing. Literally --
- Q. Did you know about the fallout over the IAT report --
- A. No, I didn't.
- Q. -- being found in the safe?
- A. I knew that the Minister was upset about something which I assumed to be the level of granularity that he had on SAS

operations. Some Ministers wanted to know; some Ministers didn't want to know. He obviously wanted to know and made that very clear. And I briefed Minister Coleman in full detail on every operation that the SAS had conducted in Afghanistan.

Q. Did you ever talk to Mark Chadwick, the Minister's Military Secretary about issues to do with the IAT report being discovered in the safe?

A. I don't recall having a conversation with Mark Chadwick.

Q. You can't recall?

A. No.

Q. Do you recall Mark Chadwick being extremely angry about the fact that this had all happened and he'd found the report in the safe?

A. No I don't recall that. Mark Chadwick was a Lieutenant Colonel equivalent. He's hardly going to express his anger to me, is he? He's subordinate to me.

Q. Because I suggest to you, Mr Blackwell, that you knew full well that this fallout had arisen about the IAT report in the middle of June 2014, and you simply never told anybody that you'd had the report since 2011?

A. Well let me suggest to you the counter, which is I was aware that the Minister was upset over the level of granularity that he had on the whole suite of SAS operations and as such, demanded a brief. There was nothing significant at that time about the IAT report, because I was briefing him on significant amounts of operations, including that.

Q. So, contrary to what you told us earlier, the Minister was concerned about his briefings about the SAS, because I thought earlier you said it wasn't really concerned about the SAS?

A. No no no, no you're -- no, you've misrepresented what I said to you. I said he was concerned about the level of briefings that he received from the NZDF.

Q. You said SAS a minute ago, and we can check the record?

- A. Well check the record, but I said previous to that it was the Office of CDF responsible to brief the Minister, not me.
- Q. But you're -- but I thought you just said that you had to brief him on whatever day it was subsequently?
- A. When he so desired my attendance at the Beehive I would wander across and brief him on what specific questions, which might range from capability to any other of a number of subjects. On this particular occasion the Minister's concern was he didn't have sufficient transparency of the entirety of SAS operations. Again, it was not my responsibility. My responsibility was to brief the CDF and the Secretary of Defence and the Single-service Chiefs. And that's what I did every Tuesday morning.
- If the Office of the CDF decided not to brief the Minister of Defence, again that's not my responsibility. And I would not have been aware of what the Minister was being briefed by the CDF.
- Q. And just to be absolutely clear what your answer is in relation to page 77, the email from you to Rian McKinstry attaching the IAT report, can you tell us again why you sent that to him on the 1st of July 2014?
- A. I can only presume that he asked me for it, or that I provided it for the purposes of briefing or understanding. I can't tell you without seeing the emails as to whether he requested it from me or I sent it to him.
- Q. You can remember lots of other things Mr Blackwell, what conversation did you have with Mr McKinstry about that at the time?
- A. In 2014?
- Q. Mmm.
- A. I don't know. I couldn't tell you the conversation I had with my business manager last week on Wednesday.
- Q. If you have a look at page 117 of the October bundle Mr McKinstry is saying to you on the 1st of July 2014 at 12.06

that his flights are booked and he'll see you tomorrow. Do you remember that?

A. Okay, well that's what it says.

Q. Do you remember that?

A. No I don't recall that. The CO would habitually come to visit me or I'd habitually go to visit him.

Q. So this is all to do with the IAT report, because that's what the email's about, and you're having a meeting with him it seems on the 2nd of July?

A. No, I don't know what I was meeting with him about on the 2nd of July.

Q. You can't remember any conversation about the IAT report on the 2nd of July?

A. Look, I know that the IAT report is of great significance to this Inquiry and its importance is not lost on me. But what I would like to say is that I was dealing with literally hundreds and hundreds and hundreds of reports. I made it very clear in my evidence about what the Office of the DSO was involved with. I know it is of great significance to this Inquiry, but in the scheme of all of the other issues I was dealing with, it didn't hold the same level of significance to which you accord to it at the moment.

Q. Mr Blackwell, what's happened here is we've got a Minister who's got very angry.

A. Which Minister? Are we talking about Minister Coleman?

Q. Coleman.

A. Okay.

Q. He's got very angry with being misled.

A. Sure.

Q. The staff find the IAT report; he demands an investigation. Ross Smith goes off and does an investigation. We've got Mr Short and Mr Smith meeting with the Minister over the weekend. And one of the things that Mr Smith's told to do is to contact Rian McKinstry, find out where the IAT report -- how the IAT report came into New Zealand, because

it's a mystery, and McKinstry gets interviewed as a result of that. Within a day of that, there's emails between you and McKinstry about the IAT report; McKinstry comes to meet you on the 2nd of July. And I want to be clear, is your evidence you never discussed with Mr McKinstry, given that context, issues to do with Coleman, the fallout over the IAT report?

A. I'm sure I discussed many issues with the CO, as I did habitually. I believe that he probably was asked some questions and asked me whether we had a copy of it. And I probably forwarded it to him. I mean, why would I not forward it to him? I'd made the report available since the 1st of September 2011. Why would I all of a sudden decide three years later that I didn't want to make a report available which I know was stored in the electronic files and which was marched into the Office of the Minister of Defence that he'd been briefed on, and his evidence says clearly that I briefed him on it? So why three years later would I change my position on that?

Q. Okay. So is your position then you would have told these senior Defence people in 2014 that you had had a copy since 2011?

A. I would have --

Q. And they would know that?

A. I would assume that they would have asked me and I would have made the report available. Because it's -- I knew that I had the report available. I knew where it was stored. I asked my analyst to provide it for me as opposed to going and searching through the files myself. Sure, at some stage I was probably asked for it.

Q. So they would have then been able to work out how the report came into New Zealand, wouldn't they, because you would have told them, based on that answer?

A. Yeah, that I received -- that I received it and it had been forwarded to the Office of the Chief of Defence Force and the Office of the Minister.

- Q. So you would have told them that in 2014?
- A. If they'd asked me, I would have, yes, I'd have no reason to tell them anything else.
- Q. Well, they'd have no reason not to talk to you about it, and they'd have every reason to talk to you about it especially given that you were talking to McKinstry?
- A. I talked to Colonel McKinstry about many things.
- Q. Well, you were talking to him about the IAT report, that's pretty clear from these emails?
- A. He just asked me for a copy of it. What I talked to him about or not, I don't recall.
- Q. Sir, I know it's a little bit earlier and I'm very nearly finished; I just wonder whether we could take an early break and I can just regroup on what I've already covered and what I still need to cover? Which might make it a little bit more efficient if we could. It's nearly 25 past.
- SIR TERENCE: Yes, okay. We'll take a 15 minute break and commence again at 20 to four.

