

UNDER

THE INQUIRIES ACT 2003

IN THE MATTER

**A GOVERNMENT INQUIRY INTO**

**OPERATION BURNHAM AND RELATED MATTERS**

**Date of Hearing:** 16 October 2019

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**TRANSCRIPT OF PROCEEDINGS**

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Wednesday, 16 October 2019

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WEDNESDAY, 16 OCTOBER 2019

SIR TERENCE: Thank you, Mr Radich?

MR RADICH: Thank you Sir Terence. Good morning to you both. We call Christopher Hoey.

**CHRISTOPHER JOHN AUGUSTINE HOEY (Affirmed)**

EVIDENCE-IN-CHIEF BY MR RADICH

MR RADICH: Good morning. Now your full name is Christopher John Augustine Hoey?

A. That's correct.

Q. And you are the Director of Coordination at the New Zealand Defence Force?

A. Correct.

Q. And, Mr Hoey, you've given an affidavit in this proceeding already, dated 23 August 2019?

A. Yes, I have.

Q. And in that affidavit, I'm sure my learned friends won't mind if I just lead you through your background of one or two sentences. You retired as a Captain in the Royal New Zealand Navy in April 2012?

A. February 2012, yes.

Q. February 2012, thank you.

In mid-April 2012, you became the Director of Coordination for the New Zealand Defence Force?

A. That's correct, as a civilian.

Q. Thank you, and you're still in that role?

A. I am.

Q. And in that role your primary responsibility is to coordinate the flow of information from NZDF to the office of the Minister of Defence?

A. It is, yes.

Q. And you have, since giving that affidavit, provided a Brief of Evidence for today's hearing of the Inquiry?

A. Yes, I have.

Q. And do you have that in front of you?

A. I do.

Q. Would you please start reading the brief now to the Members of the Inquiry from paragraph 1?

A. From paragraph 1.

This Brief of Evidence is provided further to my affidavit affirmed on 23 August 2019.

I am aware that on 19 September 2019, following a direction from the Inquiry, the NZDF located a classified document register from a safe in the Office of the Chief of Defence Force, known as the OCDF Register and I refer to the NZDF Bundle at pages 369-372.

Q. And just pause there if you would now and we'll just look at that bundle and have it to hand?

A. This one?

Q. It's the one a bit in front of that. Yes, that's right. One of those will say NZDF witness -- let me say what it says. It says, "Supplementary bundle of documents accompanying NZDF witness briefs."

A. Yes.

Q. And if you'd please turn to page 369; it's right at the very front. Do you see that there?

A. Oh yes. Yes, got there now, folded out.

Q. And if you'd look please at that page and then go through to page 371, do you see the entry there on that page?

A. Yes, I do.

Q. All right, now thank you, just keeping that there open and near to hand, would you then please read your brief from paragraph number 3?

A. The OCDF Register records that on 1 September 2011, the Director of Special Operations, abbreviated to DSO, who at that time was Jim Blackwell, marched in a "Baghlan Province Brief" comprising two secret documents. It also records my initials towards the right hand column alongside the date 1 September 2011.

Q. And just pause and bear with me as we cross between your brief and the document itself. If you look at that page 371.

A. Yes.

Q. First of all, can you point out the entry "DSO"?

A. It's the --

Q. Towards the left?

A. -- top line there. There's the initial "H" to the right. It's immediately after -- there's entry "MINDEF 1 September 2011" and then my initial "H" as having received it.

Q. Oh I see, yes, and if you look to the very far left of that line, do you see the "DSO"; is that the entry you refer to?

A. Yeah, so that's Director of Special Operations, Colonel Blackwell at the time. He delivered the document. The date of the document is 1 September 2011, entitled "Baghlan Province Brief for the MINDEF" x two secret documents, together.

Q. Yes.

A. And then to the right, as I just mentioned previously, I received that on the same day, 1 September 2011. The "H" and "MINDEF" is referring to the office of the Minister of Defence.

Q. Thank you very much.

If you go back to your brief now, and would you please, in paragraph 3, two sentences from the end, "This means that I received..." and start there again.

A. Okay.

This means that I received those documents on that same date. At that time, I was the Military Secretary to the Minister of Defence, the Hon Dr Wayne Mapp. I was in that role from mid-December 2010 until 22 February 2012.

I do not recall receiving the two secret documents, which I now understand to have been the Operation Burnham "storyboard" and the IAT report, but it follows from the fact that my initials are in the OCDF Register, either that I picked up the documents from the Headquarters New Zealand Defence Force,

NZDF, and signed the OCDF Register while I was there, or that someone brought them to the Minister's Office, together with the OCDF Register for me to sign.

I would have flipped through the documents, but I believe that I did not read them in detail or read them. It was clear that the documents concerned an operation in Afghanistan. I am quite certain that I would have given the documents to the Minister straight away, because I was conscious that any material about Afghanistan was important to the Government.

I do not recall attending a briefing on these documents. Having said that, I did not attend all of the Minister's briefings. My attendance depended upon office priorities of the day.

There were two safes in the Minister's office: The Minister's safe and the Military Secretary's safe. Typically the Military Secretary's safe would be used to store documents from NZDF, the Ministry of Foreign Affairs and Trade, or the intelligence community. The Minister's safe would be used for his own purposes. I did not at any stage have access to that safe.

Q. If I could ask you just to pause for a moment there and just to look at the document, do you see the number given to the documents on -- it's quite hard to read on this copy on page 371. If you look at the far left-hand side there, there's some shading on it, far left-hand side?

A. Far left-hand side.

Q. Do you see -- probably very hard to read in this light actually, and with the shading?

A. So that's under the column "Serial number and date of entry"?

Q. Yes.

A. Yes.

Q. Are you able to read the numbers?

A. First column, not particularly well.

The second column, "Date of entry", I believe reads "1 September 2011".

Q. Yes, and I'm just looking at the numbers on the left-hand side of that?

A. Um?

Q. No? Are they hard to read? Yeah. I think if -- I wonder if --

A. It looks like a --

Q. I wonder if I can help? They're very hard to read.

A. Well the column below that, if we're talking about the same document, is a 387 over 11.

Q. Yes, and just so that we can join the dots, would you look now, in the black ring binder to your left-hand, at the very front of the desk, you'll find a tab down the side of that that says October. Do you have that?

A. Yes.

Q. And can you look please to page 127, bottom right I think, bottom right-hand corner?

A. 127?

Q. Yeah 127.

A. Yes.

Q. Do you see, if you look at the top right-hand side of that document, a number, and a stamp?

A. Ah, top right?

Q. Top right. It says, "classified register". Top right if you hold it in portrait form.

A. "Classified register", ah -- oh yes, over there. Yep.

Q. Do you see the OCDF number?

A. 387, 2011.

Q. And does it correspond to the numbers that we were looking at on page 371 of the other bundle?

A. Yes, it does.

Q. Do you have any independent recall if this is the document that you were looking at, at the time?

A. So it's just that one page?

Q. For the purposes of this bundle, because the other -- another document that you mentioned is classified, that is the only page we have in the Inquiry.

A. Yes, I believe that is -- relates to Operation Burnham.

Q. All right. Thank you very much.

So we're back to your Brief of Evidence now, and at paragraph 8.

A. I have now seen the classified document register for the Military Secretary's safe, which is in the bundle at pages 373-376, called the Secretary's Register. It records that on 2 December 2011, I registered document 386/11 - which is the serial number given to the "storyboard" and the IAT report - into the safe. It also shows that I, together with Francis van der Krogt (who was the Minister's Private Secretary from the Ministry of Defence), shredded that document on 5 December 2011.

Q. Just pause there if you would and we'll look at these pages. So, now, we're back -- sorry to move you around bundles -- we're back to the first one you had. Yes, that small one?

A. Yes.

Q. And if you look at page 373, bottom right-hand corner?

A. Yes.

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

A. Yes, I am.

Q. And then, if we come over please to page 375?

A. Yes.

Q. And just looking at the entries, can you just take us through, please, starting on the left-hand side of that line, the far left, what the entries are, perhaps just line-by-line, or column-by-column if you would?

A. Serial number of the document, 504 is probably just a local number, i.e., the signed documents as they came in. Date of entry, that's when I entered the document into my register,

which is the 2nd of the 12th 2011. The originator was Headquarters New Zealand Defence Force. The date of origin of the document was 22 August 2010. It came across as OCDF document 386/11. The title of the document "NATO/ISAF", the "S" there refers to secret, "Op Rahbari. Objective Burnham".

I received one copy. It was classified secret, which is the one and the S, and then further to the right under "Remarks", it records that the document was shredded on the -- it looks like the 5th of December.

Q. Yes, thank you.

A. And, so that's my signature and Francis van der Krogt is -- he noted "Shredded" and initialled to the right of the word "Shredded".

Q. Yes, thank you.

So back to your Brief of Evidence, please now, on paragraph 8 and about just over halfway down, the sentence beginning "The Secretary's Register shows that..."

A. The Secretary's Register shows that a large number of other documents were also recorded on 2 December 2011, and shredded on 5 December 2011. This suggests to me that on those dates I went through all the classified material that was in the safe at that time, checked that the register was up to date (what we call a "muster"), and ensured that material that was no longer needed was securely destroyed. This is likely -- or the muster and the destruction is likely to have been due to the departure of Minister Mapp, and part of the general vacating of his -- of the Minister's office.

I cannot explain why there is a three month period between receiving the secret Baghlan documents and registering them in my classified document register. It could have been that the documents went into the Minister's safe on 1 September and that they were transferred into mine on his departure from office. Equally, it could be that the documents went into my safe on or around 1 September 2011 after the Minister had seen them but I did not update the classified document register

Until 2 December 2011, in between Minister Mapp's departure and Minister Jonathan Coleman's commencement.

2014:

In July 2014, in the day or days after the Native Affairs *Collateral Damage* programme had aired, I recall being asked by either the Chief of Defence Force, who was then Lieutenant General Tim Keating, or his Chief of Staff, Commodore Ross Smith, to collate all the material we had sent to the office of the Minister of Defence on the subject of Afghanistan, including Operation Burnham.

I found a number of relevant documents in my safe, including the bundle containing the Operation Burnham "storyboard" and the IAT report. I believe that I must have combined them all. In other words, at the time, I incorporated the draft notes to the Minister from August and December 2010, and the Word document containing the text of an email from the Senior National Officer in Afghanistan at the time of Operation Burnham, all of which were in my safe, into the bundle containing the "storyboard" and the IAT report. I included the draft notes to the Minister as I did not have a copy of the final, signed versions. I then stapled all the documents together and provided them to the CDF or to the CDF's Chief of Staff.

Q. Yes, thank you Mr Hoey. Would you please now remain there and answer any questions that my learned friend, Mr Isac, may have for you?

A. Sure.

#### CROSS-EXAMINATION BY MR ISAC

MR ISAC: So I want to begin, Mr Hoey, (inaudible) know if you can hear me, it's a bit quiet -- I'd like to begin with that last paragraph, if we might, of your Brief of Evidence. You didn't mention any of that detail of having compiled that bundle in your affidavit. Can you explain why that is?

A. Well, the question that was posed is, you know, who stapled them together? Now at the time, I think it was around June

30th that I was asked to provide them, I gathered a number of documents in my safe together. Normally the other copies of other documents relating to Afghanistan had all been stapled, so I simply, because they all related to one subject, I stapled them together and gave them either to the Chief of Staff or to the CDF.

Q. Correct me if I'm wrong, but the chronology from your affidavit, and hopefully you have a copy of that in front of you, if you need to refer to it?

A. Thank you, yes.

Q. So if you look at, for instance, paragraph 3 and 5 of that affidavit, which you swore in August of this year, what you say there is that on the 30th of June you give a bundle from your safe to someone, correct?

A. Yes.

Q. And that's all you say, isn't it? 30th of June, someone who you can't recall turns up?

A. The request was for any information I held that had gone across to the Minister relating to Afghanistan.

Q. Right. What I'm trying to clarify, and if you can't remember or you're not sure or you can't clarify this, it's fine to say that, but how, if on the 30th of June you've pulled that bundle out, yes?

A. Yes.

Q. You haven't copied it. You've given it to someone who's signed the register. How you are able to compile a bundle in July, as you say at paragraph 10? It would have been after you'd given the bundle to someone else?

A. At the time I signed the affidavit and made the affidavit it related to documents that I was asked to provide to the CDF on the 30th of June. It is --

Q. No, no, the affidavit refers to handing a bundle of documents to someone, who you can't recall, but from the register, you think was Dr Jonathan Coleman's --

A. No, that's not at all correct.

Q. Well, look at paragraph 3 of your affidavit?

A. Right, paragraph 3, correct, yes.

Q. Right.

A. That was on the Monday before, the previous day. The story broke in current affairs over the weekend, and I had not been involved in the conversation between the Minister's office and the CDF's Office at that time, but early on the Monday morning, and I believe it was Commander Mark Chadwick, who was a Military Secretary of the Minister, came across and I provided him with copies of not all -- some, the IAT report, I believe -- this is my recollection; it may not be accurate. A copy of the IAT report and I believe I may have given him copies of the draft letters that CDF had prepared back in 2010, while we went about trying to find the original signed version.

Q. Right. So you now recall -- you've recovered some of this memory, because none of that detail is in your affidavit, is it?

A. Well, that's --

Q. Yet you say --

A. -- that evidence has come to light subsequently, after I've written this.

Q. Right, okay.

So you supply a bundle of papers which you believe is the IAT?

A. Yes, the storyboard.

Q. Storyboard. Some draft notes --

A. Letters.

Q. -- for the Minister, briefing notes?

A. That's correct, yes.

Now that's what I believe I provided to Commander Mark Chadwick on the Monday.

Q. Yep, and that's the 30th of June, right?

A. Um, I'm not quite sure.

Q. 2014, if you just take that from me, we'll come to the registers a bit later.

A. Yes.

Q. So if you'd given him that material from your safe, you can't have prepared a different bundle for CDF the following day --

A. Well, I would have provided him -- I would have provided him with copies.

Q. -- unless -- pause. Right, so you're saying you made another copy of the material you provided to Mr Chadwick?

A. I think I -- yeah, it's either one or two.

Q. One or two?

A. Copies.

Q. Will there be a record, in an MD 392 register, of you having produced these additional copies?

A. Yes, there should be.

Q. Right, if there isn't, would that omission be yours?

A. Would that omission be? Sorry, the last word?

Q. Yours?

A. "Yours"?

Q. Yes.

A. If it is -- if there is an omission, yes.

Q. All right. Well, we'll come to that later.

So, just to be clear on this though, you have to have made a copy of this material that you gave to Mr Chadwick --

A. Yes.

Q. -- in order to be able to give the same material to CDF the following day, true?

A. That's correct.

Q. Okay, thank you. Well look, can we begin firstly with an understanding of your role as Military Secretary? I mean, what does that role entail? What's your job?

A. The way I interpreted my role, different Ministers expected different things from their staff, and it was up to individual Ministers as to how they ran their offices with their senior private secretaries, but I saw my role very much as making

sure that the Minister was getting information, strong communication, from the right elements of the Defence Force. So, if -- when written material came across from the Minister, I'd make sure that it got in front of him. If he wanted briefings on that, then I arranged with the subject matter experts or with the CDF for those briefings to take place.

Q. Thank you. Did you have a job description?

A. I actually don't recall whether there was one.

Q. All right. And at that time was your rank Captain?

A. It was technically Acting Captain; I wore the rank but --

Q. All right, and for those -- that's a Captain in the Royal New Zealand Navy?

A. Correct.

Q. And the Army equivalent rank would be that of a full Colonel, is that right?

A. Correct, yes.

Q. And you're a couple of rungs down, couple of promotions down from Rear Admiral, at that point?

A. Yes.

Q. And presumably it's important for the Military Secretary to have sufficient seniority in order to be able engage effectively with the correct ranking officers within NZDF, correct?

A. Not specifically. The rank of the Military Secretary, depending on the Minister, had changed. It had been -- I had previously held the role in 1990s to the Hon Warren Cooper, and then the Hon Paul East, and I was a Lieutenant Commander, which at that time was two ranks -- well, is two ranks below Captain rank. Other Ministers had wanted a more senior individual, and there was a couple of spells of Military Secretaries who were Commander rank, or a Lieutenant Colonel equivalent, and my relief in Minister Coleman's Office reverted back down to a Commander or a Lieutenant Colonel equivalent.

Q. Okay.

A. So it was very much what the Minister required.

Q. All right, but you had sufficient seniority and standing within Defence Force to be able to engage with the right people to get the information that you needed for the Minister?

A. Yes, I believe so. Yes, I believe so.

Q. And effectively, isn't the Military Secretary the ears and eyes of the CDF, within the Minister's Office?

A. Yes.

Q. You might expect to have direct communication from the CDF about important issues for the Minister, correct?

A. Correct.

Q. You would arrange with the Minister's Office briefing times when senior officials from Defence had to come over, correct?

A. Yes, in discussion with his Senior Private Secretary, who was responsible for running the Minister's diary.

Q. Yeah, and the Deputy Chief of Staff, or latterly the Director of Coordination, would effectively be the equivalence point of contact within the Office of the Chief of Defence, is that fair?

A. Yes.

Q. Right, and between the two offices, if I can put it that way, or officers, the important information, both ways between the two offices is conveyed, correct?

A. Not exclusively.

Q. All right. Wouldn't it be an expectation of the Military Secretary to be available to the Minister to provide opinions, advice on military matters, when required?

A. No. CDF is the only -- is the sole military advisor to the Minister. I did not see my role there as a gatekeeper through which all information had to go before it got to the Minister.

Q. I'm not --

A. I was there to support the relationship between the CDF, subject matter experts, other senior officers and the Minister. We worked -- it was a very dynamic office. There

was a lot going on. If the subject matter expert or the CDF was talking to the Minister, then if I had other priorities, then I would step out of that meeting.

Q. Sure. Did Dr Mapp trust your judgement sufficiently on occasion to ask your view about any of the matters that touched his desk? Did he ever do that?

A. Not that I recall.

Q. Never?

A. I honestly can't recall. You know, we would have conversations in cars and all of that sort of stuff, but he would be expressing his views on various matters, but I was well aware that, you know, I couldn't provide military advice; it wasn't my role. I would undertake to make sure he got information from the subject matter expert.

Q. And then a key part of your job would have been to be familiar with the briefings that the Minister of Defence was receiving, correct?

A. In a perfect world, yes, but as I said, it's a very busy office. The flow of information -- there's a large amount of flow of information going into and out of a Minister's office. (Inaudible) It was up to myself and the Minister to establish the priorities and quite a few of the briefings that the Minister was receiving on Afghanistan, I certainly wasn't there for all of them.

Q. Sure, but in a perfect world, as you indicated before, that was your job, wasn't it, to be aware of what was going on in the Defence portfolio for the Minister? That's why you were there as his Military Secretary, correct?

A. Yeah, generally speaking, but not necessarily the detail; that's why we had subject matter experts.

Q. Right, you would attend briefings when you could?

A. Yes.

Q. And you would read the written briefing notes when they came in, wouldn't you?

- A. If I had time. If I had time. Quite often, it would just be a matter of reading the -- if it was a written formal note signed by the CDF, then more often than not I'd just skim read it. Other mechanisms, I'd -- you know, if there were emails coming in and he needed to know then I would brief him verbally.
- Q. You would brief him verbally?
- A. Yeah, well, I was doing that communications role between an email I may have received and letting the Minister know.
- Q. Of course. So, the short point I'm putting to you Mr Hoey is that you're not just a [inaudible]; you're not a PA just moving bits of papers around. You're a senior Naval officer and your job is to make sure that the information coming from Defence gets to the Minister, and it also means engaging with that information so you know what's on the Minister's radar, true?
- A. Not all the time. I mean, it's -- clearly, the Government was sensitive to any matters relating to Afghanistan.
- Q. Right.
- A. And in around September -- there was an election in November, I believe, and we'd also suffered our first SAS casualty, or casualties, in Afghanistan. Anything relating to Afghanistan would have gone straight into the Minister.
- Q. Yes. Not without you just failing to engage with it though, surely? 'Here's a piece of paper on Afghanistan Minister; I don't know what it says.' You're not saying that you'd do that, are you?
- A. Well in -- I would have, Afghanistan, but you know, recollection, nine years later, of individual notes? I mean, the NZDF has got the subject matter experts in this.
- Q. Right, but the election's coming. There are combat casualties, correct?
- A. Correct.

Q. There are allegations of civilian casualties from Op Burnham about five months before you take possession of this bundle of papers? Correct, yeah?

A. Yes.

Q. And Afghanistan, you've already said, was front and centre in terms of the Minister's concern and interest, right?

A. Correct.

Q. Yeah. So if something comes over, through you, you're going to be wanting to engage with it, aren't you?

A. As I said, I would have skim read it, simply to get an appreciation of what it was about, but if it was about -- you know I'm a Naval officer; I wasn't a Special Forces officer, and I had had no --

Q. Well, I'm not a -- I'm not any form of officer, and I've read the IAT report and didn't find it hard to understand. It's a three page document, isn't it?

A. Correct, but as I pointed out, there's a huge amount of information which flows in and out of the Minister's Office. If I sat down and read and analysed every piece of information, I'd still be over there catching up on 2011, without being flippant.

Q. Did you read the IAT report?

A. I can't recall.

Q. You may have done?

A. But the way that that document was received in the Minister's office, if it was for the Minister's reading at his convenience, there would have been a formal cover sheet come across explaining what it was and its importance. It would have been signed by the CDF, or the acting CDF if he was away. The document that I signed for was just a storyboard and the IAT report.

Q. Do you actually know that?

A. Well I'm -- no, this is the general flow of information going into the Minister's office. Now --

- Q. Can I just stop you there? This is a really important fact, right, for the Inquiry. So let's not speculate; let's not talk about reconstructive recollections based on interpretations of registers and what Jim Blackwell has said. Do you actually have any memory of what you collected from Mike Thompson on 1 September 2011?
- A. No. Only my signature saying that I did actually take possession of that document.
- Q. And would you agree with me that the only thing we can probably be reasonably confident about is that it probably involved the storyboard?
- A. Probably.
- Q. But what was appended to the storyboard, we don't know, for sure? Or you don't know?
- A. Well, there were two secret documents and throughout, the storyboard and the IAT report had been together.
- Q. Do you remember, now, what was appended to the storyboard? Do you have any independent recollection of that?
- A. No.
- Q. And you've indicated moments ago that one would have expected that with a briefing as important as that, there would be a cover sheet?
- A. That's if it was coming across for the Minister to read at his convenience. Normally, if there was going to be a face-to-face briefing, whoever was delivering that face-to-face briefing to the Minister, he or she may have brought across some documents to explain what they were briefing. Now, because there was no cover sheet for that, I draw the conclusion that those documents, which I did sign for, were to support a briefing on -- by the subject matter expert, who in this case was Colonel Blackwell, to the Minister of Defence.
- Q. On the day you received them?
- A. Yeah, and I would have -- well, I would have signed for a copy; Colonel Blackwell may have brought extra ones in to

share with the Minister at that meeting, but a copy was left with me in case the Minister needed to refer to it at some time in the future.

Q. So on this theory of what --

A. Was the normal practice.

Q. Yeah. The absence of a cover sheet indicates to you this is urgent? It's walk in with the papers, brief the Minister on the day. Correct?

A. Well, when you say briefed him, I would have -- it all depends whether he was there or not.

Q. Not you, the subject matter expert?

A. Expert.

Q. Yeah.

A. Yeah.

Q. But that, on your account, this theory happens on the 1st of September?

A. Well, that's when I took -- well, as I said, I signed for those documents.

Q. Yeah, because isn't the short point, it just defies any sense that a -- that senior Defence officials, rather than putting together a simple cover note like a dot point summary, you know, Minister this is what these documents tell us, this is what you need to know, that the absence of that, just providing the core underlying papers is highly unusual, isn't it? You don't just --

A. No, it was -- if there was a face-to-face briefing it was quite -- it's quite usual for people to take across briefing documents that will be discussed at that briefing. Now because, as I mentioned earlier, Afghanistan was serious, and to allow the Minister to refer to the documents in the future, I was given a copy. Now -- and that was -- that's fairly routine. Different Ministers behave differently. Minister Mapp was quite happy to receive documents at a briefing and go through them. Other Ministers I've worked for and supported from over here would prefer to have, you know, meeting notes

provided two or three working days beforehand. So, the processes changed depending on the requirements of the Minister.

Q. Okay.

A. So there was nothing unusual in those documents coming across if they were going to be discussed at a face-to-face briefing.

Q. Right. Would they come across days, weeks, in advance of a briefing?

A. I'm not quite sure of the timings of when Colonel Blackwell discussed this particular issue with the Minister. I know that week the Minister and I had attended a -- the funeral of our first SAS death, in Linton camp, which I think was actually the week starting 29th of August, is it? I think, I believe? And I remember, towards the end of that week, Minister -- taking the Minister -- well, after the funeral, which I believe was on the Thursday, taking Minister Mapp to Palmerston North airport, and he flew to Auckland; that was his electorate. So most Ministers returned to their homes and electorates on a Thursday night after the Parliament's closed, and the reason I recall that is at that time he phoned the Australian Minister of Defence, because Australia had just suffered some casualties in Afghanistan, and we were doing that from the car outside the Palmerston North airport, and I returned to Wellington.

Q. So you remember all of that really clearly?

A. Yeah, quite clearly, yes.

Q. But you don't remember reading the IAT report, or if it's been received?

A. Well, you know, as I said before, there's massive numbers of documents flow in and out of the office. I was unaware of Operation Burnham until I'd actually started at the Minister's Office; I'd been working in a totally different department in the NZDF. And, at that stage, you know, decisions to make public releases had been made, and it -- when I started there, it certainly wasn't my role to go back through previous

Ministerial decisions and advice and highlight them. I wasn't the only one who sort of had control over that in the office.

Q. Okay. Well look, maybe if we can just try and clarify and wrap up on this point, what do you say the absence of a cover sheet indicates?

A. That that document was given to me because it would be used in a face-to-face briefing with the Minister, and so a cover sheet had no purpose, had no point.

Q. How often would you receive underlying core papers with no cover sheet that you would take possession of for up to 10, 11 days before a verbal briefing? How often would that happen?

A. I couldn't possibly tell you.

Q. But it did happen?

A. What happened?

Q. That you were --

A. You asked me how many times. So, I've got no idea how many times.

Q. Well, did it ever happen? Was it common? Or was it not?

A. Well, it's -- the briefing note, even though it was -- it didn't have a cover sheet, I would have provided that to the Minister at the first, earliest opportunity, that he was back. The practice was that any notes, because he had multiple portfolios, we had colour coded folders and it would have been placed on his desk.

Q. The briefing note?

A. Yes.

Q. Not the papers you've received on the --

A. I would have probably -- I would have put those -- more than likely I would have put those in there also, in preparation for the Minister's brief.

Q. Yeah?

A. With face-to-face brief.

Q. Right. Again, I'm not trying to be obtuse; I'm just trying to understand.

A. So it would have been -- in that respect, it would have been treated like the other formal notes that came across.

Q. Right. So, are you suggesting that you might have taken possession of, we know the storyboard, possibly the IAT report, possibly some other papers, and then you retained those until you got the briefing note and the formal face-to-face briefing had been scheduled?

A. I'm not quite sure I understand your question; can you put that to me again, please?

Q. Well, what did you do with the papers that you picked up on the 1st? Did you --

A. I would have --

Q. -- hold them awaiting --

A. Well they were classified; they were in my possession. I put them in my safe over the weekend; the 1st, I think, was a Friday.

Q. Right?

A. They would have stayed in my safe, secure in my safe over the weekend, and as I just said, at the first opportunity, I would have presented them to the Minister, on the Monday.

Q. Right. Do you remember doing that?

A. No, but as I've said, anything to do with Afghanistan, I didn't hold on. It was important to the Government so the last thing I was going to do was forget about it.

Q. So you say you gave him the briefing papers on what -- the -- are you saying the --

A. Well, the IA -- the briefing papers that Colonel Blackwell had provided. I would have given him those; I believe going, by practice, I would very presented those to Minister Mapp as soon as possible he returned to the office.

Q. Okay. Well, we'll come back to these topics a little later, Mr Hoey. I just want to touch briefly on the purpose of the classified safe that you had in the Ministerial office?

A. Yes.

- Q. And would you accept that the purpose of that was to act as a repository for highly sensitive, classified, principally Defence information? Is that fair?
- A. Correct, but there was also information that was routinely distributed to Ministers from other agencies, and we held that until the Minister had read them and returned them from whence they came.
- Q. Right, and the register, the MD 392 register that went along with that, I mean, I take it you're very familiar, given your background, with how they're operated, their importance?
- A. They're not -- I started the 392 when I began my time in Minister Mapp's office. Previous to that -- it's not NZDF -- you're on secondment to Ministerial Services to support the Minister. It's not an NZDF environment per se. So, previously there had been no 392.
- Q. Right.
- A. One of the --
- Q. So, you were following best practice?
- A. I was at that stage, yes.
- Q. Yeah, and you'd accept, wouldn't you, that the whole purpose of the register is to provide for a very clear audit trail of classified material so we know if it's been copied, if it's been dispatched, who's received it, and when it's destroyed, correct?
- A. From New Zealand Defence Force, yes.
- Q. Yeah. Well, wherever? If you were operating one for the Minister's safe, that was the purpose of that register, right?
- A. Yes.
- Q. Yeah, and I mean, one of the fundamental aspects of that actually is about security of information, isn't it?
- A. Well that's why it was put in a safe, yes.
- Q. Yeah, I mean it --
- A. That's why it's classified in the first place.
- Q. Yeah, it's about preventing espionage, isn't it? Losing documents, unauthorised access, that's --

A. Well it's improper disclosure, whether that's by espionage or somebody leaving it on the 6.34 train to Upper Hutt, I don't know. Well, I do know, but that's -- it's not just espionage.

Q. Okay, yeah, but about security --

A. Yes, security of information.

Q. -- of highly sensitive Government information, right?

A. Up to -- the safe I believe was classified up to secret. So nothing above secret was kept.

Q. You had, in the Minister's office, a safe that you operated?

A. Yes, I did.

Q. And that was with Francis van der Krogt, wasn't it?

A. Yes, we both had access to the safe.

Q. Did anyone else other than you two have access to that?

A. Not as far as I am aware.

Q. Right, and that was meant to be the repository for the Defence material coming over, correct?

A. That's correct.

Q. So Minister Mapp couldn't have access to your safe directly without --

A. If he wanted anything, he'd call me in.

Q. Right, yeah, but he needed your intervention?

A. That's correct.

Q. And then he had his own safe, is that right?

A. Yes. All Ministers' offices have got their own safes, as far as I know.

Q. And that's for his personal use?

A. As far as I'm aware, yes.

Q. Did you have access to his safe?

A. No, I did not. Never.

Q. Right. Are you familiar with Defence Force Order 51?

A. Yes, it covers security; it comes in several volumes.

Q. In your view, as an experienced senior officer, who's familiar with dealing with classified material, the registers and so on, would it ever be appropriate to make a working copy of a classified document, take it out of the office, bring it back,

and then destroy it, without ever logging that working document in a register?

A. I mean -- it was my role? I had the authority to --

Q. I'm not -- no, no, I'm not saying you did that. I'm just asking you for your view of that, what I've just described, would ever be appropriate?

A. Well it depends upon the officer's role. He might have the authority to duplicate it, a copy, but --

Q. If he did that, he would need to enter the copy in the register, wouldn't he?

A. It all depends what -- for what use he was doing them. I mean, if for distribution, then a 392 would record who -- you know, how many copies were made. There's a column there, numbers of copies produced, and which copy number was given to whom.

Q. Yeah, and that's the whole point, isn't it, so that you know how many copies have been made, who's received them, what's happened to them, right?

A. Yes.

Q. So you -- do you agree you can't have a situation where a working copy is made by an individual that's not logged anywhere?

A. I mean it all depends. If you're working with drafts of a document, then -- and you're submitting to a higher authority for authority or something like that, then -- but if you're within a specific area, then if you are generating different drafts, different versions of documents, then you wouldn't -- you know, you would be spending all day writing them into the 392 and writing them back and recording their destruction and all that sort of stuff. So there is an element of --

Q. Flexibility?

A. -- flexibility and expediency.

Q. Right.

- A. But if the documents were destined for, let's say a more remote destination, then once they were signed and sent, then they would be recorded.
- Q. So if they were taken out of your office, used in a briefing, brought back to your office and shredded, you would expect that to have been recorded?
- A. Shredded, certainly, but going out of the office? I mean, if I took it out of my safe and I took it through and placed it on the Minister of Defence's desk, then I'm not going to invite him to sign a 392.
- Q. Sure. Sure, it would be recorded in your register already as a document that you have, wouldn't it?
- A. Yes, it would.
- Q. All right, well look, moving then to this bundle that you received on the 1st of September, I think you say in your Brief of Evidence that you began as Military Secretary in mid-December 2010?
- A. Yes.
- Q. I mean, you'll appreciate that's quite an important point in time in terms of this hearing, isn't it? Because that's when Dr Mapp received two briefing notes from the Chief of Defence, Sir Jerry Mateparae at the time, which indicated that the IAT report had confirmed that there were absolutely no civilian casualties from either ground or air assets?
- A. I don't know what date -- what date that letter was signed from Mateparae.
- Q. I can tell you, and we can go to the bundle if you want, but they're dated the 10th and the 13th of December 2010.
- A. That's about the time I started in the office.
- Q. Yeah, and we also know from Dr Mapp's diary that there was the weekly Thursday briefing from Defence officials on the 16th of December. So, a few days after the second of those briefing notes. It's likely you were in attendance at that briefing?
- A. My posting into the Minister's office was very short notice. I was told -- I was approached by the Chief of Navy; I was

called up to his office and said that the current incumbent was required for some serious work back in -- major peace work back in the NZDF. I had previously worked, as I mentioned before, in Minister Cooper's and Minister East's office, so it was -- essentially, I was given 18 hours.

Q. You got the short straw?

A. I got the short straw, and I was -- I went to a brief interview with Minister Mapp with two other candidates. I was told -- I wasn't told immediately who had got the call to go over there. I was told that I'd be starting in January. In actual fact I got a phone call shortly after the interview with Minister Mapp asking -- well, the day after, I recall that -- asking me where I was. And I was still at my current position in Defence Headquarters. So I didn't even get an opportunity to hand over my project work in Defence Headquarters. My handover from my predecessor in Minister Mapp's office was very haphazard that week.

Q. Things moved quickly for you?

A. Things moved quickly.

Q. If you can just refer to the large bundle in front of you, page 164.

SIR TERENCE: (Inaudible) front of the large bundle, the numbers are on the top right-hand corner.

MR ISAC: So I'll just help orientate you in terms of what you're looking at, but this is the first of two briefing notes, dated 10 December 2010 you can see. If you turn over to page 166, paragraph 7, last sentence:

"The joint assessment team [that's the IAT team] their report has not been released beyond Headquarters ISAF and our knowledge of the findings are based on comments provided by the Task Force Commander who was permitted to read it."

But immediately before that, you'll see that at paragraph 7 it records the finding of the investigation, it says:

"The assessment concluded that 'having reviewed the evidence there is no way that civilian casualties could have occurred'."

Do you see that?

A. Sorry, which?

Q. Paragraph 7, sorry. The second to last sentence?

A. Oh okay. Yes, I can read that.

Q. Yeah, so this is a note basically informing Minister Mapp that the IAT report found that there was no way that there were any civilian casualties, right?

A. Yes.

Q. And then --

A. That's what the letter states.

Q. -- if you come over to page 168, 169, this is a later briefing note which is intended to provide the information taken from the 10th of December note in a publicly releasable form, yeah? So if you look at paragraph 4 of that.

A. Yes.

Q. It's essentially the same as paragraph 7 of the 10th. And if you turn through, 171, there's some advice about the risks of releasing information about Op Burnham, yes?

A. Yes, it's there.

Q. And then over in 172 onwards, there's a series of press releases. If you go through to page 178, bottom of that page, in the email string, we have an email, don't we, on the 8th of December 2010, and it's from TVNZ? It appears to be to Defence, and it's making an OIA request, isn't it, about a casualty sustained by a soldier during Op Burnham, essentially? Do you agree with that?