(Afternoon adjournment)

CROSS-EXAMINATION CONTINUED BY MS McDONALD

- MS McDONALD: Mr Blackwell, if I heard correctly earlier, you are very clear that you did not do the briefing on the 28th for the Minister, for Minister Coleman, on the 28th of June.
- A. The Saturday morning?
- Q. Saturday evening or whenever it was on the Saturday?
- A. It wasn't me.
- Q. Did anyone from your office do that briefing?
- A. Not that I'm aware of.
- Q. Would there have been anybody from your office conceivably who could have done that briefing?
- A. My recollection is that possibly some information might have been provided for that brief from my analyst.
- Q. To who?

A. I presume the Office of the Chief of Defence Force.

Q. So are you suggesting that it was the Chief of Defence who did the briefing then?

A. Undoubtedly if the Minister was upset with the Chief of Defence Force, I would have expected that the Chief of Defence would have been speaking to the Minister.

Q. Right. So there's only two choices in terms of that briefing, given the significance, would be Mr Keating or you. And we know it's not you, so are you suggesting it would be Mr Keating?

A. No it wasn't me, no.

Q. Right, so it must have been Mr Keating. Is that right?

A. I don't believe I briefed the Minister on a Saturday. So it can't have been me.

Q. Right. And based on what you've said, given the significance of it, CDF at the time was Mr Keating, correct?

A. Okay, yeah.

Q. So the suggestion is then that it would have likely to have been Mr Keating, is that what you're saying?

A. Or General Keating's staff.

Q. And who of General Keating's staff might it have been, given the significance of the issue?

A. The Vice Chief, his Chief of Staff, um, any senior -- whoever was acting on behalf if he was out of the country, a Single-service Chief. I don't know who gave the briefing.

Q. Who would be a subject matter expert on this issue?

A. Which particular bit, the staff work or the application of the operation?

Q. The issue concerning -- the issue concerning how the IAT report was obtained and the issue of civilian casualties arising from this operation and the briefing of the Minister?

A. I suggest probably Dr Mapp was a subject matter expert given that I'd briefed him and provided the document to him in 2011. I suggest General Jones would have been, having been fully briefed.

Q. You misunderstand me, who would the subject matter expert have been that would have briefed Mr Coleman on the 28th?

A. For a missing document? So this is a staff --

Q. In relation to the issue concerning the SAS, the findings of the IAT report, the operation in August --

SIR TERENCE: Could I just interrupt a moment, it seems to me there's a slight confusion here. Are you talking about the briefing on Monday 28 -- on Saturday 28 June?

MS McDONALD: Sorry, was I not clear about that Sir, sorry?

SIR TERENCE: Well, all I'm saying is that at that time there was no -- the Minister was not upset. He became upset on the Monday.

MS McDONALD: Sorry, quite right.

SIR TERENCE: And you're suggesting to the witness that he was upset on the Saturday, that's not the case. He just wanted to be briefed on the operation because of the upcoming programme.

MS McDONALD: Quite right. Sorry it's been a long day.

As at the 28th, we hadn't found the bundle in the safe. So, the briefing on the 28th was a briefing to the Minister by someone referred to as a subject matter expert, can you help us on who that might have been?

A. Well, if they were trying to ascertain as to where a document was or wasn't, then the subject matter expert would have been the individual concerned who was responsible for keeping the Office of the Chief of Defence Force's safe, he would be the technical expert. If you wanted comment on the nature of the operation, the specifics around the operation, then obviously I would have been the senior technical expert.

Q. Okay, all right. Well we'll leave that there; sorry I confused you.

I want to take you really though to page 112 of the October bundle.

A. Oscar or zero?

Q. Oscar.

A. Okay.

Q. And you'll see there that's an email of the 30th of June 2014?

A. Sure.

Q. From your analyst [WITHHELD] ?

A. Correct.

Q. To Rian McKinstry?

A. Okay.

Q. All right? And she's saying:

"Rian, apart from the one that I've emailed on DIXS, these are the documents I pulled up for CDF MINDEF on the weekend."

A. Okay.

Q. Right. Now we know, and I can take you to the document, it's at page 112a that the document on DIXS is not the IAT report?

A. It couldn't be sent on DIXS, it was a classified document.

Q. Well that's helpful to have clarified, but just in case there was any confusion, that's not what it is, it's a Ministerial Briefing of the 13th of December. And she's attaching all of those other documents, none of which are the IAT report as far as I can see?

A. Well you've directed me to two sets of documents here. There's the DIXS one which would be obviously unclassified. And then there's a plethora of documents here that are on the classified network.

Q. All I'm pitting to you, Mr Blackwell, is that the documents attached to the email on page 112 are a bunch of documents that [WITHHELD] is sending to Rian McKinstry as having been the documents that have been pulled up for the briefing for CDF MINDEF on the weekend?

A. Okay.

Q. All right?

A. Sure.

Q. And I suggest to you, and you might be prepared to accept, that this rather suggests that your staff have been involved in pulling together the document for the briefing -- documents for the briefing?

- A. Yeah of course, if the Minister was upset he would want to know what had been briefed and when and we would have made available all the documents that we had at our disposal, which would have simply been going into that file and cutting them all to an email and sending them.
- Q. And is it your evidence that you didn't know anything about that, even though your staff were involved in doing this?
- A. Look I don't -- I don't -- honestly, I don't recall what part I played in this, if any. The sheer fact that the CO is being briefed might be that he was doing this on my behalf because I was unavailable. Look, I'm unsure. I don't -- generally I wouldn't delegate briefings to the CDF or the Minister unless I was unable to provide them myself.
- Q. No, this is [WITHHELD] showing Mr McKinstry what the documents were that were used for the briefing on the weekend?
- A. Okay. Which means I may have been indisposed and unavailable, and she might have contacted the CO in my absence. I didn't have a deputy. So her next obvious port of call was to get direction from the CO of the SAS.
- Q. And you don't have any recollection of any discussions with her around this time about this issue?
- A. No, I don't. I mean I, again, I think I alluded to the fact previously in my evidence that my analyst at that time was spending almost two days a week dealing with OIAs. So she -- her providing information for the purposes of Defence answering OIAs and various other requests was not abnormal, it was standard practice on an almost daily basis.
- Q. This is not an OIA, this seems to be pulling documents that were used for the briefing?
- A. Sure, and that was her job, she was the analyst, so she -- one of her responsibilities was research, which was to go back into archives or find documents that may be relevant to questions being asked. A clerical role.
- Q. The other implication from this email is that your office was involved in the briefing on the 28th?

- A. I've already told you I wasn't.
- Q. Was your office?
- A. No, there was nobody qualified in my office to provide that briefing.
- Q. Why would they be compiling and pulling together the documents that had been used in the briefing?
- A. Well, they would be providing those documents to somebody who was properly authorised and qualified to brief, which I would have imagined would have been at sort of flag officer level. You wouldn't have sent the DSO's analyst to brief the Minister of Defence.
- Q. No you wouldn't, and I agree with you about that. But what this shows, doesn't it, is that your analyst on the 30th is pulling together the documents from the DSO's documents that were in your system?
- A. Sure.
- Q. That had been used on the 28th to brief the Minister?
- A. Okay, yeah well that's perfectly reasonable.
- Q. So that suggests that the DSO or someone from the DSO's office had been briefing the Minister on the 28th?
- A. No it doesn't suggest that at all. What it suggests is that somebody was required to brief the Minister on the 28th, and that individual would have sought out some supporting documentation from the Office of the DSO. My analyst resided in Wellington, and she would have come in and provided the documents that she could find that were relevant. So she certainly wouldn't have briefed.
- Q. And would you expect there to be some record then of who sought those documents and who provided that briefing?
- A. I'm sure she could answer that, or the individual that asked her. If you can find out who briefed the Minister, I'm sure that same person will be the person that requested those documents be made available.
- Q. And are you aware of talking points that were provided to the Minister on the -- well, talking points for that briefing on

the 28th addressing the issue of civilian casualties and the like?

A. I wasn't involved in the briefing.

Q. No, you told us that, but I'm asking you whether you were aware, given your area of expertise and your mandate as DSO, would you not have been aware if there'd been talking points provided to the Minister to respond to issues arising from the *Native Affairs* story and *Collateral Damage*?

A. Again, I exercised technical authority. In terms of what information flow came from the Office of the CDF to the Minister, that was completely outside of my mandate, that was the responsibility of the Office of the CDF, so no, I wasn't aware.

Q. So you would have had no role in helping or drafting or being aware of any -- any talking points provided to the Minister to assist him responding to questions arising from *Collateral Damage*?

A. I already said I wasn't in Wellington. I didn't conduct the brief. I didn't prepare the brief. Information was provided from our electronic files to help whoever gave the brief with some background information if there was anything.

Q. Given the nature of those talking points and the topic, I suggest that regardless of whether you did the brief or not, that the talking points would have been the sort of thing that would be relevant to your office, and would be in your system somewhere, would that be a fair comment?

A. They're relevant to my office yeah, but I didn't -- I didn't prepare those talking points and I didn't have any involvement. I've told you I wasn't in Wellington. I didn't do the briefing.

Q. Do you know about those talking points?

A. No.

Q. You have no knowledge of them at all?

A. No I didn't see them. As far as I was concerned the question had been asked from the Minister's Office; we provided the

information that was relevant. End of story. That was nothing unusual. That would happen on an almost daily basis. It just happened to happen on a Saturday.

- Q. Because we know there were talking points, because what we have got, Mr Blackwell, at page 217 of the first part of the bundle, not under the October bit, if you just go to the main part of the bundle, what we've got with that document -- I'll just find it.
- A. Is that the one from Commodore Smith?
- Q. No. It should be page 217.
- A. 217. It's an email from Commodore Smith, Commodore Ross Smith.
- Q. Oh yes, that's right. The top of the page.
- A. Okay.
- Q. And the reason I'm showing you this is simply to show you that these -- these are talking points that have been prepared, it seems from the Minister's Office, to update or amend the talking points that had been provided previously. So they've up -- they appear to have been updated post the discovery of the IAT report, you'll see there under the first line, "as our draft updated talking points"?
- A. Yeah, well it effectively says that New Zealanders were not responsible for any civilian casualties, if there were any. There's no evidence of civilian casualties from Coalition air support, but you can't categorically rule it out. And the New Zealand troops were categorically not responsible for inflicting these civilian casualties, if in fact they occurred. Nine insurgents were killed as a result of the operation. No surprises there.
- Q. No, the point I'm making with you though, is that these are updated; if follows that there were ones that predated this that needed updating because they presumably weren't right, and these ones are the corrected ones, which would make sense because they've been prepared following the discovery of the IAT report?

- A. Okay that's a staff function, again, that's not my responsibility. I was not a member of the Office of the Chief of Defence Force's staff.
- Q. And you have no knowledge of those talking points, the earlier ones?
- A. No, but I have no issues with them, they're all entirely correct.
- Q. No, the earlier ones, the ones we don't have. Because we have the amended ones you see, but we don't have any disclosure or discovery of the ones that pre-dated this, which appear as a matter of logic, to be different; presumably not correct?
- A. Look, sometimes my opinion or input was sought. Often it wasn't. On this occasion I don't believe it was.
- Q. So that's another missing document?
- A. Well it may be missing --
- Q. I'm not holding you responsible for that Mr Blackwell.
- A. Well, there's only so many things that I could be responsible for, to be fair. And I wasn't responsible for the staff matters in the Office of the CDF or the Minister, or the PR department. I was responsible for trying to keep [WITHHELD] New Zealanders alive and protect the lives of civilians in Afghanistan. That's what I was responsible for.
- Q. Mmm, and you were also though, weren't you, to be fair, responsible for fulsome and proper and accurate briefing to the CDF and the Minister of Defence?
- A. And I took my responsibilities very seriously. This is not a game, this is combat. People get killed. People get hurt. The whole purpose of us being in Afghanistan was to provide a safe and secure environment for Afghans. This is no game.
- Q. I don't think anybody's talking about that here Mr Blackwell. What we're talking about is the openness, transparency and whether or not the Minister might have been misled by any of NZDF's briefings?
- A. If the Minister was unclear it was not by any motivation or efforts by any individual to mislead the Minister. An officer

is selected and commissioned for his integrity, and there is no Officer that I know that would of deliberately misled the Minister or any other official.

Q. And just to be absolutely clear before we finish, your evidence is you did not mislead Mr Mapp, Dr Mapp?

A. No, why would I?

Q. He was absolutely clear about the implications of the IAT report and had it? And you did not in any way dissemble or downplay the significance of the findings of the IAT report, is that correct?

A. Yeah, I'm not sure why I would. It clearly exonerated any activities of the ground forces, which were the soldiers that I was responsible for. If anything, I would be exceptionally motivated to make that information available to my leadership.

CROSS-EXAMINATION BY MR SALMON

MR SALMON: Mr Blackwell, you'll probably be aware that I have a timing limit that means I'll be asking you to work with me to move quite quickly from topic-to-topic; so if you can endeavour to keep your answers reasonably succinct and focused, that would be appreciated.

You've talked about the extent to which you have dealt with similar issues to the ones that have given rise to this Inquiry many times, and you've mentioned the hundreds of operations in which civilians have been in target and the thousands of operations generally you've overseen, you recall saying that?

A. Correct.

Q. And one of the reasons you've said those points at various times when my learned friend's been talking to you is by way of highlighting why you have said in your brief that you don't recall a lot of these details, and indeed, didn't recall the IAT report at all when Ms van Dam phoned you up in August this year?