A. Yes.

Q. So, the background, the timing, if you like, to these briefing notes is we've got media interest in what happened during Op Burnham, right? And the Minister and PM want to know if they can say something publicly, and if so, what that might be. Is

that -- do you agree that that's essentially, in a nutshell, what's happening at this point?

A. From the information I've quickly read here, yes.

Q. So that's December 2010, and then four months later, if you turn through to page 185, so this is a record of a TV One news piece, we can see, on the 20th of April 2011. So you're in the Minister's office at that time, yes?

A. Yes.

Q. And you can see the first line:

"News anchor one: We begin tonight with an astonishing admission from the Government". Yeah?

A. Yes.

Q. So it's the lead item on TV 1 News that day, isn't it?

A. Well, obviously, yes.

Q. Yeah, and if you go over the page, bottom of page 186, top of page 187, Guyon Espiner is putting to Dr Mapp that there'd been claims of civilians killed during Op Burnham, yeah?

A. Yes.

Q. And then Minister Mapp saying that's been investigated and proven to be false, correct?

A. That's how it reads, yes.

Q. Yeah, and Dr Mapp's answer would be entirely consistent with the briefings he had been given back in December, correct?

A. I believe so, yes.

Q. Yeah. So, I mean this must have occupied some fair attention within the Minister's office at the time, presumably? We've got allegations of civilian casualties leading One News, and the Minister being drilled about it by a reporter, correct?

A. Yes, and at that stage -- I mean, I'd need to check what day I actually started working in Minister Mapp's office, but personally, I don't recall this going on at the time. I was probably still getting very much orientated to the position.

Q. This would be about four or five months after you were in?

A. Sorry?

Q. This is --

A. Oh yes. Sorry, yeah, disregard that.

Q. This is the 20th of April?

A. Yes, you're correct. No, this was in April, yes.

Q. Yeah, so I mean, this must have been on your radar. It would have been on the Minister's?

A. Not particularly. If -- as I said, when I started in the office, the operation had happened before that. There would have been other people directly involved in handling of this. There was other staff in the Minister's Office. I don't actually recall, in April 2011, anything around this to be perfectly honest.

Q. You don't remember this even being a thing? Your Minister --

A. I remember the news items that were claiming that Operation Burnham was a revenge attack on the death of Lieutenant O'Donnell. Much -- the comments here that civilians died in the Kiwi counter attack, that's been investigated, proven false, was surely a repeat of what had previously been released before my time.

Q. Okay. All right. So, are you saying that you have no memory of it now, but may have been aware of it at the time?

A. I remember the headlines about a revenge attack and all that sort of stuff, but I don't recall the -- or being involved in any of the conversations around the civilians killed.

Q. You don't recall the Minister's denial of civilian casualties?

A. No, well the -- well, he'd previously -- I think there'd been a press release earlier in 2010 around this sort of thing. His -- the press secretary in the office and probably his political advisor would have been involved with it.

Q. Are you sure about that? Or could you be mistaken?

A. Well, sure about what? That they would have been involved?

Q. That there was a press release about civilian casualties in December?

A. No, it wasn't a press release -- I thought there was an earlier one, well before that, before December?

Q. Okay. If you look at page 184?

A. Yep.

Q. Just as a matter of fairness to you, so this is --

A. Okay.

Q. -- on the same day, an NZDF press release, it uses slightly different language, but the upshot of it is pretty much identical to what the Minister was saying on One News, that there had been an official ISAF investigation and allegations of civilian casualties were unfounded. I mean, you must have been familiar with that, surely?

A. 22nd of August 2010, I was working in a totally different --

Q. No, no, page 184?

A. 184, I'm reading it.

Q. Yeah, this is -- sorry, you're looking at the date of Op Burnham?

A. Oh sorry, wrong date. I probably would have been aware of it at the time, but I actually don't recall it going out.

Q. All right, so this is happening April, now, we've got the briefings December 2010; we've got media interest; allegations of civilian casualties leading the news. NZDF issuing public denials of civilian casualties in relation to a Special Forces operation. I, mean that's unusual isn't it? That doesn't normally happen? NZDF doesn't generally comment on Special Operations, does it?

A. No, but they were serious allegations, weren't they?

Q. They were. They were. And we've got both Defence Force and the Minister on public record denying that there'd been any civilian casualties, correct?

A. It seems so, yes.

Q. So, it's against that backdrop that what, four, five months later you get this bundle for the Minister?

A. In September.

Q. Yes, the 1st of September. Again, I just want to ask you directly, did that bundle contain the IAT report? And I'm not asking you to give a reconstruction; I want you to tell us if you actually remember what was in the bundle, now.

- A. I am reasonably confident that it included the storyboard and the IAT report.
- Q. Okay. Why are you reasonably confident of that?
- A. Because there's a record of it in the register. I don't -- I don't have a -- you know, a visual memory of receiving it or reading it, but the 392 records that I did take -- receive it on the 1st of September.
- Q. It indicates that you took possession of something called a Baghlan Province Brief for MINDEF, doesn't it?
- A. Yes it does.
- Q. There's no reference to IAT, civilian casualties, civilian casualty investigation, the title that's recorded in the register, right?
- A. That's correct.
- Q. So, what? Nine years later, do you actually have any memory, other than an interpretation of the register, of receiving the IAT? Because it would have been a bombshell, right? It would have been something that you, as the Minister's Private Secretary, would have engaged with and would have brought immediately to his attention, because given what had been occurring, you would realise its importance, correct?
- A. It's important because it was a document referring to Afghanistan.
- Q. It utterly contradicted both your employer's public statements and the Minister's, and his answers to Parliamentary questions?
- A. And, as I said some time ago, I would have skim read the article, seen it was about an operation in Afghanistan, and I would have put it on the Minister's desk. I may not have -- I probably would not have sat down and read it in detail and analysed it against what had gone before.
- Q. To be frank, it's not helpful to know what you would have done. That's sounds like you trying to guess.
- A. Well I can't be categorically -- I can't categorically remember whether that's the case or not.

Q. No?

A. But in the pattern of flow of work in the Minister's office, that's how it would have been handled.

Q. Do you have any recollection of having read the IAT report?

A. Not in detail.

Q. Is it possible that you didn't receive it as part of the briefing pack?

A. On the 1st of September?

Q. Yes. Is that possible?

A. Very remote. I'm -- as I said --

Q. You didn't -- did you read it?

A. Not in detail.

Q. So you did read it?

A. Yes, I would have just seen it was Afghanistan.

Q. No, not would -- did you read it? Because what I'm suggesting to you, Mr Hoey, is if you'd engaged with that material, there is no way in the world you wouldn't remember what it said, given the context of what had been happening only a matter of months earlier?

A. I am confident I would have skim read it. I would have been aware that it was going to be used for a face-to-face briefing with the Minister, but I certainly didn't make any connection with the releases that had been made in April, this public statement.

Q. You were oblivious to what the Minister -- your own Minister has said on -- as a lead item on One News, what he'd said, and questions in Parliament to an MP, and what NZDF, your own employer, had said publicly? You didn't remember any of that?

A. No, I didn't make the connection.

Q. How could you not?

A. Because as I said to you, there's a vast amount of information flying in through the Minister's office.

Q. How did you --

A. It's just -- you know, it's a further piece of information coming through.

- Q. How did you get the briefing papers? How did you receive them?
- A. They either would have been hand delivered in an envelope to me or -- along with other material, perhaps, or by themselves -- or if I was visiting the NZDF I would have signed for them over there.
- Q. Can I try and just capture what you've just said? You actually don't remember how you got them?
- A. No, but there was only two alternatives.
- Q. Yeah, well -- yes. So, you're --
- A. Either I signed for them over in the Headquarters or they were hand delivered to me in the Minister's office.
- Q. Who did you receive them from?
- A. I can't recall. Um, but the register does say the DSO is the originator, so I may very well -- it says 392, I understand, I think perhaps not -- it was either himself or Mike Thompson, who was the Deputy Chief of Staff at the time or the EA to CDF.
- Q. Who is that?
- A. That was a lady, Ms Christina Taggert, because I -- visits to CDF's office were quite frequent. If there was one -- one of the routine things you did was call past the CDF's office to see whether there was any material to go across for the Minister.
- Q. So, you could have received it from any one of four people?
- A. Ah, three.
- Q. Sorry, three. You're right. And --
- A. But I've got -- there could have been a fourth, whoever hand delivered it to the Minister's Office, but I think that would have been either Mike Thompson or Jim Blackwell.
- Q. Was Minister Mapp available that day?
- A. I can't recall. The 1st I think was a Friday, was it not? He had returned to Auckland after the funeral for Corporal Dougie Grant I believe.
- Q. Standby Mr Hoey, I won't be long.

So I can tell you I have a copy of Dr Mapp's ministerial diary and what it tells us is that the -- if it's accurate, the 1st of September was a Thursday?

A. Thursday, yep.

Q. Yeah. So, does that change things for you, in terms of timing?

A. Um, a day either side. Probably a day either side.

Q. What do you mean, "A day either side"?

A. Does that record when he attended the funeral for Corporal Grant?

Q. No. Not on the 1st.

A. No.

Q. So do you recall when you gave them to the Minister now?

A. No, but it would have been at the earliest opportunity; I'm quite convinced of that.

Q. Okay. Well, you say in your Brief of Evidence at paragraph 5 that you were -- you are certain that you would have given the documents to the Minister straight away, don't you?

A. Well straight away, yeah. As soon as the Minister was physically available.

Q. Have you read Dr Mapp's Brief of Evidence for this hearing?

A. Yes, I was forwarded a copy the other day and I've just read it quickly, read it once.

Q. Yeah, and what did you take from that?

A. Well, he -- I think he mentions the fact that he would have given those documents to me for -- I don't -- I'll have to -- can I check it again?

Q. Sure. Well, let me help you while Mr Radich finds it for you. He says he wasn't in his office on the 1st of September, and in fact, he didn't attend his Ministerial office between the 1st and the 5th of September?

A. Which would have been the following Monday.

Q. Mmm.

A. So he would have -- as I said he would have got it -- when I meant straight away in my affidavit, that is the first available opportunity of seeing the Minister.

Q. So immediately means five days later?

A. Well, immediately insofar as the first available opportunity. I didn't tarry after he returned to the office.

Q. Right. So, you can't have given him these documents straight away after you've taken possession of them, yeah? He's not even in the office for five days, correct?

A. Well, clearly not. I assume that he was in Auckland.

Q. When do you say the Minister was briefed on them?

A. I can't recall when Colonel Blackwell would have come across to brief him on those documents. As I said at the start, there were frequent briefings on operations in Afghanistan. Op Burnham was only just one of several going on.

Q. Not by Jim Blackwell though, were there?

A. I don't believe that I attended that particular brief. As I said at the start, I didn't attend all briefings. It depended upon what my priorities in the office were.

Q. So which -- what day is this brief?

A. The face-to-face briefing between Jim Blackwell and the Minister --

Q. Yes.

A. -- I can't recall when it was.

Q. Well, if you've read Dr Mapp's Brief of Evidence, you would know what Dr Mapp says about that, wouldn't you? Look at paragraph 4, and then 5?

A. Monday the 12th of September.

Q. So paragraph 4 --

A. Yes.

Q. -- of Dr Mapp's brief tells us that he only met with Jim Blackwell on four occasions in 2011, right?

A. Yes.

Q. And the last of those occasions was the 12th of --

A. Well I'm quite surprised; I thought there would have been more than that to be honest.

Q. Right, well they'd be in his Ministerial diary, wouldn't they? So do you accept what Dr Mapp says based on his diary, or do you take issue with it?

A. I can't take issue with it.

Q. No. So he's right?

A. Well, I can only accept that his version of the truth is his diary. I mean it's -- I can't argue with it.

Q. Yeah. And the only one briefing that occurred with Jim Blackwell occurred on the 12th of September 2011?

A. Yes.

Q. For half an hour, right?

A. Correct.

Q. Now, if you look at the October bundle, which is behind the tab in that large -- should be a tab with October on it Mr Hoey. Hopefully you can find that?

A. October. Sorry, which page?

Q. I'll give it to you in just a moment. If you turn through to page 60 and 60A.

A. Yes.

Q. So we've got Monday the 12th of September, yeah?

A. Yes.

Q. And then if you look at page 60A, third entry from the bottom, 3.45 to 4.15.

A. Yes.

Q. Colonel Jim Blackwell/Captain Hoey?

A. Yes.

Q. That's you?

A. Yes, it is.

Q. So the Ministerial diary for that day for that briefing indicates you were there?

A. No, it doesn't. It indicates that I was the point of contact for that briefing. It doesn't imply or in any way mean that I attended that brief. I didn't attend all briefs, as I

explained before; it depended upon what other priorities were going on in the Minister's Office.

Q. So are you saying you definitely didn't attend that brief?

A. I don't recall attending it.

Q. It's possible you were there?

A. Possible, but I believe it's probably remote. I remember other briefings that he had -- Colonel Blackwell had given to the Minister on other matters relating to Afghanistan.

Q. So you did attend other Blackwell briefings?

A. Yes, but not all of them.

Q. Right, well there were only four --

A. Four, yep.

Q. Yeah. So you know you've attended others, but you're not sure about this one?

A. I'm not sure about this one, no. I don't recall discussing this issue with the Minister and Colonel Blackwell.

Q. If you'd attended that briefing, and Jim Blackwell had told the Minister here is the IAT; we've got a problem, yeah, you'd remember that wouldn't you?

A. I'd like to think so, but it's speculation, is it not?

Q. If you'd attended that briefing and Jim Blackwell was covering a range of subjects and operations, because that's what he would commonly do, correct?

A. Yes.

Q. And in passing he made some reference to allegations of civilian casualties, but no evidence that there had been any, you might not remember that, fair?

A. Um, if I had been there?

Q. Yeah.

A. I mean --

MR RADICH: I wonder, I just think that's possibly asking for a great deal of speculation. The witness has already --

SIR TERENCE: It is getting a bit far I think.

MR RADICH: Yeah.

SIR TERENCE: I'm not sure that it's really helping us.

MR ISAC: Thank you.

A. I mean the fact is that Colonel Blackwell was the subject matter expert. He would have spoken to the Minister about that. To a certain extent, whether I was there or not is irrelevant, and the Minister had already received advice from CDF on this issue. I don't consider it my place to challenge the CDF's advice.

Q. With all due respect, Mr Hoey, it's actually critically important if you were there because one of the issues is what Jim Blackwell told Minister Mapp. So if you don't remember being present, or a briefing to the effect that the IAT report discloses that there may have been civilian casualties, and your public statements Minister are wrong, that's fine, but you'd remember a briefing like that if you'd attended one, wouldn't you?

A. I would like to think so. As I said before, there were other briefings I did attend, which I recall those quite distinctly, or parts thereof, but I've got no recollection of this one at all.

Q. How well do you remember reading the IAT report?

A. Ah, how well do I remember reading it?

Q. Mmm.

A. I think I've mentioned before that I skim read it, but I didn't read it in detail. I made no analysis of it, of what it was saying.

Q. So did you realise when you read it that it said that there'd been -- there may have been civilian casualties as a result of an Apache gunship misfiring?

A. Perhaps not until 2014, when it cropped up again as a result of the *Native Affairs* programme. As I said, these discussions had gone on between the subject matter expert and the CDF; their interpretations of the operation and advice to the Minister had already been provided.

Q. But when you say that, that the subject matter expert and CDF had discussed them, are you saying that General Rhys Jones and

Jim Blackwell had discussed the IAT and you were aware of that?

A. Well, certainly with General Mateparae, I actually think signed out some of the documents, would've signed them.

Q. He had left Defence Force by the time the IAT came in?

A. Okay.

Q. So, do you have any direct knowledge of these discussions, or is this actually your --

A. No, it's an assumption.

Q. All right. Then just coming back to a question I asked you before, is it possible that the briefing pack that you received on the 1st of September didn't actually contain the IAT?

A. As I can't definitively recall -- no, but I'm -- if you want me to put it in percentages, I'm probably 95% sure it was there.

Q. And you've flipped through it?

A. Yeah, skim read it. Yes.

Q. Skim read it?

A. Realised it was obviously leading into a face-to-face briefing and given it to the Minister of Defence as soon as he was available.

Q. And otherwise not engaged with this thing at all?

A. Not that I recall.

Q. So, can we just crystallise the state of your knowledge then, as at the 1st of September? You've seen the IAT report? You've flipped through it, yeah?

A. Yes.

Q. You know that it's an official record of an investigation into civilian casualties in Afghanistan, is that correct?

A. I can't recall on that piece. As I said, I didn't -- I would not have read it in detail.

Q. Had you made any connection between the documents and Operation Burnham?

A. Um --

Q. You must have done if you looked at the storyboard?

A. I must have done, because there was a brief -- you know, there was a briefing put into the Minister's diary.

Q. So you've got the storyboard, which is about Objective Burnham, yes?

A. Yes.

Q. Says what happened, says the date?

A. Yes.

Q. And then an IAT report, which is an executive summary about a civilian casualty investigation, which would have been apparent from the first page of the document, right?

A. Yes.

Q. So, do you accept that you must have known about the connection between the report and Op Burnham when you received that pack?

A. Well, it was about Op Burnham.

Q. Yeah. So you did?

A. Yes.

Q. So, I just want to try and deal with the next topic fairly succinctly if we can. If you want me to take you to DFO 51, happy to do that, but I just want to touch on a couple of key points from what I understand from that document.

So this is a Defence Force Order, correct?

A. Correct.

Q. That means it's in the form of an official order given by the Chief of Defence to all personnel? It's an order --

A. Correct.

Q. -- you've got to comply with it, yeah?

A. Yes.

Q. I think we've agreed it's about the importance of security, custody of classified material, yeah?

A. Yes.

Q. One of the critical aspects of that is when you make copies of documents, you've actually got to take a record of the number of copies you've made. Do you agree with that?

A. Yes.

Q. And there's even a column in the register where you can put the number of copies, yeah?

A. That would come when you were ready to distribute that document, and you'd probably put an individual line that somebody received copy 1 of 6, somebody received copy 2 of 6, 3 of 6.