A. Let me just clarify, at that stage I hadn't served in the Defence Force for four years. This was an activity that

occurred eight years ago. I was driving at the time. It was a cold call. I wasn't warned out about it. And I was considering a significant commercial deal. It wasn't something that was at the top of my priority list. I did say, however, that if the information was required, it would be held in my electronic files and that's where they should source it from.

Q. Yes, my point was just to get confirmation that the reason you mentioned how many similar operations you've been involved in is by way of explaining why this one doesn't really stand out for you?

A. I would say that I've been involved in a number of operations that are significantly more complex with more significant outcomes, correct.

Q. Right. And that's why when I read your brief I see examples of you being responsibly upfront where you can't remember where something happened or how it happened exactly?

A. Well, look, to the best of my recollection I've tried to provide what I believe to be the situation from my time as a DSO.

Q. Right. So when this morning you used the language speaking to my learned friend that "the SNO would have been the person", quoting you, "who would have given it to me", being the IAT report?

A. Correct.

Q. You're not remembering that it was that SNO that gave it to you, you're inferring it from documents?

A. It came through a New Zealand medium. And the only individual in the contingent deployed that I dealt with was the SNO. So it could not have come from anybody else.

Q. Okay. And when you say "it came from a New Zealand medium", what would that mean?

A. Over a New Zealand bearer system, which was not compatible with other systems. So, for example, you couldn't transfer

information from our bearer to a Canadian bearer or an American bearer or a Dutch bearer or a Swede bearer.

Q. Right, so you know it came from that New Zealand bearer, but have deduced who would have sent it because of the fact that you know it came from a New Zealand bearer?

A. Well under the chain of command, I would certainly not be speaking to anybody subordinate to the SNO in theatre and I would have tasked him and he would have been responsible for providing and answering to me.

Q. Okay, so again, trying to move fairly swiftly through these things, that's you confirming this is deduction rather than a crisp memory today that the SNO sent it to you?

A. My memory is it came from the SNO.

Q. So you do remember it came from the SNO?

A. Yeah, I believe that's as I recall it.

Q. All right. So that's something you can remember today even though this operation is one of many that you didn't remember when rung up specifically about it, is that your evidence?

A. Sure.

Q. You remember that it came from the SNO?

A. Correct.

Q. And you remember the type of medium?

A. It could only come across one medium, and it could only come across from one person. So again, I don't -- again, whether I remember that, or that's established protocol, what I can tell you is it would have come across a New Zealand bearer and it would have come from the SNO in theatre.

Q. But you see this is changing Mr Blackwell, and let's be crisp and let's be precise, you've been saying you knew it came across by a particular medium, and now you're saying it would have come across by a particular medium. The problem is you don't remember how it came across, do you?

A. Okay, so the document was received electronically over SWAN via [WITHHELD] and was stored on my SWAN system.

Q. Okay. Pausing there, do you remember that, or are you asserting it?

A. I remember it.

Q. And you remember the day it turned up in your in-box?

A. I do.

Q. And you've said in your brief that that was September --

A. September the 1st.

Q. -- 2011? And you remember it was September the 1st because?

A. Because that's when it was marched into the Office of the Chief of Defence Force and the Minister.

Q. All right. Let's step back. You don't remember the date you briefed the Minister?

A. No, I don't.

Q. You don't remember where you were when you briefed the Minister?

 You need to answer for the transcript, Mr Blackwell.

A. No, I don't.

 Oh where? Yes, I briefed the Minister in the Beehive.

Q. Well, you've said you don't remember the logistics in your brief, what do "logistics" mean if not the place?

A. I don't recall who else was present at the time when I briefed the Minister.

Q. Right, so you don't have a visual memory of the format of the meeting?

A. There were many meetings. It didn't stand out any differently to any others.

Q. Right. Given it didn't stand out, you wouldn't be in a position to remember with precision what in fact you said at that meeting would you?

A. I do, because I remember the Minister's response. He asked me questions about it.

Q. And I'll come to that. It seems strange you can't remember who was there, and it's just one of many meetings, and yet you then move to saying that you can remember exact parts of the dialogue. Do you agree that's strange?

A. Ah not really. I've read the Minister's Brief of Evidence. He remembers me briefing him and the details on the briefing. So that collaborates or validates what I've said to you.

Q. Let's focus just on your evidence given the time we have, shall we?

A. Okay.

Q. All right, you are saying that you remember talking to the Minister specifically and him making clear he had read the IAT Report before you'd got there and had comments on it?

A. He asked me questions about it, yes.

Q. So that's a yes?

A. Yes.

Q. Okay, you can answer yes if it's the straight answer, and we can move swiftly.

A. Sure.

Q. Do you agree you didn't say that in your Brief of Evidence? Yes or no?

A. Well what are you asking me?

Q. Do you agree that that crucial detail of memory of your meeting with the Minister was not mentioned in your Brief of Evidence?

A. Do you mean in terms of the date?

Q. No, in terms of him having read the IAT report and asking specific questions arising from it?

A. I think my Brief of Evidence is clear as to what I did with that document, and that document was --

Q. That's not what I'm asking you Mr Blackwell, and we don't have much time. Do you agree that that's not in your Brief of Evidence?

A. It's -- yeah, it's not in the -- you know, there's a lot of stuff that's not in the Brief of my Evidence.

Q. But your Brief of Evidence was your attempt to be as helpful as you could to this Inquiry?

A. Yeah, with the limited time I had available to do it. I --

Q. And to be as honest as you could?

- A. Mr Salmon, you need to be aware I run a half billion dollar company. I don't have days or weeks to attend to this. I provided the information as I saw it was available; made it available to the Defence counsel and moved on with the other duties that I have on a daily basis.
- Q. But, Mr Blackwell, this is probably the clearest most important memory you have relayed today in that it goes directly to the Terms of Reference. It is the memory that was most relevant to your brief. Do you agree you missed it out from your brief or not?
- A. I agree that I could have included my recollection of briefing the Minister.
- Q. And do you agree that had you done so, the Minister might have been able to respond to it in his brief, rather than finding out only once you're in the witness box that you are suggesting that the problem was at the Minister's end and not yours?
- A. Well, the Minister's acknowledged that I briefed him.
- Q. The Minister has not acknowledged a series of events as you have described which involved him having the IAT report, and it'll be more efficient if you don't suggest that he has. Do you agree that things might have been different if you had said this in your brief?
- A. My recollection is that the Minister was in receipt of the IAT report.
- Q. Do you agree that this would have been more efficient if you'd said it in your brief?
- A. Sure, okay.
- Q. Okay. Let's step back to the SNO. I'm not to use the person's name, but I understand there was one SNO from April through to August 2011, and a second one from August 2011 onwards, is that correct?
- A. Correct.
- Q. And the one from August onwards is the one who sent it to you?
- A. Correct.

Q. And you can remember that email popping up?

A. Correct.

Q. And you can remember from whom it came?

A. Correct.

Q. Even though, as you've said on many other occasions it's a long time ago and it's only one of many?

A. Well, I'd been asking for the report since April; so it was significant in the sense that it had been provided some six months later.

Q. Okay. So that's what I want to ask you about. You asked this particular SNO to get it?

A. I asked his predecessor and I asked him.

Q. Okay. You asked the predecessor?

A. Yes.

Q. And then you asked the new SNO?

A. Correct.

Q. And what did they say to you?

A. Well, the predecessor was unable to obtain it. His successor was able to obtain it.

Q. And the predecessor wasn't Chris Parsons?

A. No it was not.

Q. All right. So the one who was -- the one who ultimately provided it, you kept chasing to provide it?

A. It was on his list of --

Q. Did you keep chasing him?

A. I reviewed their task list on a monthly basis.

Q. How many emails would you have sent on the point?

A. I have no idea.

Q. Well, isn't it interesting that you can't remember that, and yet you can remember the one email that we can't find?

A. No no, I remember the email arriving, I made it very clear in terms of what I did.

Q. Oh you've said that many times. What I'm wanting to do is test why you can't remember how many other emails you sent

chasing the point. You've said it's important and that's why you remember it?

A. Yes.

Q. You're not able to remember how many times you chased it or how?

A. I remember that I asked on numerous, or several occasions of his predecessor and I asked him as well.

Q. How?

A. How many times I don't know.

Q. Email? Email?

A. By email, yes, correct.

Q. And those emails are gone from your records and from his, are they?

A. DSO@SWAN, correct.

Q. Both gone?

A. Well yeah, but I mean that's -- I can't explain why they're not there.

Q. Did he tell you how he ultimately got a copy of the report?

A. No, he did not.

Q. Is it possible he sent it to you on a different day than 1st September?

A. I don't believe so, no.

Q. Why can you be sure of that?

A. Because as soon as I received it, I realised it was significant and I took it down to the Office of the Chief of Defence Force.

Q. But you've made quite a point of how busy you were and how many things there are like this, why did this one stand out?

A. Well, because we'd been trying to obtain the report since April. So it was obviously significant.

Q. And the reason you were trying to obtain the report is in fact because this was a very significant event and it wasn't just one of hundreds or thousands, as you've repeatedly tried to suggest?

A. Well, no no, I disagree. How was it significant? There was nothing there. If -- a significant event where I was absolutely of the knowledge where civilians had been killed would have been significant. There was an assertion that civilians had been killed. But until that time --

Q. Yes, and you've made that speech a number of times today.

A. Yeah, well it's --

Q. Again, I'll ask you to bear with me given the timing, just to stick to my questions. I asked Mr Cummins about this when he was in the witness box, and about the extent to which this was unusual. You've described him today as a very smart guy. Do you recall that?

A. You don't get into the SAS unless you have a high level of IQ.

Q. That can just be a yes, if that's the quick answer, and we can make good progress Mr Blackwell.

A. Well, I've never met an obtuse SAS officer, if that's what you're asking me?

Q. I'm asking you, in particular, if you'd mind not being obtuse and just giving brief answers if the easy answer's yes, that's what I'm asking.

So what he said in his cross-examination was that rather than this being one of many, this was, and this is from page 428 of the transcript if that helps Mr Radich. This was the only time ISAF had investigated potential civilian casualties that New Zealand was involved with in recent memory. And that when asked whether we can agree that this is "the biggest and most prominent and most serious allegation of civilian casualties involving New Zealand in modern times" he said, "sitting here, I believe that to be the case. Certainly in the forefront of my mind."

Now we might quibble and you might mention the number hundreds and thousands, but you'd agree that this smart man who worked in the SAS is broadly right, that this was a very significant issue, wouldn't you?

A. I had dealt with numerous allegations of civilian casualties over numerous operations that the SAS -- New Zealand SAS were involved with.

Q. Well, were there any others that involved an IAT report or an ISAF investigation?

A. No, but there've been --

Q. All right.

A. There were NGOs in theatre like ICRC and other NGOs who were responsible for any suggestions of human rights issues and none of them had identified or chosen to investigate this. This was as a result of a weapons surveillance video being reviewed where ISAF decided to conduct its own report.

Q. Again, if we can just keep focussed. None of the others involved an ISAF investigation or an IAT report, so this was significant in that respect?

A. The ISAF -- okay, let me be clear --

Q. Was it significant?

A. The ISAF investigation was generated by ISAF, not us.

Q. Was it significant?

A. It would have been significant if the investigation had found evidence of civilian casualties or negligence.

Q. And you hadn't read it yet, so it was, at the time you were trying to find it, significant to you, wasn't it?

A. It was significant in the sense that it had been requested because we were aware that it was in play.

Q. All right. So your saying then that you received the email on the 1st and you can remember receiving it on the day, correct?

A. Well, I absolutely remember it, because I went down and had a conversation with Mike Thompson and instructed him to make it available to the CDF and to brief me when the CDF was available to discuss it. So I absolutely remember the conversation.

Q. Right. And you remember specifically that conversation with Mike Thompson, and as I understand it today, your evidence is

that you regarded yourself as having briefed the CDF by briefing Mike Thompson?

A. Ah no. Mike Thompson was not the CDF, but Mike Thompson worked for the CDF and I had made the report available to the CDF for him to be briefed on at a time that he saw fit.

Q. Right. And the short point is though, you briefed Mike Thompson and not the CDF directly?

A. On the 1st of September, correct.

Q. And you didn't brief, as I understood all your evidence this morning, you didn't personally brief the CDF at some later time either?

A. I believe I did.

Q. You believe you did?

A. I do.

Q. And you believe that because you've seen a record of it, or what?

A. I believe that I briefed the CDF on many issues and, like me, he travelled extensively and when he came back I would normally have a Commanders Update Brief and it would have all the relevant points that I thought appropriate for his knowledge. So, it is consistent with me keeping him fully informed; so I'm sure that I briefed him with other operations.

Q. And from that language it is abundantly clear that you don't remember, but you think it's likely?

A. The specific time.

Q. Right. So again, that's a strange thing, isn't it, that you don't remember a discussion on this issue with the CDF, but somehow you do now remember one with Dr Mapp, do you agree that seems strange?

A. No, I haven't said I don't remember briefing the CDF. What I don't remember is when I particularly did that and what context. I do remember briefing the Minister. I briefed the Minister a lot less than I briefed the CDF. It was probably a bit more significant.

Q. Sure. But you're speculating or inferring that you would have mentioned the IAT Report to the CDF. Whereas you're claiming you specifically remember mentioning it to Dr Mapp?