Q. Right. In fact, you're meant to put that on the actual copy document, aren't you?

A. Yes, but I think it's -- some people use it, others don't.

Q. Right, well, the ones that don't aren't complying with an Order from the Chief of Defence, aren't they? Yes?

A. Yes, but it would be a fairly minor infraction.

Q. Oh, okay. In your view?

A. Sorry?

Q. In your view?

A. Well, yes.

Q. Do you think the CDF --

A. I'm not an authority on this. My experience is based on using 392s and living it in -- you know, experiential staff through my Naval career.

Q. Sure. And again, I can take you to the Defence Force Order paragraph, but do you accept that it actually also provides that the file copy documents, so if you've made multiple copies 2 of 5, 3 of 5, 4 of 5, written on the documents, what you're actually also meant to do, other than the entry in the register, is to keep a record on the file copy of who gets what copy. Do you agree with that?

A. In a perfect world, correct.

Q. Yeah, so there are two records effectively. The file copy tells you where the copies have gone, and the register, correct?

A. Yes. Well, the document, if it's in the form of a letter, for example, would have a distribution who it's going to.

Q. Right.

A. And the individual one will be stamped; this is copy four.

Q. In your view, does DFO 51 apply to all documents, all classified material, and by that, I mean both physical, hard copy, and electronic? Or does it apply just to physical documents?

A. I believe it still has relevance to physical documents, documents that are extracted out of an IT system, or received from another Government agency that might be classified. It's designed to cover --

Q. Hard copy?

A. -- hard copy.

Q. Okay. What's the Defence Force Order, what's the regulation that ensures that electronic documents aren't wrongly disclosed? Is there an audit trail for electronic documents?

A. Well, the general concept of protective security applies to electronic ones. I'm no specialist in that area at all.

Q. Is there a DFO that deals with electronic copies?

A. I'd have to check on that.

Q. Okay. If there is, you're not aware of it?

A. Sorry?

Q. If there is, you don't know what it is?

A. Can't recall it. No, I don't recall it.

Q. So, do you also accept that DFO 51, you say in relation to physical documents, requires that all incoming documents classified confidential or above are to be registered immediately? Those are the words in the DFO?

A. That's correct.

Q. You accept that's what it says?

A. I haven't read it, but I believe that's probably what it says.

Q. Yeah, you take custody of a highly sensitive secret partner document, yeah, on the 1st of September 2011? You only register it in the Ministerial safe register on the 2nd of December 2011?

A. Yes.

Q. That's three months later.

A. Correct.

Q. And three days later before you shred it?

A. Correct.

Q. So you didn't register it immediately, did you?

A. No, I didn't.

Q. You didn't comply with Defence Force Order 51, did you?

A. It will be moot whether or not I was covered by Defence Order 51 in the Minister's office.

Q. Okay.

A. I mean the DFO 51 applies only to Defence Force. I think we are probably the -- there might be one Ministry of Defence uses actually the 392 system. As far as I am aware, no other department who handles classified information has a similar approval process. So in the Minister's office, you're in this sort of grey area. As I started -- stated some time ago, I started the 392 in the Minister's office; it hadn't previously been done, but the fact that there was a delay purely reflects the workload in the office. It's a very handraulic, mandraulic system to actually record all of this stuff, and as I said, there's information flowing in and out all the time.

Q. You say in your supplementary brief at paragraph 9 that you think it may have even ended up in the Ministry of Defence's safe, for a period?

A. Well, when I gave it to him.

Q. So you remember giving it to him?

A. Well, as I -- the normal practice was to place it on his desk.

Q. Yep.

A. I don't recall it coming out. I assume that he may have kept it in his own safe until the briefing with Colonel Blackwell. He may have read it and then returned it to me, and I put it in my safe for safe-keeping.

Q. Do you remember any of that, or is this now your --

A. It's going by the general pattern of events. It's probably what happened.

Q. Right, well what I suggest to you, Captain Hoey, is that appropriate formalities in relation to the custody and care of the bundle of documents weren't followed. Do you agree with that?

A. Within the workload and the timeframe available, yes. And if I hadn't started that 392, we wouldn't have the evidence of this material going into the Minister's office or being destroyed.

Q. There's no separate record anywhere that you actually received the IAT report on the 1st of September, is there?

A. Not on the 1st of September, no. As you've pointed out before, I didn't record it in my 392 until sometime later.

Q. And it's not recorded in anyone else's 392 as IAT report from NATO ISAF, is it?

A. No, there was -- the label was simply documents relating to Operation -- I think it was Rahbari at the time, with Op -- with the Burnham as the target.

Q. And because of that, we don't know if in fact what you shredded on the 5th of December 2011 included the IAT report, do we?

A. I'm quite sure it is. I can't be categorical, but there was a witness there too.

Q. Right. Okay, well, we'll come back to that.

I'd like to refer you to registers, but I'm going to refer you to what I'm going to call form registers. They're not in the bundle. I've discussed this with Mr Radich. As a result of sensitivities around the information that's in them, we're not able to share them with other parties currently, but the Members, Mr Radich, myself, will have a copy, and I'm going to ask you some questions about them, if that's okay with you?

UNKNOWN SPEAKER: (Inaudible).

MR ISAC: Yeah no, I'll make sure (inaudible).

So, just to orientate you Mr Hoey, I'm going to refer to this as the OCDF form register?

A. Yes.

- Q. And you've already been referred by my learned friend, Mr Radich, to a couple of entries in that document, but what you have is a page?
- A. Yes.
- Q. The same page as the entries we have on the publicly available version, correct?
- A. Yes.
- Q. Who kept this register, within OCDF, in September 2011? Do you know?
- A. September 2011, this was an OCDF one, so it would have been most likely the safe, CDF's safe. So it would have been held by his military assistant at the time, whose name I can't recall.
- Q. Right, and that was actually a related question I had, was whether there is a safe specifically associated with this register, and there is?
- A. Normal practice is that there's 392 goes with a safe. I believe, I'm not one hundred percent sure, that the CDF is a four drawer safe; it was quite a large one, but that was shared also with the Vice Chief of Defence force and his military assistant.
- Q. Right.
- A. But -- so each of those would have separate drawers but they would have had their own 392's.
- Q. And you think that it's the CDF's military assistant who's likely to be the person who had custody of the register and the safe?
- A. Yes.
- Q. Okay. If you look at the first six entries, we can --
- A. At the top of the page?
- Q. Yes. We can see there are two columns, marked G and H aren't they, which is total number received or produced?
- A. Yes.
- Q. And then beside that, column H, copy?
- A. Yes.

Q. Yeah? Copy number, I should say?

A. Copy number.

Q. So, the person operating this safe, for the first six documents, has clearly appreciated how you're meant to fill it in, in terms of copies, haven't they, because the first six documents have multiple copies and those two columns have been filled in, total number received, copy number?

A. So they would have generated, on behalf of Commodore Anson --

Q. Well, don't --

A. -- those copies --

Q. I just -- yeah, just to be clear, I'm going to avoid asking you too much about the content of the entries. The short point I'm putting to you is that the person keeping this register --

A. Yes.

Q. -- has recorded correctly how you treat copies in those two columns for the first six documents?

A. Yes, they would have been copies of a final signed document and they would have been distributed as indicated in the temporary and final.

Q. Yeah, and then, for the rest of that page, the copy numbers are listed as 1, aren't they?

A. Sorry, the rest of these? Yes, 1 of 1, which would indicate there was only one --

Q. One copy?

A. -- copy.

Q. Yeah. And that --

A. Which was received by the custodian.

Q. Yeah, and that applies, importantly, doesn't it to documents 386 and 387? You see that?

A. Yes.

Q. One of each?

A. Yes.

Q. DSO is marked as the originator?

A. Yes, he is.

Q. The title used, Baghlan Province Brief for MINDEF, two secret documents?

A. Yes.

Q. No reference in the title to civilian casualties, IAT, or CIVCAS investigation?

A. No.

Q. And there are in fact two secret documents then entered in the register, aren't they, document 386 and 387?

A. Both the same documents.

Q. Well, hang on, because if they were both the same document --

A. No, they're copies.

Q. Yeah, yeah -- well, we've just been through the first six entries, where the person has recorded correctly, because they know how the register works, the number of copies, right?

A. Yes.

Q. And what they've done for 386 and 387 is record them as two separate secret documents, each with their own unique serial number, correct?

A. Yes, they have.

Q. So, if they were copies of precisely the same documents, the person has failed to fill in the register correctly, right?

A. Um, not necessarily.

Q. Well, they've failed to fill it in consistently with how they've done the first six documents, right?

A. It could have been that one copy of a document was received for dispatch, which I signed for, which is the 386, and then the same document, at a later time on the same day -- oh, we'd better give them a copy too, entry would have been in there.

Q. Okay. Well, the short point --

A. But to your question of whether or not the people who entered that -- I mean, you're going to have to ask them. I wasn't -- I was the receiver of the document, not the dispatcher.

Q. One way of reading this register, would you agree, is that document 386 and 387 are not two copies of the same document,

because if they were, you'd have one column, only, you'd have one row, and you'd note two copies?

A. Well, that's possible. I only signed -- I mean, when this came across it is more than likely that 386, when I signed for it, was the last entry in it, on the folder. So these other ones are subsequent on the same day.

Q. Well --

A. Well, you can see there's -- the next one starts --

Q. 387, just has ditto marks below it, doesn't it?

A. Yes, it does.

Q. Or along -- so based on this register, we don't know if 386 and 387 are the same document, true?

A. Well if the ditto marks are there, it's an assumption one should make. You'd, again, need to speak to the person who actually completed the register.

Q. All right. And both documents are marked as having the DSO as the originator, aren't they?

A. That's correct.

Q. So if they were a copy of the same documents, they would have been made by the DSO?

A. Correct.

Q. Because if they'd been copied by OCDF, they would not both be entered as having the DSO as originator, right?

A. I cannot say yes or no to that.

Q. Well, do you accept that we simply don't know, from that register, if document 386, the one that you got, contained the IAT report?

A. If you're just purely looking at the register, yes.

Q. Yeah. Now, I want to refer you to your register. So this is a larger extract from the MD 392 for the Minister's safe, yeah?

A. Well, no, for the Military Secretary's safe in the Minister's Office, not the Minister's safe.

Q. Thank you. And if, before we get into that, you could refer please to the supplementary bundle. So if you go to the big

black folder, there should be a tab with "Sup bundle"? One of the tabs in that folder you have.

A. Sorry, the rings are about to fail.

Q. It's a perennial problem with spiral ring binders, isn't it -- lever arch, I should say --

A. I am at the supplementary bundle.

Q. Great. So if you go through to page 55 of that.

A. Yes.

Q. So, I believe I'm right when I'm saying that this is a copy -- in fact, we can see the exhibit note from your affidavit, which is on the left-hand side of the storyboard. Can you see that? So this is the bundle of papers that you've appended to your affidavit, and it's the bundle of papers that are in your affidavit, you say, that you give to someone who you now recall is Mark Chadwick, on the 30th of June, yeah?

A. Well, not solely to him. It would have been the same bundle that I would have given to the Chief of Staff for the meeting on the Tuesday.

Q. Okay. Well, let's just keep this simple, take it one step at a time. So, this is the bundle that you have deposed in your affidavit that you gave to Mark Chadwick, okay?

A. Yes, I believe so.

Q. And I just want to confirm with you, quickly, what it's comprised of? It's a total of six documents. The first is the storyboard, right?

A. Correct.

Q. The next is a draft of a Note to the Minister, which is dated August 2010?

A. Yes.

Q. Has some handwritten notes on?

A. Yes.

Q. Are they yours?

A. No they're not.

- Q. Then, the next document is again another draft Note to the Minister. This is undated, but we know it's the 13 December Note, yeah?
- A. Yes.
- Q. And then the next document is again a draft Note, and we know that this is a draft of the 10 December Note to the Minister, correct?
- A. Yes.
- Q. The next document, page 66, this is the fifth one, that looks like you're on the same page as me?
- A. Yes.
- Q. So this is a -- redacted, but a document which begins from NZSAS SNO at the time, and it's -- if you take it from me, a copy and paste of an email of 26 August from the SNO in theatre at the time, Rian McKinstry, back to the DSO, Peter Kelly at the time?
- A. Yes.
- Q. And that was in your safe, as part of this bundle, wasn't it? Must have been. That's what you --
- A. It might have been delivered to me around the 30th of June, around when the news story broke, because the call would have gone out -- I mean I was asked for all my material that I held in my safe. I don't recall -- it may have been in the safe; I honestly don't recall, but --
- Q. It could have been; you don't remember?
- A. Yeah. Yep.
- Q. And then the next, and final document, which we don't have, is the IAT report, right?
- A. Yes.
- Q. So those six documents, storyboard, three briefing notes, SNO email, and the IAT report?
- A. Yes.
- Q. Okay. Now, if you turn please to your MD 392. I've had to number my pages, and you might find that easier too, because they're double sided printed. If we take the first page.

A. Top or the bottom of the first page?

Q. Top. So you've got the cover sheet? The cover sheet?

A. Yes.

Q. Turn over from that. The first page after that.

A. Okay.

Q. And we've got serial numbers running from 480 down to 499, haven't we?

A. Correct.

Q. If you look at the start of the next page, and this confused me when I first looked at it; I thought the photocopying had been done wrongly, but it's not. You can see at the top of the very next page, it begins at document 450, which is out of sequence? So the second page we've got documents 450 down to 469.

A. I'll just have to -- I mean as they're printed here, they appear to be out of sequence.

Q. Yeah, and I thought that too initially, but if you look back at the first page and look at the date of entry and then the date destroyed, they're back in November of 11, see that?

A. Yes.

Q. Then if you go to the next page, these are documents you've mustered on the 2nd of December, see that?

A. Yes.

Q. And destroyed on the 2nd -- or some on the 2nd, lots on the 5th. So all I wanted to do --

A. And some on the 29th of November.

Q. Yeah. Well, not on page 2.

A. Yes.

Q. All right.. So, all I wanted to clarify with you is that it appears that you've got the numbering sequencing wrong, haven't you? Because you can actually see that from page 2 to page 3, you begin again at document 480, halfway through page 3?

A. Yeah, from what it seems, I have.

Q. I mean, I'm not -- no criticism of you. I mean there's a huge volume of papers you're getting through, but do you accept that it appears that the serial numbers might overlap in part with later entries?

A. Quite possibly. Simple mis-numbering.

Q. Sure.

    If you look at page 2.

A. Yes.

Q. I want you to look at entries 467 and 468. Do you see those?

A. Yes.

Q. Keep your -- keep that page in front of you, and then if I could ask you to go back to the big black ring binder bundle, and go to page 164 and 168? Tell me when you get to 164?

A. I'm at 164.

Q. So we can see the cover sheet, can't we, for the Note to the Minister of the 10th of December 2010?

A. Yes.

Q. Correct?

A. Yes.

Q. And importantly, we can see that there's an NZDF file number column at the top of the cover sheet, see that?

A. Yes. Yes, I do.

Q. Someone has handwritten on that a tracking number 520/10, you see that?

A. Yes.

Q. Then if you go over the page to page 168, see that?

A. Yes.

Q. Someone's written in hand, again, 521, the tracking number, 521/2010?

A. Yes.

Q. So, I'm not suggesting it was a universal practice, but it appears that these briefing notes, the person once they're finalised, signed by CDF, they actually handwrite the tracking number on, don't they?

A. Correct, and that was more than likely entered by the CDF's executive assistant, who maintained a log.

Q. Yeah. And then, if you go back to page 2 of your register, and the column with reference number?

A. Yes.

Q. We actually see that you've quite diligently recorded not only the NZDF DSO tracking number for the first one, but you've actually recorded the tracking number that's written by hand, 520/10, haven't you?

A. In some of them, yes.

Q. Well, for document 467 you have, haven't you?

A. I'm trying to find page 467.

Q. Page 2.

A. Correct.

Q. And then the very next document, 468, you've written 521, yeah?

A. Yes.

Q. And in fact, if you compare the cover sheets of the two briefing notes from that bundle, they don't have the same subject line -- so this is from the black bundle, Mr Hoey?

A. Yes.

Q. Sorry, I'm referring to the cover sheets again. So if you look at the subject line for the 10 December documents, it has "NZ SAS...Operations in Baghlan Province August and September"?

A. Yes.

Q. And that's virtually the exact version you've adopted for the title of your document 467 in the register, yes?

A. Yes, where possible you recorded the title of the document in the register.

Q. Yeah, and the same -- over to you, but if you accept from me, you've done the same, very accurately, for the other final briefing note, correct?

A. Correct.

Q. So the fact that the reference numbers in your register, at this point for documents 467, 468, include that handwritten note, that tells us that these documents that you've noted and shredded that day, these are the original briefing notes, aren't they?

A. Yes.

Q. Because it would only be the original briefing notes where someone's handwritten as we can see --

A. But there would have -- there would have been a copy kept in CDF's office.

Q. Sure, but you accept that these are the originals; they must be because that information would only be on the final version, correct?

A. Yes, correct.

Q. All right, so, if you look at page 4, what I'd like you to do is -- importantly, as we go through this, we'll go through that bundle that was appended to your affidavit. So if you could go back -- I wonder Sir Terence, Sir Geoffrey, if I can just approach the witness and help him --

SIR TERENCE: Yes, go ahead.

We're going to break at half past, so just keep an eye on that.

MR ISAC: So, what you have, if you look at page 4, is a document dated -- sorry, Document Number 504, if you look, it's about three quarters of the way down the page.

A. Yes, I've found it.

Q. And that's the one entry we have recorded at the moment, and it's dated the 22nd of August, isn't it?

A. Yes.

Q. And you've got OCDF register, 386/11, in the reference number?

A. Yes.

Q. And then if you look at the title you've written NATO/ISAF, Op Rahbari, Objective Burnham, right?

A. Yes.

Q. If you look at the storyboard that's in front of you, which is the first page of the bundle that you pulled out of your safe and gave to Mark Chadwick, it's actually the -- sorry, the page -- that page?

A. Yes.

Q. No, no, the storyboard. That one, page 55 of the supplementary bundle. We can see, can't we, that the reference number 386/11 is on that storyboard? That's the OCDF safe number that you've accurately recorded in your register?