A. Yes.

Q. Okay.

So you're standing by the notion that that's something that you remember despite, again with me, trying to say that this was not a particularly significant issue, because by then you'd read the IAT Report?

A. Well, the Minister asked me questions on it.

Q. Right. Now you can't recall the date or the context of the briefing of the Minister as you've said?

A. No, but I'd be able to find it in my electronic calendar if it existed.

Q. You'd agree that by the time you'd met him it was some four months after the TVNZ piece on the issue, and after Dr Mapp had taken a position on the issue publicly?

A. I didn't really pay a huge amount of attention to some of the media reporting on the activities of the SAS, or the activities of the Defence Force. I found most of them were not entirely accurate.

Q. Well, you did take a lot of care and pride about how the SAS was conveyed in media, didn't you?

A. Correct.

Q. Right. And you have at times actively taken a part in the way information is presented to help protect the reputation of the SAS?

A. I think any leader, commander, manager, has got fiduciary and reputational responsibilities that they should adhere to.

Q. Well, they also have other responsibilities such as under the legislation governing the retention of public records, that you've put perhaps less time into, would you agree with that?

A. Not my job to store information, that's some entity that sits within Defence who's responsible for that.

- Q. Well help me understand this just because you're here, there must be backup tapes taken of our top secret military documents that help protect the safety of these soldiers you care about? There must be a routine so that when you spill your coffee on your computer you can get the data back? There must be, right?
- A. I agree.
- Q. Right. So when you say that you understand your electronic copies can't be found --
- A. Yes.
- Q. -- there must be a form of backup to prevent New Zealand being redundantly absent, or lost without its key information?
- A. I am amazed by this as you are.
- Q. Yes. So you had a meeting with Dr Mapp four months after he'd taken a position which the IAT Report showed to be unsafe?
- A. Okay.
- Q. And your evidence is that rather than be upset or alarmed by this he merely talked about details as if he was interested in them?
- A. He asked me for the details of the operation and asked me for my opinion in terms of how strongly I felt that there may or may not have been civilians killed as a result of the operation. And I then went into some detail about what I had reviewed as the DSO.
- Q. But your evidence, again sorry to cut you off, I need to, your evidence is that he was not alarmed to find out his public statements were unsafe, he was just interested in the detail, is that the evidence you want this Inquiry to hear?
- A. Mr Mapp heard what I had to say and queried me on it. Whether he was alarmed or not I'm -- I have no idea.
- Q. Okay. But you perceived no alarm?
- A. Well, he didn't fall off his chair if that's what you're suggesting? He simply asked me some questions.
- Q. Okay. You mentioned earlier today that your views on -- that you've discussed with my friend, and I don't want to get into

them, but your views on civilian casualties were not just drawn from the IAT report, but from accounts from other people involved?

A. Other gun footage.

Q. No that's not what you said earlier today though, you said accounts from --

A. No no --

Q. Hear my question please. You said accounts from other people involved?

A. Correct.

Q. Did you not mean to say that, and you just meant looking at the footage?

A. No, I meant the footage and accounts from people involved.

Q. Why did you quibble with me when I asked you about accounts from people involved then?

A. I'm not quibbling with you Mr Salmon, I'm simply trying to answer your questions as fully as I can, which are staccato-like in their nature and presentation, and I'm trying to stay with you here so that I can be absolutely honest and transparent with my answers --

Q. Great, that's terrific.

A. -- and not be misconstrued --

Q. When did you --

A. -- which you're endeavouring to do, I'm sure.

Q. When did you interview or talk to the other people involved?

A. Sometime between the period of March and September I'm sure.

Q. Of 2011?

A. Yes.

Q. Even though the issue was unimportant and you were not concerned about it?

A. No, I was concerned about it.

Q. You were concerned?

A. Well, look, I've given very clear evidence that in April Lieutenant Colonel Cummins identified to me that there was an allegation of civilian casualties and it would be beneficial

to the position of Defence to find a copy of that report.
Therefore, I became interested.

Q. You weren't the only one who had an electronic copy though, were you, because your analyst had an electronic Word version in the series of emails that Ms McDonald was showing to you just before she finished?

A. It's on the server, yeah, she has access to the server.

Q. But it's on a server --

A. Yes.

Q. -- that other people can access?

A. Correct, I've made that clear.

Q. And while it's gone now, at the time that meant she could find it on the server?

A. Correct.

Q. And that would mean that anyone else could find it on the server?

A. Anybody who had access to the DSO SWAN server repository, which would have only been DSO staff.

Q. Right. So I'm looking just, for example, in the new bundle of -- for this hearing of documents, and looking at page 121. Have you got that there? The thin volume -- oh it's all part of your big one. I'm not sure what the tab will say. October, the tab will say "October", have you got that? If you look for a tab saying "October".

A. 121 just has a heading "PSR IC6".

Q. Okay wrong one. So look at a tab that says "October".

A. Yes.

Q. All right. Page 121 there. Go back to page 124.

A. 121 or 124 Mr Salmon?

Q. If you start at 121 -- I'll do it this way, and go over onto 122, which is part of the email string that it's part of, you'll see about six lines down from the top a subject "Incident Assessment Team Executive Summary", do you see that?

A. Correct.

Q. Relating to the operation in August 2010?

A. Correct.

Q. If you look on page 123 you will see, and if you can take it from me for a moment, this is people trying to find the IAT report within Defence. You will see [WITHHELD] on 2 July 2014 saying have we asked TGC/DSO, the DSO being you, correct?

A. Yes.

Q. And then over the page, back on 122, [WITHHELD], responds saying: "Yes, and most likely source" do you see that?

A. No just give me a moment. Yes, "and most likely source", yes.

Q. That rather suggests you were asked if you had the document in 2014, doesn't it?

A. Yes it does.

Q. And it rather suggests that you'd been asked, but perhaps not given a clear answer as to whether you had it?

A. No I don't believe so. I believe that the document was made available when it was requested and there's evidence of that in the other documents.

Q. Well, the following emails suggest that it wasn't clear to the recipients that you had it, and that you were the source at the time. So, I just want to know do you remember what you said then or should we be asking other people?

A. I don't remember what I said, but I do remember that I -- the document resided in the Office of the CDF. So I am a little surprised it couldn't be found.

Q. Well, they were trying to find it amongst your records and appear to have asked you and still not found it, would you agree that seems to be what happened?

A. On the face of that email, which I can't ever recall seeing, because it's not directed at me.

Q. No I'm not suggesting you saw it, but I do want to know whether you remember being asked?

A. No I don't recall being asked.

Q. Quite a big issue though at the time with this angry Minister as they wanted to find it, wasn't it?

A. Well I didn't know the Minister was angry.

Q. Yes, you've said that, and you've said in your paragraphs 30 to 32 that you really had no idea that there was such a fuss. But here we see people trying to find the document you had and seeming to ask you; you say you can't remember that, correct?