A. Not on this one.

Q. Sorry, 387 -- oh, sorry, I'm putting you completely wrong. My apologies, Mr Hoey. We can see, can't we, that on your version you've recorded the number 386/11, yeah? And that's from the 086 -- sorry, your register. Don't look at the bundle; ignore that. Just look at your register.

A. Okay. Yeah.

Q. See you've written 386/11 in the reference number column, doc 504?

A. Yes, I have.

Q. And then you've in fact used exactly the same incorrect title from the storyboard, haven't you, to describe that document?

A. Yes, I have.

Q. Now, the next document in your register, 505, see that?

A. Yes.

Q. The date you've given to that is December 10?

A. Date of origin, yes.

Q. You've got a reference number, but no tracking number, see that?

A. Yes.

Q. And then in the title, you've written in capitals "Draft", see that?

A. Yes, I have.

Q. "TF81 Ops in Baghlan August and September 2010", see that?

A. Yes.

Q. No tracking number, but the same title correctly as the 10th of December briefing note, do you accept that? And you can look at page 62 of the bundle from that folder -- we'll get you a working lever arch, if we can, soon. Can you see that?

A. Page 62?

Q. Yeah. "TF81 Ops in Baghlan"?

A. "Province August and September 2010", yep.

Q. This version, here at page 62, you confirmed before, this is the draft briefing Note to the Minister, yes?

A. As far as I can recall, yes.

Q. Yeah, and it doesn't have the handwritten tracking reference in it, does it?

A. No, it does not.

Q. And that's why you haven't recorded it as part of document 505, correct?

A. Um --

Q. Well, that would be logical, at least?

A. It would be logical. Can you just explain what -- that again, please?

Q. Yeah. So, you've written "Draft" beside the title of the briefing note, right? So that's an indication that the briefing note is a draft, correct?

A. Um, that's correct.

Q. And you haven't written a tracking reference in there either, which would be another indicator, given that for the original that we've dealt with earlier in -- yeah?

A. Um, yeah. I'm quite --

Q. So what we --

A. I mean, this is eight years ago; I don't recall why I would have received a draft document. It's not usual for the Minister's Office to receive drafts of documents back then.

Q. No. And then, the third document, 506, if you look at number 506?

A. Yes.

Q. It's dated the 13th of December 10?

- A. Yes.
- Q. Where it says "Reference number", you've put NR, which would be no reference?
- A. Yes, there's no -- either no tracking number or the document had no reference number.
- Q. And then you've written, for the title, "CRU and NZSAS Ops in Baghlan Province August and September 2010", see that?
- A. Yes.
- Q. So, if I suggested to you that the third document, in exact sequence here, is looking like a draft of the 13 December briefing note, you wouldn't disagree with me?
- A. I'd have to compare them, but I don't think I would. I don't think I would.
- Q. Would what, agree with me?
- A. Um -- well, disagree.
- Q. Disagree? Okay, thank you.
- So just to round off before we take the adjournment, of this bundle of six documents that you pull out of the safe on the 30th of June, we've got the storyboard and two draft briefing notes, which you've said would be unusual for you to have received, correct?
- A. Um, we're talking 2014 here?
- Q. Well I'm just taking about the register, and I'm trying to put reasonable propositions to you from it?
- A. Yeah, I've got no idea why I would have received drafts of those.
- Q. Yeah, but you accept that the way things look from the register you've completed, three of the six documents you've pulled out of the safe on the 30th of June, back at OCDF --
- A. Yep.
- Q. -- are in exact sequence, 504, 505 -- 505 and 506, within your Ministerial safe, correct?
- A. Yes.

(Morning adjournment)

CROSS-EXAMINATION CONTINUED MR ISAC

MR ISAC: Mr Hoey, I'll give you a moment to get your papers ready in front of you, but just to confirm where we got to before the adjournment, we got -- in your MINDEF register documents 504 to 506, which appear to be three of the six documents from the bundle located in your safe, on the 30th of June 2014, different safe though --

A. Yes.

Q. -- to the one at OCDF, correct?

A. Correct.

Q. You're -- I mean, the fact that three of the six documents are found amongst the 529 or however many there are in exact sequence doesn't speak of a coincidence, does it? It tends to suggest that those three documents were associated with each other in order within the materials you had in your safe?

A. Yes, well, they all probably came across together. So, it's not -- I mean, if you look at the dates, they dance all over the place, so --

Q. Yeah. What's missing though, from the specific document entries, is the IAT report, isn't it? There's no -- and I've been through this -- it's not noted in sequence there with those other three papers?

A. Um --

Q. Take it from me; we've been through it. If you want to check that and it needs to be corrected, then Mr Radich will be able to inform the Inquiry, but we've got three of the six documents that go in the safe at OCDF on the 1st of September, noted in precise sequence in your Ministerial safe in December 2011. Yeah?

A. There's --

Q. And they're drafts. Now they're draft briefing notes, which you've accepted is unusual?

A. Yes.

Q. And they are draft briefing notes which are in the bundle back at OCDF. Do you see --

A. Can I just -- I just refer to -- because that's, item 504 mentions 386/11?

Q. Yep.

A. Now, I just need to check whether that was on that storyboard.

Q. Well, we won't know -- well, if you go to page 55 of the supplementary bundle -- I put you wrong before, because I think I said number 387, on page 55 of the supplementary bundle, but it's not. It's 387 --

A. But in this document here, it's -- it was destroyed on the 5th of the 12th?

Q. Yep.

A. But 386, if I go to the other register?

Q. You're going to the --

A. Was the version that came to me.

Q. -- the DCOORD register?

A. Yes, but if --

Q. See, you've got --

A. This register, DSO's register, or the OCDF register, has got document 386, which is the one that I initialled to receive on the 1st of September.

Q. And that lines up with document 584?

A. With document 504.

Q. 504?

A. 504 which was destroyed in December.

Q. Yep, yep. So we're on the same page?

A. Yes.

Q. So what I'm saying is that if we look -- if we compare the bundle that's kept in the Office of Chief of Defence with the bundle -- or the sequence of papers at 504 to 506.

A. Yes.

Q. We've got storyboard, yes?

A. Yes.

Q. And then two draft briefing notes, which is unusual?

A. But that 504, which is 386, as I've stated before, I believe was just not the storyboard; it also included the IAT report.

Q. Right, we'll come to that.

A. Yep.

Q. The short point here is, in your MINDEF register --

A. Yes.

Q. -- recording over 500 documents, three of the six documents, storyboard, two draft briefing notes, are recorded in exact sequence as having been received by you --

A. Yes.

Q. -- in the office over with the Minister, right?

A. Correct.

Q. And what I'm suggesting is, it's highly unlikely that those drafts, in direct association with the storyboard, is a coincidence. It looks as though that's the briefing pack you've received on the 1st of September? You've got over 500 documents and they're half of a mirror image of what's left over at OCDF? Do you accept that?

A. Well, I can't -- I cannot argue against what's recorded here, but I'm not quite sure what the point is you're making?

Q. Well, if 504 to 506 were the briefing pack that came over, the person who's very carefully and assiduously -- you -- completed this register, has recorded three individual documents, yes?

A. Yes.

Q. But they haven't recorded the IAT report. Correct? That's not recorded here, or anywhere in that --

A. Not specifically.

Q. No.

A. But I would assume -- okay, I won't assume. I believe it's part of 504.

Q. And you haven't recorded the SNO email either?

A. Well, the SNO email, while I was in the Minister's office, I didn't receive. The SNO -- the first I saw of that SNO email was when I was in CDF's office as DCOORD.

Q. All right. So, looking at that register, it's possible, isn't it, given we can't dismiss this as mere coincidence, that the

pack that you pick up, on the 1st of September, was the storyboard and the draft notes, but not the IAT report or the SNO email? It's possible, isn't it?

A. It's possible.

Q. Now, if you turn over to page 5 of that document, we're nearly done with your -- if you look at documents 517 through to 529.

A. Yes.

Q. And then look at the disposal column?

A. Yes.

Q. We can see that, rather than destroying those documents, they've been returned to the Office of Chief of Defence, haven't they?

A. Yes.

Q. And the date was the 6th of December 11?

A. Yes, it was.

Q. So what this reveals is that some papers, you may have kept in the safe?

A. Yes.

Q. Some had been shredded, and some had been returned to OCDF?

A. That's correct.

Q. So you're engaging with the material that you're finding in the safe, looking at the documents individually carefully, just seeing what they are and how important they are, correct?

A. Correct.

Q. You're shredding things that you don't think need to be returned to Defence. You're returning things that should be returned to Defence, and you're leaving things that should be kept for an incoming Minister. Correct?

A. That's correct. When I took over the role in Minister Mapp's office, I think it was in January while Ministers were still on Christmas leave. I actually got Mike Thompson to come across and we actually went through the Military Secretary's safe to see what should be kept, what can be destroyed, and what can be returned.

Q. So you did that with Mike Thompson?

A. Yeah, so we actually -- that was in January 2011.

Q. After this?

A. So this was --

Q. Oh January 2011, sorry?

A. Yeah. So, in essence I started the 592 once we'd actually had that clearing house meeting and returned stuff. So, you're quite correct though, the disposal of the documents is either by destruction or returned to the originator.

Q. Yeah, you're not just mindlessly throwing classified material into a shredder; you're actually looking at it to work out what it is --

A. Yep.

Q. -- determining its --

A. Well, you're not reading it page-by-page, or line-by-line, but --

Q. All right, but you've got to be able to tell if it's to be kept or not, or returned, correct?

A. Yes.

Q. So what I'm suggesting to you is that, if you'd come across the IAT at any point in that process, you would have realised that it was secret partner material, correct? From NATO, correct?

A. Yes.

Q. You wouldn't have shredded a document like that, would you?

A. Well, I would have -- quite possibly I would have shredded it, because I would have known there would have been an original copy somehow somewhere in Headquarters New Zealand Defence Force.

Q. You would have shredded a crucial partner document and not returned it to NZDF?

A. If I knew that the document existed over in Headquarters New Zealand Defence Force, then I would have shredded it, because there was already a copy there.

Q. So you knew that?

A. Well I can't recall, but there would have been a -- you know, a good reason for destroying it. I mean, I believe that -- as I said before, I believe that that IAT report came across as part of the briefing pack for Jim Blackwell to brief the Minister on; that briefing had been completed. The original of those briefing documents would have been in Headquarters New Zealand Defence Force. It would have been pointless returning it -- a copy of the document that they already had. So it was shredded.

Q. So, you've engaged with the IAT on the 1st of September, when you've received it, 2011?

A. Yes.

Q. Flicked through it. Worked out what it is, yes?

A. Not in depth -- yes.

Q. And then you must have -- on your account, you've looked at it a second time, now on the 2nd and 5th of -- so you've had to register it; you've had to put it in the register?

A. Correct.

Q. Is it in the register anywhere? Because I haven't found it, in amongst the 500 documents. There's nothing that's Baghlan Briefing pack?

SIR TERENCE: If I can just intervene here a second. Could you look at entry 522 in the register from the Minister's Office?

A. So that's Operation Wātea, HQ ISAF civilian casualty investigation into Op Burnham, dated 22 August 2010, which was returned --

SIR TERENCE: Right, and at -- the original date of that is 25 or 26, I'm not sure -- 25, is it, August 2010?

A. That would be the 25th of August 2010.

SIR TERENCE: Right, and then the reference number indicates what?

A. That will be the file -- the reference -- the NZDF03130 is the file number applied by the author of the document to the Headquarters New Zealand Defence Force.

SIR TERENCE: And that was returned to the Office of Chief of Defence?

A. On the 6th of December.

SIR TERENCE: Right. Is it possible that that was the IAT report, or not?

A. I'm not too sure whether the IAT report was included with that; I honestly can't remember. Or whether that was the separate formal document sent by the CDF. I can't answer your question, sorry.

SIR TERENCE: All right. Sorry, I didn't -- I just wanted to interrupt on that while we were on this.

MR ISAC: Okay, if you can refer to the large bundle again, we're going to page 18 of that.

A. 18?

Q. Yeah 1-8.

A. Page 18.

Q. So, take a moment. So this is the briefing note, the original one to the Minister, dated 25 August, isn't it, 2010?

A. Yes, it is.

Q. And again, sort of a handwritten tracking number on it?

A. 375/10, yes.

Q. And that corresponds, if you go back to your MINDEF register, document 522?

A. 522, yes.

Q. You've again very diligently written that exact handwritten number into your register?

A. Correct.

Q. So this tells us that what you returned to OCDF on the 6th of December was the original briefing note from the Minister dated the 25th of August 2010, right?

A. That's correct.

Q. So, I'm not trying to criticise you, but there was a copy of that back at OCDF, wasn't there?

A. What do you mean a copy of?

Q. That briefing note? A copy of that would have been kept at --

A. Well, yes. Correct.

Q. Yeah, but you've returned it, right?

A. Ah yes, I have.

Q. So think about the IAT report again?

A. Yes.

Q. All right, because there's a copy of that back, you think, at OCDF, right?

A. Yes.

Q. So, you know, you've treated the briefing note for the 25th of August appropriately; you've returned that, haven't you?

A. Yes.

Q. Are you saying that, although you returned that, you shredded the IAT?

A. Yes. I mean, the only thing I can -- the only difference would have been, returning material back to OCDF, is if the Minister had signed as reading it. Now he wouldn't have done that to that storyboard or the ISAF -- or the -- sorry, the IAT report, because it was a face-to-face briefing.

Q. I see. So, what's significant in terms of the decision to return is it's a record of what the Minister's actually read?

A. Correct.

Q. Right. And there's no record of that in relation to the IAT report?

A. No, because it came across not at -- see these are formal documents where there's actually a section on here for Minister's comments, Minister's action. Now there wasn't on -- when briefing documents are prepared for the Minister for a face-to-face -- or Minister Mapp, for a face-to-face briefing, there was no such invitation for him to comment on it. It might have still been given a tracking number to officially record that it was -- came across to the Minister's office, but there was nowhere -- you know, it's documents that would be discussed over a table.

Q. Do you have a positive memory of seeing the IAT report again, on the --

A. During my time in the Minister's office --

Q. Yeah, well --

A. -- or, when I was -

Q. Yes, because --

A. -- there in 2014?

Q. -- you've seen it on the 1st of September --

A. Yes.

Q. -- because it's coming over, but you've then seen it two further times, haven't you? You've seen it -- and it's not clear from this which document it is, but if you had it, you've looked at it; it's been recorded in some other way in here, we don't know how, and then you've had to look at it again when you've destroyed it later, correct?

A. But that would have been simply looking at the title; I wouldn't have sat -- in destroying stuff, there's a document -- it would have had a -- its local number, the 517, or the 522 or whatever on it.

Q. There's nothing in here that's entitled Baghlan briefing pack IAT report, you know, CIVCAS investigation, Baghlan 2010. What I'm suggesting to you is that you've been very careful with the way you've kept the register, and the complete absence of any indication of the IAT directly within a bundle of papers in here, is a strong indicator, isn't it, that you didn't get it? You didn't have it?

A. I can only disagree with that. As I said, it would have -- it came across; there's a storyboard and the IAT report on the 1st of September. Somebody cleverly gave it a tracking number so to record it's -- has arrived. Now I believe that that, the IAT report, was part of that brief, which -- documents. There were two documents, the storyboard and the IAT report, that Colonel Blackwell would have used to brief the Minister on that.

Q. All right, well, just tell us about shredding the IAT. Do you think that's an appropriate and responsible thing to do with an incoming Minister?

A. It was -- well, as far as I'm concerned, the issue had been finished with, insofar as press releases had been made

et cetera, et cetera. The -- and that status quo, I would suggest, suggested until the *Native Affairs* programme aired in 2014. So, if that -- and the documents would have been copies, so --

Q. So someone else had it?

A. It would have been --

Q. And you've made that conscious?

A. Well, obviously somebody did, because it was delivered to the Minister's office.

Q. Yeah. So is that your conscious thought process? I can shred this because there's another copy somewhere else?

A. Yes.

Q. And that's actually what you remember doing, thinking?

A. Correct, and the witness, to that effect.

Q. Jim Blackwell, when he gave evidence, thought it was really quite odd that the IAT was shredded in the Minister's office. What do you say to that; do you agree with him?

A. Well, I'm not quite sure what he bases that comment on? And I've explained why I would have shredded it, because it was just a copy of -- he, more than likely, would have brought across two or three copies lest there were other people in the briefing room with the Minister. So, I was given a copy on the 1st of September, which I retained. He would have taken those other copies back to the office with him.

Q. Did you have any discussion --

A. And it was only a copy; it wasn't the original document.

Q. Did you have any discussion with Minister Mapp about what should be cleared out from the safe?

A. No, I didn't; not that I recall.

Q. So there may have been?

A. There may have been, but I'm pretty sure that there wasn't one on those safes, on my safe. There wasn't a discussion around what to keep and what not to keep.

Q. What discussions did you have with Minister Mapp about the IAT report, and its importance?

A. I don't recall any discussions on that issue. As I said, at the start, my role was to get the subject matter expert and the Minister talking.

Q. If you put it on his desk, in preparation for a briefing from the subject matter expert --

A. Yes.

Q. -- what happened to it afterwards? How did you get it again?

A. Well I assume Minister Mapp would have returned it to me, as he said in his affidavit, that he returned it direct to me, and I've got no reason to disagree with that. And I would have kept it in the safe, lest he needed to refer to it again.

Q. All right, well look, thank you Mr Hoey. That's been very helpful.

I want to move now to 30 June 2014. So by this point, as I understand it, you're now the Director of Coordination within NZDF OCDF?

A. That's correct.

Q. And is it part of your role to keep a database of all Ministerial briefings?

A. At that stage it was still practiced by the EA to CDF, who copied and logged and put their tracking number across. One of -- by 2014 -- well, that was in 2012 when I started, by 2014 we were actually transitioning to a new period where the Chief of Staff and myself would see all of that. She would still apply a tracking number, but we would review the material going across to the Minister's office.

Q. Do you keep a database now?

A. Of?

Q. Briefings to the Minister?

A. Certainly do. Yeah, we went to an electronic version in 2012, I think, when I hired new staff who had that experience -- was 2012, they were hired. 2013, we started using it; it was just a simple spreadsheet system.

Q. Did it -- was part of that new system --

A. Well SharePoint system, I should say, not SharePoint.

- Q. Was part of that new system dragging in briefings that pre-dated it, or was it forward looking?
- A. No, it started -- it was forward looking.
- Q. Okay.
- A. And since then we've moved to the new document -- Defence Document Management System, which is an updated one, but all that material from 2013, 2014 is held in the SharePoint site.
- Q. All right.
- A. Now, what I'll point out there is those sites tracked material up to restricted only. When it came to classified documents, because you couldn't keep a classified document on an unclassified system or a restricted system, it was still quite mandraulic.
- Q. Sure. Okay, well, you mentioned before that you were aware of the *Native Affairs* programme that ran in 2014. I think you mentioned it before?
- A. Yes, it broke that weekend -- it broke at the weekend, I understand. Yes.
- Q. Yes, and we know, and I can take you to the relevant page, but we know that Jon Stephenson asked questions of NZDF on the 27th of June 2014, specifically in relation to the issue of civilian casualties and Operation Burnham, yeah?
- A. Yes.
- Q. Were you aware of those questions at the relevant time, that they'd been made?
- A. No, I was not aware of that.
- Q. Okay, well what I want to do now, Mr Hoey, is put to you some very specific propositions about what happened and I want you to tell the Inquiry if you can't remember, agree, or disagree with the propositions that I'm going to put to you, okay?
- A. Okay.
- Q. It's going to relate to the sequence of the bundle coming out of your safe and going over to Minister Coleman's office, okay?
- A. Yes.

- Q. So, do you recall, or do you accept, that the National Party conference was taking place over the weekend of the 28th and 29th of June?
- A. I was unaware of that; I don't recall it.
- Q. But you'd accept that, that it did?
- A. If you said it happened, it happened. I was unaware of that.
- Q. Do you accept that Minister Coleman at that time was at the conference, but he was pulled out of it late on the Saturday the 28th, in order to receive a briefing about Operation Burnham and allegations of civilian casualties, are you aware of that?
- A. No, I wasn't.
- Q. Are you aware that in the -- or do you accept that on the afternoon, or evening of the following day, this is Sunday the 29th of June, the Minister's then Military Secretary telephoned you about the briefing that the Minister had had the previous day, on the Saturday?
- A. I don't recall that telephone conversation.
- Q. Is it possible that that happened? That you don't remember?
- A. Well, I don't remember.
- Q. Is it -- well, do you accept that the purpose of that phone call from the Military Secretary was to set up a meeting with you early on Monday the 30th of June 2014, because the Military Secretary hadn't been included in the briefing on the Saturday with the Minister, and his then MILSEC wanted to find out what the Minister had been briefed, because he knew that he'd be grilled by the Minister about it first thing Monday morning? Does that ring a bell with you?
- A. I've got no reason to doubt Commander Chadwick's statement that he phoned on the Sunday, and there was -- the meeting -- it wasn't more -- it was less of a meeting, than me handing over some key documents which he'd asked for, which is recorded in the register, but it was little more than handing over the documents. There wasn't a discussion about their content or anything as far as I recall --

Q. Well wait, there's more.

A. He was in a hurry.

Q. Wait there's more. So, you met with the Military Secretary early on the Monday of the 30th of June, in your office, within the Office of Chief of Defence, about 7 o'clock in the morning --

A. Yes.

Q. -- do you accept that that happened?

A. Yes, I do accept that.

Q. You opened the safe and you pulled out some briefing notes relevant to Op Burnham and the CIVCAS allegations. Do you accept that?

A. Yes, I do accept that.

Q. Do you accept that included in those papers that you pulled out were the 10 and 13 December 2010 briefings?

A. Sorry the?

Q. 10 and 13 December 2010 briefings?

A. I think there were drafts of those, if I recall correctly.

Q. You in fact told the Military Secretary at that time, that the ISAF report was a classified partner document, which NZDF had tried to obtain, but had not been able to do so, as ISAF had not been prepared to hand it over. Do you accept that that's what you told Mark Chadwick?

A. I don't recall any conversation around that at all.

Q. Is it possible?

A. Well, we had the document, you know. It was -- a copy was in the safe, so how it came into the -- it was in that safe when I took over that job. How it was received there, I've got no idea.

Q. I'll ask you that again. Is it possible that you told Mark Chadwick, early on the 30th of June 2014, that the ISAF report was a classified partner doc, that Defence had tried to get it but had been unable to do so, because ISAF weren't prepared to hand it over? Is it possible you told him that?

A. I honestly can't answer that; I've got no recollection. It's possible I could have told him anything, what colour the paper was or something.

Q. All right. So if he said that --

A. Then I've got no reason to doubt Commander Chadwick; he was a trustworthy colleague.

Q. You would only have said that if you genuinely believed it, wouldn't you, because the alternative would be, you'd be misleading him?

A. Well, I would have only said that if somebody else had informed me of that.

Q. Right.

A. I had no detailed history in my own mind of where that document had come from.

Q. All right, well, just as you were saying to the Military Secretary that ISAF wouldn't part with that, the NATO document, do you recall that he said something along these lines, "hang on mate, I've got it right here. It's right here stapled to the back of one of the draft notes to the Minister"?

A. Did he say that or did I say that?

Q. Do you accept that he said that to you? He may have done?

A. He may have done; I can't recall.

Q. Right, so is it possible that it was actually Mark Chadwick who located and identified the IAT stapled to the back of a draft briefing note?

A. Quite possibly.

Q. Yeah, you don't disagree with that?

Then there was a bad moment wasn't there, when the two of you realised -- you read the IAT report, and both realised its significance? Do you remember that part?

A. Well, in terms of the media coverage that weekend, and by early that Monday morning there were a lot of -- CDF Keating was still returning from overseas; the Chief of Staff and

several others were starting to run around looking for material.

Q. And Ross Smith came into the room soon after that, didn't he? Do you remember that?

A. I -- yes, whether that was on the Monday or the Tuesday I'm unaware. I'm not sure, sorry.

Q. Okay. And the door was closed and --

A. My door?

Q. Yes, to your office, and the three of you laid out the papers on the table and discussed the implications, do you remember that?

A. No, I do not.

Q. And all three of you were then aware that the report said that civilian casualties were possible and you discussed the fact that that was inconsistent with NZDF's briefings to the Minister that there had been no civilian casualties? Is it possible --

A. I think quite a lot of people were starting to realise the implications of what the IAT report said that morning, compared to what had previously been briefed and discussed with the Minister.

Q. And then it was the Military Secretary who said and we're going to have to bring the report to the attention of the Minister as soon as possible, before he provides advice to the PM and makes any public statements. Do you accept that that's what Mark Chadwick said?

A. I would -- yes, I'd accept that is what he likely said.

Q. Yeah, and the ISAF report was then signed out of the classified register and walked over to the Beehive by the Military Secretary, correct?

A. Yes, I run off -- I think it was one or two copies for him.

Q. Yeah, you've got out the register from the safe for him to sign at that point in time, do you remember that?

A. Yes, yep.

- Q. Yeah. So, I suggest to you that if you'd received the IAT, engaged with it, even in the relatively superficial way that you indicated in your evidence earlier, there's no way that you would have been telling Mark Chadwick we can't get the report. It's been through your hands several times?
- A. Yes, but I don't know how the report arrived in New Zealand in our hands. I've got no history of that. If I had said that then it was probably a repeat of information I had received from somebody else in the Headquarters who had been handling it.
- Q. But he's found it stapled and he said, 'hang on mate, it's right here,' hasn't he? And you've gone, it can't be?
- A. I didn't -- I don't recall saying it can't be. I couldn't deny it; it was there.
- Q. And then you've read it and realised its significance?
- A. Well, we both read it. Yeah, in terms -- its significance in comparison to --
- Q. The briefing note it was stapled to?
- A. No, in comparison to what was being -- the media was stating.
- Q. So it is only at this time that the light goes on for you about the importance --
- A. Well, for me personally, yes.
- Q. Right. Were you involved in any of the subsequent dealings with Minister Coleman about it?
- A. No. I worked -- I worked to the Chief of Defence Force or the Chief of Staff.
- Q. You must have learnt though that Minister Coleman was furious about the briefing that he'd got on the Saturday the 28th of June? You must have heard that?
- A. Yeah, well I've -- the fact that you get phone calls on a Sunday asking for documents, you know? I've got no reason to doubt Commander Chadwick did that, then obviously it was serious.
- Q. Well, what other discussions did you have with Ross Smith about the IAT and how it had come to light?

- A. I just -- after my -- well, when I was asked for all the documents relating to it, I can only presume that when I gave him those documents and they went into CDF Keating's office, that the light bulb moment was spreading.
- Q. Do you remember discussing and speculating with the Military Secretary about how the IAT had got into your safe?
- A. No, it would have only been speculation. It was in the safe when I took over that role in April 2012.
- Q. Was there someone who you identified as the person who might have put it there and provided it?
- A. Well, my predecessor was Mike Thompson, so -- and it was registered in his -- in the folder, in his classified document register.
- Q. So, I just want to be clear, because it's important in fairness to you, Mr Hoey, and we can wrap up on this, you are saying that the 30th of June 2014 was not the first time that you saw the IAT report, had access to it?
- A. I admit that; I had access to it over in the Minister's office.
- Q. What I'm suggesting to you is that your reaction to its discovery by Mark Chadwick and the comments that you made to him on the 30th of June are strongly suggestive that you hadn't seen the report prior to that day, because if you had, you wouldn't have told him that New Zealand can't get hold of a copy of it?
- A. If that conversation was held, then I would have spoken to somebody earlier that day. I mean, I honestly can't recall who I spoke to.
- Q. He's meeting with you at 7am in the morning?
- A. Yes.
- Q. And him discovering the IAT report is a complete bombshell to you and him, right?
- A. Um --
- Q. You didn't say oh, that's --

A. No, not discovering the document, but its implications of what it said in some of its final paragraphs, I think if I recall, when I did read it.

Q. Yes, all right thank you.

CROSS-EXAMINATION BY MR SALMON

MR SALMON: It's clear though that you do remember this meeting, in some form, that we've heard about, in 2014, with Mr Chadwick and Mr Smith, correct?

A. Yes, I do.

Q. And it's clear from your answers this morning that you don't recall, either way, whether or not the IAT report was part of the documents that you were involved in the movements of three years prior. You're surmising that it might have been or probably was, correct? You don't recall?

A. I can't be one hundred percent sure, but I'm very sure that -- as delivered in accordance with the register --

Q. But the register --

A. And I initialled for it.

Q. -- the register doesn't name it. So the reason that you're sure is that you know that Jim Blackwell has said that it should have been amongst those documents, and you are therefore taking him at his word. That's the reason why you are saying that it was there, isn't it?

A. No, I believe -- I, myself, that it was there and that it was going to be part of the brief going to the face-to-face brief with the Minister Mapp.

Q. But you don't recall it being there, and it is clear from your answers to Mr Isac that you don't have documents that you can point to, to show it was there. So I'm just asking you, is there some other reason, other than the fact that you know that Jim Blackwell has said it was there, that you base your inference that it was there?

A. Yes, there may have been conversations between Jim Blackwell and myself saying I want to come across to brief the Minister on this issue. I can't recall.

Q. Let's forget "may have been", because you're talking about what you know --

A. Well you're suggesting "may have been".

Q. No I'm not. I'm wanting to know why you are saying you think it was probably there, given that you don't know on the documents, and whether the only reason is that Jim Blackwell's evidence is that it was there, or whether you have another reason that you know?

A. Well the documents, when I assumed the role of DCOORD, the documents were in the safe; there was a tracking number on them. So, the tracking number refers to a period that I was over in the Minister's office. So, it leads me to assume that -- quite strongly, that I received that storyboard and the IAT.

Q. All right. So that's your other reason, is it?

A. Other reason? Yeah. I mean, there's not a -- there's not an unbroken flow, but to my mind, the evidence is there.

Q. Now, in your affidavit that you swore earlier before the last hearing, you dealt only with your 2014 dealings with these documents, agree?

A. Agreed.

Q. And in that you said that you had found the documents in Mike Thompson's safe, agree?

A. Well, I'd taken over custodianship of the safe.

Q. Yes, and you found them in there?

A. Yes, which he had been a previous custodian of.

Q. And you said they were already stapled?

A. I -- some of --

Q. You said in your affidavit that they were stapled together?

A. Yes, well that's because I stapled them when I put them together to go to the Minister -- ah, to go into the CDF.

Q. No. No, just focus on my questions and don't argue the point that you know is coming. You said in your affidavit that they were stapled together?

A. Yes, I did.

Q. And that's because that's what you recalled at the time?

A. Yes.

Q. Because you would be honest on oath when swearing an affidavit, wouldn't you?

A. Of course.

Q. And so, in saying they were stapled together, you must have remembered that they were stapled together?

A. What I believe happened is that I -- they all related to Op Burnham, and I stapled them together to provide --

Q. No, no, no, no --

A. -- to the CDF.

Q. -- sorry to cut you off. I'm talking just about what you thought and knew when you wrote your affidavit, in which you don't say you stapled them together; you say they were already stapled together. And I'm just wanting to know, given you were on oath, giving evidence to an Inquiry.

A. Yes, I'm we'll aware of that thank you, but what I'm saying is --

Q. All right, listen to my question --

A. -- the stapling -- the stapling could have happened before the affidavit.

Q. True.

A. It would have had to have been.

Q. But if it had been done by you, your affidavit would have been rather misleading, wouldn't it? You would have needed to say so in your affidavit, agree?

A. Um, I'll need to look at my --

SIR TERENCE: Yes, have a look at --

MR SALMON: Sure, have a look at your affidavit, if you like. I'll read you the relevant part. In paragraph 4?

A. Yes, I have it here. Sorry.

Q. You have it? You refer to a small bundle of documents relating to Afghanistan "...so I pulled that bundle out. ...quickly scanned...[and then you say at 5], I handed over to

this person the notes to the Minister and the bundle of documents which were stapled together."

A. Yes, and what I'm saying is I probably stapled those together at the time, because they all related to Operation Burnham.

Q. Okay, so you're saying you probably stapled them together at the time? So that's not a memory, just --

A. Well, they were stapled?

Q. No, no, no, no, no, are you remembering that they were stapled?

A. I believe that that's -- I stapled them.

Q. Are you remembering that they were stapled or has someone told you they were stapled? I just want to know what you remember.

A. I don't remember stapling them myself, but that was the state they were in, in the safe.

Q. Okay, all right. Then in your brief of evidence, which you've done since, you say that you believe you must have combined them all. So that's a belief not a memory, isn't it?

A. Well, yes.

Q. Okay. So you remember they were stapled and believe it may have been by you?

A. Yes.

Q. You found them stapled though, and if you had done it you must have stapled them on some other day?

A. Yes, either the day before or earlier.

Q. So you found them before you found them, did you?

A. Um, honestly can't remember. I mean, it's -- a lot was going on in that morning, so the copies I made for Commander Mark Chadwick, which he signed for, I may have kept the documents that I kept --

Q. Well, you've just said --

A. -- I probably stapled them together.

Q. You just said you remembered getting them out and they were stapled then, but it may have been you who stapled them earlier?

A. Well some of them were stapled, but I actually put the -- there was the two draft documents which had come separately, I believe.

Q. Oh, so you're saying you assembled them in that order? That's your evidence now, in your brief, isn't it? And that you stapled them?

A. I believe that that's what happened, yes.

Q. You believe? But you believe that --

A. Yes, I can't --

Q. -- because someone else --

A. I can't remember categorically what happened on that morning.

Q. No. So your belief that you did that is based on someone suggesting to you that you may have?

A. No, because the other documents relating to Afghanistan, which weren't about Op Wātea, those individual documents were stapled, because they were several pages each. So --

Q. All right. Your Brief of Evidence ends with the words, in your final paragraph, "I then stapled all the documents together."

A. And that would have been for delivery to the Chief of Defence Force's meeting.

Q. But that is rather suggesting that you remember stapling them altogether before they went, which you've said you don't remember?

A. Well, they came from me and that's how they ended up on CDF's desk, so --

Q. How do you remember that they ended up in one stapled bundle to the CDF?

A. Because before this Inquiry started that was the state that they were in my -- in my part of the -- my safe.

Q. All right. So, if I can ask you then to look at the supplementary tab in the large bundle, and we'll just look at the collection of documents that we're talking about. If you go to page 53 or 54 of the supplementary bundle, and I just want to ask you while you're finding it, do you recall whether

the stapled bundle was one or two sided? In other words were all the back pages blank, or was it two sided copies?

A. I honestly can't recall.

Q. All right. If you have a look at this one that we have here, beginning on page 54, and I think yours might be in the same volume but I'll soon come to two others.

A. Well, my page 54 is blank.

Q. Page 54 of?

A. This is the --

Q. The supplementary tab?

A. Yes, it is.

Q. 55. 55, my apologies, 55.

Now this is the bundle, is it, that we're talking about here?

A. Yes, it is.

Q. All right. Now just very briefly, because time is short, do you see that this bundle has a spiral binding copied on the left-hand side of that first page?

A. That's correct.

Q. And if you go to page 57, we see it again?

A. Yes.

Q. And if we go to 59 and 60, we see it on both sides?

A. Yes.

Q. So it rather looks as if someone has, at least for those pages, taken a spiral bound document and copied it, doesn't it?

A. Yes, it does.

Q. A two sided spiral bound copy?

A. Yes.

Q. If you look also on say pages 56 and 57, 58 and 59, you will see a series of holes that look like holes left from staples. Do you see those?

A. Down the left-hand -- oh, up in the top left-hand corner?

Yes.

Q. And in the top right hand corner of some documents. Do you see that?

A. I see it on the left, but not the right.

Q. Well, if you look at page 56 or 58, you'll see some dots in the top left --

A. Oh page 58, correction.

Q. See that?

A. There's a few on top of page 58.

Q. All right. So, it looks rather that some of these have been both spiral bound and stapled, would you agree with that?

A. Yes, I would.

Q. All right. If you also look at this one, now you know these details generally, this version that we're looking at now has the handwritten edits to the statements that ultimately made it into the typed version. You understand what I mean by that?