A. No I don't recall that.

Q. All right, if you go to page 124, down the bottom of that page you'll see the final line in an email:

"Hi Ma'am, search for report by SNO Kea...", etcetera, "...at both locations, including both SWAN accounts has come up with nil result."

Now SNO Kea is separate from the SNO we're talking about is it?

A. Yeah SNO Kea was a totally separate Defence capability and wouldn't have been privy to SAS eyes only confidential reporting. So I'm surprised they were even asked.

Q. Right. But it rather suggests, given it's odd that they were asked, that there would also have been attempts to search your SWAN details?

A. Oh well they wouldn't have to search for it, if they'd asked us, we would have made it available, because it existed.

Q. But you didn't when you were asked?

A. Well, was I asked? You haven't shown me an email where I was asked.

Q. No we've shown you an email in which there's a record of you having been asked, and you can't remember either way. So you wouldn't doubt an Officer, you've talked about how honest they are. This Major won't be making that up, will he?

A. I'm not make anything up Mr Salmon.

Q. I'm talking about the Major who wrote that you'd been asked.

A. Perhaps he felt that he had asked me. He may have asked one of my staff, but not me directly.

Q. Well, your staff can access it we know, because your analyst did.

A. Yeah, it's in the files, it's not hard to find.

Q. They can look in SWAN?

A. Yes.

Q. Which they presumably did --

A. Yes.

Q. -- given they knew to ask you, and couldn't find it?

A. Well it was hiding in plain sight, because obviously the analyst found it and sent it.

Q. Well, the only place we have a record of it hiding in plain sight is in the safe. So, the only reason we have to believe that it came in by email to you and was put where you say electronically, is because you say so.

A. So I --

Q. Would you agree -- here's my question, would you agree that here we have indications that it may not have been on SWAN?

A. So I had a document in the safe of the CDF. Is that what you just said?

Q. No, I asked you a question, and I'd appreciate the respect of you answering the actual question. Would you agree that here are two indications that it may not have been in SWAN?

A. I don't accept that.

Q. You don't accept that those indicate that --

A. I do not accept that it wasn't on SWAN.

Q. All right.

We've had evidence from Mr Ross Smith, and we've also had a copy of his diary disclosed, in which there is a reference in July to -- and this is at page 18 of the supplementary bundle, whatever that's tabbed from the main bundle, to "envelope from JB (1507)". He thought this could well be you?

A. Sorry, which page are you talking about?

Q. Page 18 of the -- I'm not sure what the tab will be called, "supplementary" the tab might say?

A. Oh 18 in the top right-hand corner?

Q. 18 on mine.

A. "CDF JB"?

Q. It might be 19 on my friend's. It's 19 on my friend's, we have different versions. Any rate, the short point is would you agree you might have provided an envelope at that time?

A. I'm not sure why I provided an envelope. I provided it in a secret level folder, which is generally how it was done. There would be no need to envelope it.

Q. All right.

But that would be you, would it, providing documents, at a time when you say you were not involved in the flurry to find out why the Minister --

A. I don't know how you suggested that? I mean, where does it say that it was me that did it?

Q. It doesn't, I'm asking you whether it could have been, and how confident you are in your memory of what you didn't know in 2014?

A. I don't recall that.

Q. All right.

You mentioned --

A. I do recall, Mr Salmon, that you told me you had 30 minutes and I'm not privy to cross-examining you or the people you represent --

Q. All right, let's not waste the time then?

A. -- so I'm just wondering how long this is going to go on, and can I pose that question to Mr Radich about --

Q. No, just stick with me and I'll ask you the questions if --

A. Well how long -- I thought you had a limited amount of time to --

Q. And it's not for you to police that, and you're eating it up.

SIR TERENCE: I'm watching the time, so don't worry about it.

Go on.

MR SALMON: Right. You talked about how few people would have access to the copy that was with the CDF of the report that has the handwritten marks on it, and of the briefing notes. You'd agree that that would make it very easy to find out whose handwriting it is in a well-run Defence Force, it

shouldn't be hard to work out the identity of the person who wrote on it, agree?

A. Handwriting?

Q. Yes.

A. Well, we don't have a handwriting analyst in the Defence Force, but --

Q. You have people who work with each other, and you've said very few people would see it?

A. Oh you could generally -- you can identify somebody's handwriting if relevant.

Q. Right. And in terms of the timing that my learned friend pointed to, the 1 September date that you say you remember getting the email and then acting, do you agree that it's unusual that that flurry of activity, the discovery of the report, undocumented, and you distributing it, all happened to happen at the same time as a book came out critical of your operation?

A. I didn't read the book. I've never read the book. I have no idea.

Q. That wasn't my question.

A. No, no it's not at all. I mean, I had no idea of the detail of the book or any allegations that are made in the book. I was unaware of anything that had been suggested in the book.

Q. Complete coincidence, is your evidence?

A. Well I can only assume so.

Q. All right.

Do you, coming back to the backups point, which I am interested in, do you know whether there is a system of keeping backups of your records generally?

A. It was my job to file those documents in the directory that I had access to. You'd have to ask somebody with an IT background who was responsible for CIS in the Defence Force as to how the storage of those documents was handled.

Q. And do you know whether there is a system for ensuring that briefing papers for Ministers are not shredded, but rather are

kept, since your time of shredding them, or is that not something you know?

A. I told you I was surprised to find that the documents had been shredded from the Minister's safe when the Ministers changed over.

Q. That wasn't my question, do you know if there's a better system now? Or is that something that could be done?

A. I left the Defence Force four years ago Mr Salmon, I've no idea what's been done now.

Q. When were the documents deleted or lost from your system?

A. I left the Defence Force four years ago Mr Salmon, I have no idea.

Q. But you've been told that they're gone. Someone told you that they're gone, and did they tell you why?

A. Well the obvious question when I was asked to come and give evidence today, as I said, can you give me access to my documents please so that I can prepare my evidence? Guess what, no documents.

Q. Did they tell you when they disappeared?

A. No. I'm as surprised as you to find out that I couldn't access my records. I mean, I would have been delighted to have come down here, printed off the documents and the emails and made them available to the Inquiry.

Q. And my final question, because I think it's time, who showed you the IAT report when you had the chance to read that paragraph recently?

A. Lucila van Dam.

Q. All right. Thank you for your time.

RE-EXAMINATION BY MR RADICH

MR RADICH: It's been a long day for you, I just have a few matters to touch on just by way of re-examination.

Now, you were talking to my learned friend, Ms McDonald, about the DFO 51 document, do you remember that?

A. Correct.

Q. And could I ask you to have a look at it again please? It's in what would be called the "October" bundle tab, it's the first few pages of that? Do you have it there, yeah?