A. Yes, page 57.

Q. Yes.

A. And page 56.

Q. Now, you would know that we now also have a version of that, and doesn't have those handwritten edits that were ultimately converted into a typed final version. You're aware that that's been found too?

A. Yes. Yes, I am aware of that.

Q. And you're aware that that's been found in the same order that you say you assembled this document in 2014, and stapled it together?

A. So -- sorry, what are you asking me again?

Q. Well, let's go to the next one, shall we? If we can go to the documents for today's hearing, the October bundle, which I think might be in a tab for October, and just keep your finger on the pages we were on, because we're going to move between the two a little bit. Can you please go to page 127 of today's bundle, the October bundle?

A. Yes.

Q. All right. You will see there, on page 1, a version of the storyboard that does not have the spiral binding on it that we were just looking at --

A. Yes.

Q. -- in the other version? Now, if you've kept your finger on the other version, can I ask you to look at the top of both in turn? You will see at the top of the one that we've moved to now, on page 127, there are some notes from 2017 in pen. Do you see those?

A. Yes.

Q. And if you go back to the version that we were on at page 55 of the supplementary bundle?

A. Yes.

Q. You will see where -- in the same location that there were the final words in that note, just above that little map -- you will see the remains of some text or some sort of markings on that page. Do you see that?

A. Yes, there's a 133, and what looks like either an H or an A.

Q. But down to the left from the 133?

A. Yes.

Q. There's what looks like it might be the remains of blacked out lettering from those words at the top of page 127. I've lined them up, and checked, and I don't know what that final word is, but it's something like "CDF bring" on page 127?

A. That would have been "CDF briefing". That's my writing.

Q. "Briefing", all right. I, on my lining up, make those little remaining residual marks down into the left from the number 133, to be the remains of the word "briefing". They're in exactly the right place, and they correspond with the end of that word. Do you see that?

A. Just, there's a couple of print marks there, but I can't --

Q. Okay, you don't know?

A. I don't know.

Q. All right, is it possible anyone blanked out the top of that document when making the copy that we looked at first?

- A. I've got -- I can't honestly say.
- Q. Don't know? Okay. Moving back then to the version at page 127 of the October bundle?
- A. Yes.
- Q. If we look at 128 and 129, we can see that, rather than staple holes, we have the corner marks in the top left of those pages, see 128 and 129 have the corner folds of a page that's been copied?
- A. Yes.
- Q. All right. And do you see that, for example on page 128, there are no staple holes on the right-hand top side?
- A. On what pages, sorry?
- Q. 128?
- A. Not that I can see.
- Q. And similarly, on page 130 there are none on the top right-hand side?
- A. Yes.
- Q. Now, if you can take it from me, just for time, that those correspond to corners on the version we were looking at that did have staple holes on the other side, we can infer, can't we, just given your knowledge of how documents are handled, that the photocopies are not the same copies, because they have differences in hole punching and stapling and binding? Fair to say?
- A. Fair to say. I've got no idea what the different -- what the origins of the different documents are.
- Q. All right. And to take another example, page 129 represents a page that in the other version we were at had spiral binding on it, but doesn't here?
- A. That's correct, but that might just be a simple -- if you note on page 129, down the right-hand column is obviously the edge of the document. So it's quite possible in the photocopying the spiral binding markings were outside the left-hand margin.
- Q. Yes, I thought you might say that. So let's look at 60, can we, in the first version?

A. Sorry, where are we back to?

Q. Page 60 on the supplementary tab. The first version we looked at?

A. Yes.

Q. And you'll see that has a spiral binding on the right-hand side, so we know we have the edge of that page, don't we?

A. Yes, we do.

Q. The right-hand edge?

A. Yes.

Q. Okay. That corresponds with page 132. Do you see that?

A. Sorry, which page 132? In the main part or --

Q. Yes, 132 in the October bundle?

A. Oh, sorry, going the wrong way.

Q. And you'll see 132 doesn't have a spiral binding on the right, but we can see the right-hand edge of the page, agree?

A. That's correct.

Q. Okay, so that's clearly not photocopied from the same version, is it?

A. I couldn't comment on that.

Q. Well, one's spiral bound --

A. Probably not.

Q. -- on the right. Okay.

And then if we look at the changes on those, the version at page 60 is the one with the additional handwritten comments, and the version at 132 has no handwritten comments. Agreed?

A. Sorry, I've lost page 60.

MS McDONALD: Excuse me Sir, I'm reluctant to interrupt, but I think there's a matter we need to draw Mr Salmon's attention to -- if we could just have a moment?

SIR TERENCE: Yes.

MR SALMON: Okay, so the spiral binding is you. All right, my friends have clarified that the spiral binding relates to something I haven't seen, but you possibly don't know was spiral bound, which was your affidavit. So we might not have -- we might be distracting ourselves with the spiral

binding; I thank my friends for that, but I didn't know and perhaps you didn't know.

If we can focus just on the differences otherwise, then. You'd agree that there are a number of staple holes that differentiate the two versions, and separately, that we then have the version that you've put on your affidavit, which is the first one we looked at, being the one with changes, and there being a version without changes? Agree with that?

A. Yes.

Q. And you'd agree that the version that I'm showing you, in the bundle for today's hearing, shows a corner fold in the copying that is not in your version?

A. So that's --

Q. These are the corner folds at the top?

A. So you're comparing what pages, 129?

Q. Well any of them. If you look at the pages 129 and so on, they all have at the top left a corner fold?

A. Yes.

Q. And that reflects them all being single-sided copies, doesn't it?

A. Yes, of documents that have probably been stapled together.

Q. Yes. So we have two different single-sided copies, perhaps, being the ones in the new bundle, and your double-sided version from your affidavit?

A. Which has the manuscript changes to it.

Q. Which has the manuscript changes, rather suggesting that there might have been at least three sets. Certainly, at least two, but possibly three sets of bundled documents in the same form as the bundle that you have annexed to your affidavit, agree?

A. Well, yes, because there would have been the bundle in my safe; there was the copies I made for Commander Mark Chadwick and the Minister's office; I then gave these to either the Chief of Staff or the CDF at the time. So it is quite possible that other copies were made also.

Q. The problem is we're seeing differences --

A. Because we handled it as we --

Q. -- we're seeing differences that show that they were not copies of each other, because some have the handwritten changes and some do not, and some have corner marks, and some do not?

A. Well, then I can only assume that the ones without the other marks were sourced by other people.

Q. Right, but what that would suggest is that other people had a copy of documents in exactly the same order that you say -- and attached in the same order -- that you say did not happen until you think you might have stapled them together, assembling them in 2014, would you agree with that?

A. Well it's --

Q. That's what it looks like.

A. Well, it all depends where the documents came from.

Q. Wherever they came from, someone has chosen to assemble them in the exact order that you happened to assemble them in, in a hurry, in 2014?

A. Well, I can't confirm or deny that.

Q. Well, you can confirm that they're in the same order, can't you?

A. Um --

Q. You can take it from me.

A. Yep, fine.

Q. All right, and you can confirm that they cannot be copies, because they have differences. We've covered that?

A. Yes.

Q. And you can confirm that they appear to have been attached together in that order and appear to have been provided to the Inquiry in that order?

A. Correct.

Q. So let's just think about it. You don't know, but you think you might have been the first person to attach these documents in the order in which they were put, and that you did it in 2014, to one copy?

A. Quite possibly.

Q. But somehow, by complete coincidence, someone else has done the same thing for no reason we know. That's your theory?

A. I couldn't possibly comment. I don't know.

Q. Well, you could comment on whether you think --

A. I don't have a theory on it.

Q. Well, your theory aside, you could comment on whether that would be very surprising. Given how few people had access to the IAT report, that would be bizarre, would it not, Mr Hoey?

A. To be -- I don't understand the line of questioning you're making. I mean --

Q. Let me put this to you --

A. -- I had the documents which I provided copies to Mark Chadwick and also to Chief of Staff on either the Monday or the Tuesday -- Monday and Tuesday morning, respectively.

Q. Yes. And somehow --

A. If these other documents have been sourced, I've got no idea where they've come from.

Q. No, but you must be quite shaken to find someone else happened, through fluke of the universe, to assemble a different set in exactly the same order as you did, one with --

A. But when would they have assembled them?

Q. Listen to the question, one with the hand-written edits and one without. Is that not a suggestion that your speculation as to what you did might not be right? Do you accept that, or not?

A. I don't understand your logic to be perfectly honest.

Q. Let me put a possibility to you, given you're dealing with possibilities and probabilities. Here's a possibility, a number of people had something like a little briefing folder or a document folder to enable them to consider questions like how they draft media releases or briefings to the Minister --

A. Yes.

Q. -- or briefings to the CDF? And they sat in a room with -- each with their own sets of key documents, and one of them has marked changes on their copy --

A. Yes.

Q. -- that ultimately find their way into the final. That's one possibility, isn't it?

A. Yes.

Q. And that would be a reason why we might see three substantially similar, but subtly different collections of the same documents all existing?

A. Yes, I think they're all in date order, I believe.

Q. Right, but we have the issue, don't we, that that would mean that people working on these documents had them -- or most of them, in 2010, because they're working on 2010 statements and briefing papers in part?

A. Well, I think that's --

Q. You've covered that with Mr Isac?

A. If you -- the signed version of these were dated December -- I can't remember what date the actual signed versions were.

Q. Well, yeah, if you could take it from me and from Mr Isac's questions of you that some of these documents were finalised in 2010?

A. But, you know, the fact that some have got manuscript changes on them and others probably reflects the way that those documents were generated.

Q. Yes, it may reflect that one person had the pen in a group briefing situation, or something else, correct?

A. Yes, or --

MR RADICH: I think this calls for so much speculation, Sir Terence, that I just struggle --

A. I mean, there would have -- sorry, I can try and answer this one?

MR RADICH: Sure.

A. There would have been an original drafter of this. It would have gone to, up through his or her command chain depending on

who they were who drafted it. It would have gone to CDF. CDF has made his manuscript changes. Now it is more than likely that CDF's changes or an e-version was sent to CDF's staff --

MR SALMON: That may be right.

A. -- and his changes were inserted, not necessarily in the original drafter's version, but in what he wanted.

Q. And that is speculation of course too, as my friend rightly points out.

But the key point is, this is entirely possible, isn't it, that these collections of documents represented multiple copies of these documents that were held by multiple people, from times well before your involvement. Now, that's not your fault, but that's entirely possible looking at the type of documents we have, isn't it?

A. I mean, my recollections of putting the folder together for the June 30th 2014 --

Q. Can we just focus --

A. -- was that the -- some -- the draft documents with the manuscripts were in the safe. There were other copies --

Q. You've said this, and we are short of time. Can I just check whether you agree, given what little you actually remember, that it's entirely possible that multiple people had different versions of essentially the same set of documents, and you're not to blame for the order they're in?

A. It's quite possible the -- noting the way that the documents are generated.

Q. Right. In that context, can I understand, in the time we've got left, why did you change your account from your affidavit to what we have now as to who stapled and assembled these documents? And let me be quite specific about it. You're aware, aren't you, that Jim Blackwell has taken the position that nobody could have had the IAT report within NZDF in New Zealand before 1 September 2011? You're aware of that, aren't you?

A. No, I'm not aware of that.

- Q. You're not? Okay. What is the reason then that you changed your evidence from finding this stapled, which is consistent with it being one of many copies, and I don't criticise -- why have you changed that to one where you eagerly speculate, without remembering, that you might have stapled it? Who suggested that idea to you?
- A. Nobody suggested that idea to me. I mean --
- Q. Who wrote the words in that paragraph?
- A. -- when the Inquiry -- sorry?
- Q. Who wrote the words in that paragraph in your brief?
- A. Well, I signed it, so they're my words.
- Q. Not what I asked?
- A. After discussions with the NZDF legal team.
- Q. All right. Why did you change it? Why did you change it from finding them stapled to saying that you might have done it?
- A. Um, well, what I mean there is some of them -- I might have added to that pile -- sorry, the storyboard and the -- I mean, I'm trying to remember things here which happened what, five years ago, or more. There could have been some documents stapled together already in the safe and what I have done is stapled other ones like those draft letters and possibly that transcript of the SNO's email. I stapled those on the morning because I knew that they all related -- I realised that they all related to the same operation.
- Q. But you've answered that with the words at the beginning "I could have". So that's, again speculation, not memory?
- A. Well yes. I don't remember sitting there stapling, saying I must staple these.
- Q. All right. Can I ask you a final thing because we're at the end of the line for the morning session? You know what SWAN is, and you understand, given your liaison role and your various roles, how data is generally stored and exchanged electronically within the NZDF, correct?
- A. I am aware of SWAN. I did have my own terminal, but I got rid of it because I only used it twice in three years.

- Q. Now, as a civilian --
- A. Yes.
- Q. -- I have always assumed that the NZDF would have at least better backing up systems for critical data, Defence data like that, which is kept in SWAN, than say a law firm would have, which backs up data every night, for example, every week, keeps ongoing copies of databases for years. The NZDF would have all of that, wouldn't it?
- A. I'm not a specialist, but I am aware that there is some 24 hour data recording done, but whether that applies to SWAN or not, I've got no idea. You'd need to get evidence from a specialist in that field.
- Q. But it would be a security risk if one person could delete their files, for example, and remove them from the purview of NZDF? That would be rather a security exposure, wouldn't it, to allow someone to disappear information?
- A. Well, I'm not quite sure what happens when people delete emails. I would presume that they are recorded somewhere. I mean that's why I'm saying you're going to have to talk to an IT specialist who runs those systems.
- Q. Right, and just finally, in terms of electronic copies, are you aware of whether electronic copies of the IAT report exist within NZDF or you don't know?
- A. I've got no idea. I've ever only dealt with papers copies.
- Q. Now, I understand, but I can't see the IAT report, but I understand that the Inquiry's possibly been provided with a copy that is annexed to these documents which has pen markings on it, but also a copy that's clean. Are you aware of that, or do you not know?
- A. I am aware of that. The version with the markings probably came -- would have come from my safe.
- Q. Where did the clean one come from?
- A. I've got no idea.
- Q. But the multiple copies we're looking at here didn't all come from your safe, did they? Or did they?

A. No, I mean it could have been in any repository, any IT repository.

Q. But the hard copies didn't all come from your safe, or they did?

A. Well, only the hard copies I held. I mean if --

Q. The multiple hard copies we've just looked at together, were they all in your safe or not?

A. Some of them --

Q. You just can't remember, can you?

A. I just can't remember -- well, it's not remember -- I remember the SNO's transcripts came in on either the Monday or the Tuesday. Probably the Tuesday because it was part of the bundle I believe I gave to CDF. I'm pretty sure I had the storyboard and the IAT, a whole bunch of other documents relating to Afghanistan, but not Op Burnham.

Q. These are memories you actually have now?

A. If you mean memories one hundred percent sure, no. I can't be that.

MR SALMON: Yes, thank you Sir, that's time. I don't know whether my friend will be able to re-examine in the time we've got left.

SIR TERENCE: Well, I was just going to ask about that. Thank you, Mr Salmon.

MR SALMON: If he's not, there's just one point of order I'd raise with you afterwards before we break for lunch regarding scheduling, just in case we adjourn in at a pace, thank you Sir.

SIR TERENCE: Now Mr Radich, I don't know how much re-examination you've got, but I'd be quite keen to let the witness go, if we could deal with it quickly?

MR RADICH: Yes, it suits me.

SIR TERENCE: We do have, at least I do, have some questions, but if it's just a matter of 10 or 15 minutes, then?

MR RADICH: Yes, it's exactly that. Would you like me to do that now?

SIR TERENCE: All right, well let's do that.

So do you mind -- just we'll finish yours and then you can be free?

A. Thank you.

MR RADICH: I'm sure he'd like that very much.

RE-EXAMINATION BY MR RADICH

MR RADICH: Mr Hoey, good afternoon, just one or two things.

Now, you were asked some questions about DFO 51 by my learned friend, Mr Isac?

A. Yes, I was.

Q. And my learned friend put the proposition to you that, looking at a scenario where someone might take a document, using my notes of his words, take a document out of the office, bring it back to the office, and destroy it without logging it into the register. And you said well, it depends on the officer's role and you mentioned some practicalities making -- coming into the equation?

A. Yes.

Q. Could I just ask you to focus on that scenario for a moment? And I can't ask you leading questions of course, so I'll just have to put questions to you and see how we go.

What it -- what other sort of circumstances that you think might make a scenario of that sort permissible, or are there any?

A. If a subject matter expert was leaving the building, he or she may have a copy of a classified document that they have quite properly taken from their system, gone to brief someone, either CDF or out at Joint Headquarters or wherever, I'm not specifying the Minister's office, and brought it back with them. Now, the fact that they did that should have been -- or should be logged and its destruction copied, but again, it's -- again, expedience has a significant role here.

Q. If someone was doing that, would you expect them to transport the document in any particular way?

- A. Yes, either in a secure satchel or secure briefcase. The document would probably be double -- or should be double enveloped.
- Q. Thank you. Now you were asked some questions about when the IAT report and the storyboard came in, and whether you recognised its significance. You said that you would skim -- you skim read it, and you didn't make connections with statements earlier. Can -- because you were referring to the busyness of the office, could I ask you just to explain to the Inquiry the nature of the office of the Minister when you were working there in that role? Just to expand on your comment that it was busy?
- A. It was busy. I mean, the Defence portfolio at that stage, it just wasn't Afghanistan. There were several other operations going on at the same time. The Defence White Paper 2010 had just been released. So my Ministry of Defence Secretary, with a little bit of input from me, was working busily towards the -- you know, the Cabinet papers which were starting to generate and flow from that. We were still dealing with issues relating to the 2010 Anzac Day helicopter crash and dealing with the families. It was, you know, a very very busy office. As I said, the Defence portfolio is very dynamic, and at the same time, there's all those other corporate issues going on in the background. So -- and my role just wasn't to support, as I said at the start -- my priority role, I saw, was making sure that the CDF and the Minister were talking coherently between themselves or with the subject matter experts. There was a lot of other activity which went on in the Minister's office. We had a lot of programmed overseas travel, and even though I was a Captain, a senior officer, it's very transactional in organising those tours overseas; they take a huge amount of work. So that was going on at the same time. As we alluded to earlier, we'd had a couple of deaths. So, it's coordinating -- the Minister quite rightly wanted to visit the deceased's families and all that sort of

stuff. So all of this stuff is also going on in the Minister's office.