A. Yes.

Q. Would you look please first of all at page 17 of the bundle, bottom right-hand corner for the numbers?

A. Yes.

Q. Now, the first thing is that this particular paragraph 7.69 was put to you, and could I ask you just to read it carefully please and have a look at these words and let me read it out first of all:

"Headquarters and units wishing to computerise their classified documents registers are to use the electronic classified document register."

Do you understand what that is saying and how it relates to registers versus documents?

A. What I understood was that if a document had been printed off, it is a soft copy, it was registered into a classified document register. I believe that if it was saved into an electronic format, that it was effectively as part of a register because it could be sourced.

Q. Yes, what I'm looking for, and thank you for that, is the subject matter of this particular clause 7.69 to your knowledge. Do you see the words there "wishing to computerise their classified documents registers", and does that help you understand what the provision's directed at?

A. I believed by setting up a series of files, some of which was done by my predecessor and myself, that the documents were adequately stored in a register and accessible to those who had a reason to, or authority to, access them.

Q. Yes, when we talk about a classified document register generally speaking, what would we be referring to in hard copy form?

A. Well here it is here, it would just be a book exactly like that.

- Q. All right. And then, with contrast to that, are you able to explain what the words "classified document registers" mean?
- A. It means to me, that if you have printed a copy of a document that you are going to make available to somebody else, or you're going to store in your safe, it had to be properly accounted for.
- Q. And in terms of this particular document here, DFO 51, what is your understanding of the types of documents to which it relates?
- A. Hard copy. Or classified documents, is that what you mean?
- Q. No that's fine. What's your understanding of the way in which it does or doesn't relate to electronic material?
- A. Electronic material was in a register because you could simply go into the file and recover those documents, right? It's different to documents in a file, for example, that I have on my desk here. Right? Those documents if they've been put into a secret file would have had to be annotated and in a register, right? For two reasons, first of all, if the documents for any reason were to be destroyed it had to be accounted for. Second of all, if another document was made it would go into that register and then you would have a trail of what documents were made copies of and where they had gone to and for what purpose.
- Q. You spoke about the practice that you're just referring to now as being a practice that you engaged in?
- A. Yes.
- Q. Was it you, were there others? Can you tell me a little bit about how the electronic document storage worked across the organisation?
- A. Well, I was the second DSO -- well actually, the third DSO in the history of DSOs, there was one acting -- one subbed and myself. I inherited the electronic document register, which I enlarged upon.
- Q. And across NZDF generally, do you have any knowledge?

- A. No we were isolated in SWAN under a DSO directory. We could access shared directories from other entities, i.e., intelligence entities or other units. But generally it was one-way. You couldn't access Special Forces or NZIA's documents unless you had permission to go into the SAS or the SF dot electronic register.
- Q. To your knowledge were there others apart from you who used electronic storage methods?
- A. Yeah, the entire intelligence capability of the Defence Force had electronic registers of documents -- well not registers, they just stored documents.
- Q. Okay. You mentioned in response to a question from my learned friend that one of the reasons to keep documents stored electronically was because of a lack of space, you have a broom closet, for example, were there any other reasons and if so, could you explain them?
- A. Yeah, you just, like any computer, you put a search in there and you can find the document. It's got an electronic tag on it. So you put in -- in any words, you know, and again, we talked about Objective Burnham, Objective, you know, Operation Burnham. If you put in "Burnham" you would have found the documents, because the electronic register would have done that, you didn't have to file through anything, it would just simply come up with all those documents, as you do on a trace on any emails today.
- Q. And were there any other reasons that you can think of?
- A. Simply the sheer -- you know, it was an efficient practice to be able to store and account for documents without physically having to go in and process, as I explained, if you printed off ten documents and you took them over and briefed on them, you would have to march all of those documents in and then subsequently account for, and then get somebody else to witness them being shredded. And it was a daily basis. So, that was just a working copy with a backup copy. I considered

the backup copy to be electronic, there was no point in duplicating that effort.

Q. You were asked some questions about whether or not the documents that were registered were in fact the IAT report or not, do you remember that series of questions?

A. Yes, I do.

Q. Could I ask you please if we just pause on this point for a moment to have a look at the supplementary bundle. So it's the one that's marked "supplementary" and you if go to page 55, top right-hand corner for these numbers -- oh in fact this one is I think in the top left-hand corner, just to be confusing. So page 55 of the supplementary bundle.

A. They're all top right-hand.

Q. There we are, stop exactly there, you've got it.

A. Yeah sure.

Q. So, now would you have a look please and can you read out in the classified registers stamp the number there, serial number?

A. S116.

Q. Okay. And then keep that page open, if you wouldn't mind, if you can do this or keep that page somewhere handy, and can I ask you now please to go to the October bundle which is the last tab down there.

A. Sure.

Q. And please have a look at page 48.

A. Yes.

Q. Do you see that's the -- this is the register?

A. Yes I do, yes.

Q. And do you see the number there at the bottom that corresponds to the number on the document that you've been looking at? They're very hard to read I know, but you see the entry at the bottom left-hand side of that page, can you read that number at all?

A. 387.

Q. Yes. And if you look back please at page 55, do you see the number on page 55 -- sorry that's the storyboard that you were looking at a moment ago.

A. 387.

Q. Yes. And from your recollection, and we haven't got the IAT report of course in these particular materials because it's classified, but from your recollection does looking at joining those two numbers together and seeing what 387 help you to recall whether or not one way or the other the IAT was part of that?

A. Yes it does.

Q. And could you explain how that is so?

A. Well, I would have simply provided the IAT report with the storyboard for delivery of the narrative, as I've explained previously.

Q. All right, thank you. And if you have a look also at page -- keep on page 48, which is the register again, my learned friend Ms McDonald put to you the title or the heading for this, which reads as we know "Baghlan Province Brief for MINDEF".

And the question is, how do we know that that might include the IAT report, that was the question put to you?

A. Yes.

Q. Could I ask you please in terms of Baghlan, how routinely or otherwise did New Zealand operate there? New Zealand SAS forces?

A. We didn't. That objective was specifically for that target set, which was the insurgents that were involved in the ambush on Lieutenant O'Donnell.

Q. Yes. Were there any others in that province?

A. In Baghlan?

Q. Yes.

A. We conducted operations primarily around Kabul and the six surrounding districts, of which Baghlan was not. I couldn't categorically say, but I don't recall any others in Baghlan.

Q. All right thank you, they were my only questions to you Colonel Blackwell, thank you very much. The Inquiry Members may have questions for you now.

SIR TERENCE: We have no questions for you Mr Blackwell. Thank you very much for your attendance. I understand that you had to rearrange things to attend and we're grateful to you for that, but you're excused.

(Witness excused)

Given the time I think we'll adjourn for the afternoon if that's suitable to everyone.

All right, we'll adjourn until 9.30 tomorrow morning.

(The hearing adjourned until Wednesday, 16 October 2019 at 9.30 am)