Q. Thank you. You were referred to Mr Blackwell having briefed the Minister on certain occasions; I think four occasions were put to you by reference to the diary. Are you familiar with the way in which the Minister's diary operated, in your role?

A. In my role, if those -- those briefings were based -- there was normally a routine; there was a pattern to them, but if something cropped up early that the Minister needed to be made aware of, then there would be an ad hoc entry made. Now I would either speak with -- well, I would speak with the Senior Private Secretary, say, can we put these dates into the Minister's diary? And she would put in the name of who was coming across to brief, and my name as the lead secretary would be a point there, and the telephone exchange or the extension number was my extension number.

So, on other occasions, it wouldn't be without the realms of realism that the CDF, if he wanted to brief the Minister, well, he could talk to the Minister at any time directly if he wanted to, if he needed to, but his -- the CDF's EA might have phoned the Senior Private Secretary and asked for a meeting window, in which case, I would have picked that up in reading the Minister's diary. You know, essentially the Minister's diary was my diary, or our -- the secretary's diary.

Q. Was everything that occurred in the Minister's office recorded in there, or otherwise?

A. Sorry, recorded in the diary?

Q. Yes.

A. The main parts, but there might have been other, you know, sort of ad hoc briefings organised. I can't categorically state either way.

Q. Okay. Thank you.

Just coming back to the DSO again, and it came up just at one time later on in the questions that you were asked, any

idea how long it's been in service? The DSO  
itself -- sorry --

A. DFO?

Q. -- DFO, my apologies. My writing, 51?

A. Well, I joined the service in 76 and I remember being taught  
about it then.

Q. All right.

A. So it's been around for decades.

Q. And are you aware of any other written measures that govern  
the way in which documents are to be managed that have come  
into play since?

A. Not specifically. Certainly, not electronic ones.

Q. Okay, we'll leave that for submissions.

Now, can I ask you, please, to have a look at -- I'm just  
coming back to a point that my learned friend was making,  
page 371 -- what I think I'll ask you to do -- yes, I think if  
we -- yes. This was where it came from. If you go back  
please, now, you were given the full copies of the register,  
and if you go to the OCDF one, the one with the yellow sticker  
on the front page, they were just handed up singularly to you.  
Yes, possibly amongst that pile?

A. Oh, these ones.

Q. There's one that's just one simple page?

A. This one here?

Q. Yes, there it is. And you were asked some questions about the  
numbers. So, for example, if you look, if you come down,  
please, to on the left-hand side, 573/11, and you will see the  
total number received or produced five, copy number four? Do  
you see -- and you were asked questions about that?

A. Yes.

Q. And if you come then to the ones that I think you'll find are  
highlighted, and these are the ones that are disclosed in the  
redacted versions for my learned friends, the entries were one  
and one, do you see those?

A. Yes, I do.

Q. I'm just trying to understand, for our own purposes, the heading. If you go to item G, if you go over the top of the page, it says, and there are two different things here, "Total number received or produced". Can you explain those, because they're quite different things?

A. Well, the -- if this was my register, if I had produced a document, then I would have logged it in here for distribution as the producer. So I would have said -- if I had five copies to go to five different addressees, I would have put total number produced, you know, is five. Now, the person who was handling the 392, for one of those addressees, would register it in as one, and then the copy number, if you see what I mean?

Q. Yes. Yes, I see.

A. So the 392 has two uses. It has one for receiving information and also one for transmitting.

Q. I see. Thank you, that's helpful.

Could we go, please, then -- just if you keep that open to you, and for my learned friends, just so that they can follow, on -- who don't have these pages -- if you go please to the supplementary bundle for NZDF witnesses, and it's at page 371. Don't you worry about that Mr Hoey; I think we can just go off the pages you've got in front of you. This is just a reference for my learned friend and for the record, page 371 of NZDF's supplementary bundle.

Now what we're looking at are the two yellow highlighted entries, 386/11, 387/11 in the photocopy in front of you --

A. Yes.

Q. -- do you see that there?

A. Yes, I do.

Q. Now, I just want to be clear on this, because you were asked a lot of questions about it and I just want to work through it with you. So, do you see your signature on that page?

A. The line marked 386/11, out to the right after date of receipt returned, I've initialled it there.

- Q. Yes, thank you.
- A. Somebody else has entered my name above that; I've got no idea who that is.
- Q. Yes, and just to recap, what were you doing when you initialled it, in relation to the documents?
- A. I would have received them, however -- by whatever mechanism that would have been. And quite likely -- I mean, the fact that they're just labelled, "For MINDEF two secret documents," whether I actually -- I would have -- may have just actually signed this, because this is -- belonged to somebody else's stuff, to say that -- or to somebody else's safe. I would have signed -- simply signed, rather than hold them up, as receiving the documents.
- Q. Thank you, and can you please be clear, on your evidence, where it says, "two secret documents", just to recap, can you explain what your evidence is the documents were?
- A. I believe it was the storyboard, Op Burnham storyboard, and the IAT report.
- Q. And would you please come now -- there's another signature on the page, under the heading "Recipient", it's column L. Do you recognise that signature?
- A. Initial? No, I do not.
- Q. The initial?
- A. I don't know who that is.
- Q. All right. Okay, we'll leave that.
- And the -- just to confirm, in terms of the number of these documents that you have received, on the far left-hand side, 386/11, do you see that there?
- A. Yes, I do.
- Q. All right. Now, if you then go to the next -- you've been given the multiple paged entry?
- A. Yes.
- Q. Just to link these up so we don't miss it, 504, and I wonder, just for my learned friends again, this is -- sorry, I'm just

finding another copy for my friends -- 375, page 375 of the NZDF supplementary bundle. Can you just look at item 504?

A. Yes.

Q. And do you see in column E reference number --

A. Correct.

Q. -- the number that we were looking at previously?

A. 386/11, yes.

Q. And are you able to comment on what that then tells you, with reference to both of these registers and that number?

A. That I receipted for document 386/11, and I've entered it -- that document -- in on the 2nd of December 2011, and it was duly destroyed, shredded, on the 5th of December 2011.

Q. Yes, and when you say, "that document", just to be clear, back on the first entry in the single page, you've just said, and I'm not leading you on this, two secret documents is the entry?

A. Yes, I mean that was -- that label "two secret documents" would have been generated by the person who generated that entry.

Q. Yes.

A. But, in my register, I've actually put the title, a fuller title.

Q. Yes, all right. Thank you. I think just one final thing, and it was the questions my learned friend Mr Davey was asking you -- Mr Salmon, I'm sorry -- was asking you just a moment ago, and you didn't have the documents in front of you, and I know he was very time pressured, but I just want to make sure you have the time to read these two paragraphs and comment on them. So, he was talking about the way in which you had described, in your evidence, the collation of these documents. Do you have your affidavit still in front of you? I'm sorry there are so many papers we've been putting in front of you; it's a miracle you're on top of it. This is your affidavit that was given to the Inquiry in August. Do you still have

that there? It will be in a spiral bound volume, and if you go to -- if it's the same as I have, page 52.

A. Yes.

Q. And the paragraph that is relevant is paragraph 5, and would you just read that please, in your own time?

A. "I handed over to this person the notes to the Minister and the bundle of documents which were stapled together. The bundle is attached to this affidavit and marked as Exhibit A."

Q. Thank you, and then just have a look at the evidence you've given today, your statement of evidence dated 3 October?

A. Yes.

Q. And paragraph 11?

A. Yes.

Q. And I'm just referring you to two sentences. One is the second sentence, "I believe I must have combined them all"?

A. Yes.

Q. And then the last sentence, "I then stapled all the documents together and provided them."

Could I ask you please, just with reference to your affidavit and this, to explain to us, now that you've been able to read them, what you believe the sequence was in terms of collation?

A. In the safe I had the IAT storyboard, and a copy of the IAT, IATF report, which we're talking about, the copy of which had underlinings and markings which my predecessor had logged in. When it came to the hearing, and I believe those two, three, four pages were actually -- were stapled together, because they were a document. When it came to 2014, June 2014, I was asked to provide documents relating to Afghanistan, then I had copies of the draft notes with CDF's manuscript, and I actually -- I probably removed the staple on the first one, and stapled those there, and also later that day, when the -- I believe it was later that day when the transcript of the SNO's email -- and stapled that together, because the request from the Minister was -- or the request from CDF was

for all things relating to Afghanistan, and they all related Op Burnham.

Q. I see.

A. So from the resources I had, that's what I put together.

Q. All right. Thank you very much. Nothing further Sir Terence.

#### QUESTIONS FROM INQUIRY MEMBERS

SIR TERENCE: I just have a couple of little things.

Going to Monday 30 June 2014 and you were talking about the -- Mark Chadwick coming to the office, and having the meeting, and opening the safe and so on. You made the observation that, and I assume you were talking about the course of that day and the following day, the Tuesday. A lot of people were realising the significance of the IAT report compared to what had been briefed to the Minister. Do you recall --

A. Yes, because most of the -- you know, the CDF was different; there was a lot of different people who are looking at it differently. The -- I recall on the Tuesday, and I'm pretty sure it was the Tuesday evening, and CDF had returned -- CDF Keating had returned from overseas. He held a bit of a meeting that night just to gather and that's the document bundle that I provided probably to him through the Chief of Staff. I believe that, having heard the evidence that Mark Chadwick phoned me on the Sunday afternoon, and I suspect that he'd had several phone calls with his Minister and other officers in the NZDF as to what this report was, so he had an inkling, if not a very firm idea, as to what he was after, and that would seem a reasonable sort of flow of events.

SIR TERENCE: Right, so people were realising that what the report said was significantly different from what -- public statements?

A. Well, I think -- I mean, I wasn't here yesterday for Colonel Blackwell's testimony, but obviously -- well, not obviously -- I believe that he'd discussed the interpretation of the IAT report with the Minister, and the conclusion was --

SIR TERENCE: Sorry, which Minister are you talking about?

A. Minister Mapp.

SIR TERENCE: Oh, this is in 2010?

A. Yes, as the background, and then in 2012, you've got a new Minister come in who had no prior knowledge of any of this, and who I believe, you know, at first face saw the IAT report said there may have been, whereas -- and obviously, the dichotomy between that and the previous statements issued by Minister Mapp.

SIR TERENCE: So you are suggesting that previously the report had been interpreted in a rather different way?

A. I can't be categorical on that, but I believe that's probably how it transpired. I mean, it's -- yeah, I can't possibly comment on that, because I wasn't at any of the briefings.

SIR TERENCE: Right. Well, let's go back to 2011. In April, there's the lead item on the news, and there's then the interaction between Guyon Espiner and the Minister, and the Minister says, there's been an investigation; no civilian casualties.

We then -- in May 2011, Keith Locke, MP asks a question in the House about it, and the Minister gives a very similar answer, "all those killed were insurgents".

And then in October, in early October, there are requests under the Official Information Act from TV3, which raised a number of things, but one of them was civilian casualties, and there's quite a bit of material that we've been provided about dealing with that Official Information Act request, which was ultimately answered, I think, in the early part of December.

Do you recall any -- bearing in mind -- and the Minister was clearly asked to comment on the answers that were proposed to be given to the Official Information Act request. Do you have any recollection of that?

A. Not specifically. No, sorry.

SIR TERENCE: No. The reason I raise it is, given what we have in April, it's come up again in May. We then get Official

Information Act requests in early October, which are answered in December. The IAT report seems critical to all of these elements. Now, it appears in 1st of September, as far as we know, and it indicates, as you've said, that the new Minister looked at it and has interpreted it in a particular way, and sees it as being inconsistent with the briefings he's got, and the public statements that are being made.

It does seem rather odd that that document was shredded, given all the public inquiries, public statements that had been made about civilian casualties, or the possibility of them?

A. That document was shredded because we were moving out of Minister Mapp's office; it was the end of his tenure in Parliament, and as a Minister. So, everything gets wiped and cleaned, or returned.

The reason I shredded it was because there were copies -- Minister Mapp had no more need for it. He was retiring from Parliament, and because it came from Headquarters New Zealand Defence Force I knew that the -- you know, they had the copy there. So it's not as if the only copy of the document was being destroyed.

SIR TERENCE: But bearing in mind that the Minister had been consulted about the answer to the Official Information Act request, and bearing in mind that you had a new Minister coming in, part of the obligation of the old Minister is to brief the new Minister on -- in terms of a handover, isn't it?

A. Well if that happened, it would have happened between the two of them, with no staff present.

SIR TERENCE: Right. So that -- and you weren't involved in that --

A. Not at all.

SIR TERENCE: -- and there was no discussion with you about that?

A. No.

SIR TERENCE: All right. The other thing I just wanted to ask, you've mentioned that you'd set up this electronic system for keeping briefings to the Minister?

A. Yes.

SIR TERENCE: But it was only up to restricted level?

A. That's correct.

SIR TERENCE: Right, and briefings from the DSO, I assume, were -- would basically have been secret, generally?

A. Yes.

SIR TERENCE: So what record keeping system would be -- would there be for those?

A. For material coming across to the Minister's office, or generally speaking?

SIR TERENCE: Yeah, so taking it back to your period and talking about 2011, you've got the DSO coming over to see the Minister --

A. Yep.

SIR TERENCE: -- to take the example of the document pack. It didn't have a covering note, so there would be a written briefing that the DSO brought with him. When he came over with that written briefing, you may or may not attend the particular meetings, depending on how it goes. What would have happened to the written briefing that the DSO used for briefing the Minister?

A. Well, he would have taken his -- the copy that he used back to the Headquarters building and put it in his system.

SIR TERENCE: Would there be no copy of that kept in the Minister's office?

A. Well, there wasn't a need to, because they'd already received a copy of what he -- the material that he was going to brief to the Minister.

SIR TERENCE: But you hadn't received the briefing though?

A. The covering briefing, or --

SIR TERENCE: Yes, I mean what you got, for example, is a storyboard and an IAT report without any comment on it?

A. That's correct.

SIR TERENCE: So the briefing that the DSO gave would provide the substance, the relevance of this --

A. Yes.

SIR TERENCE: -- what's important about it?

A. Yes.

SIR TERENCE: So having briefed the Minister, on the basis of the briefing note, the DSO takes his copy back?

A. That's correct.

SIR TERENCE: Is there a copy left for the Minister?

A. Yes it is, and that's the one I held in my safe until I destroyed it in December 2011.

SIR TERENCE: Right, and that briefing note, I mean, did you read it at any stage?

A. As I mentioned, I knew it was for the briefing. I just skim read the title and what it was. I didn't go into reading it in detail.

SIR TERENCE: I'm not talking about the IAT report; I'm talking about the DSO's briefing note explaining the IAT report.

A. There wasn't one though; there wasn't a cover sheet with the -- there was the storyboard, plus the IAT report, and that was used -- those documents were, I believe, used by Jim Blackwell to brief the Minister of Defence, but if those documents were coming across for the Minister to read, without a meeting, then there would have been a cover note explaining what they were and why they were being sent and the so what, and the next steps and all that sort of normal stuff, yeah. Yeah.

SIR TERENCE: All right, maybe I'll put it another way.

When the DSO came over to brief the Minister --

A. Yes.

SIR TERENCE: -- in a situation such as we have, where there was no cover note with the documents, so that his briefing was going to provide the explanation --

A. Yes.

SIR TERENCE: -- did he have a written note with him for his own purpose --

A. For his own script? I have got no idea to be -- to be perfectly honest.

SIR TERENCE: Right, if he did have a written brief that he used as the basis for his briefing to the Minister, which he brought with him on the day, in your experience, would the Minister have retained a copy of that?

A. No.

SIR TERENCE: No.

A. It would have just been used by the briefer to the Minister.

SIR TERENCE: Right.

A. If the briefer thought it was necessary for the Minister to have a copy, then that would have been appended to the documents that had already been sent across on the 1st of September.

SIR TERENCE: All right. Thank you, that's all I wanted to ask. Is there anything arising out of that?

Well thank you very much; we've gone over time, but I was keen to try and finish and get you released. So you're free to go.

For the rest of us we'll start again at 2.30.

(Witness excused)

MR SALMON: Sorry Sir, just -- it's only very brief. I don't have the rights for cross-examination for further witnesses until Friday, I think, for the CDF and Dr Mapp?

SIR TERENCE: Right.

MR SALMON: With your leave, I'll scarper now and try to clear things up so I can be here on Friday. In theory, I'm in a hearing, but I will try to be back, because it seems right.

SIR TERENCE: Thank you very much.

MR SALMON: Thank you, Sir.

SIR TERENCE: Thank you very much for advising that.

And this afternoon we'll go from 2.30 straight through to 5; we won't have an afternoon break.

(The luncheon adjournment)

SIR TERENCE: Mr Radich?

MR RADICH: Thank you very much, Sir Terence. I call Michael Thompson.

**MICHAEL ANDREW THOMPSON (Sworn)**

**EVIDENCE-IN-CHIEF BY MR RADICH**

MR RADICH: Good afternoon, now your full name is Michael Andrew Thompson?

A. Yes, it is.

Q. And you are the Director Asia of the International Branch of the Ministry of Defence?

A. I am.

Q. You have given a statement of evidence to the Inquiry already, haven't you, and that's -- that you've read out and been cross-examined on?

A. Yes, I have.

Q. And in that statement, you've given a background of your experience in the NZDF. I don't think we need to go through that again, Sir Terence, unless you'd like to?

SIR TERENCE: No, no.

MR RADICH: Thank you very much. And you've got now for us a second Brief of Evidence, in front of you?

A. I have.

Q. And it's dated 4 October 2019.

Thank you. Now, please would you read the evidence to the Inquiry beginning at paragraph 1?

A. This supplementary Brief of Evidence is provided further to my Brief of Evidence of 13 September 2019. In that brief, I indicated that I placed in my safe a bundle of documents containing the IAT report, and that this was recorded in my

classified document register. I said that I could not recall who may have given me the bundle.

As I understand it, on 19 September 2019, the Inquiry directed the NZDF to search a separate classified document register in the Office of the Chief of Defence Force. I have now had the opportunity to review the relevant entry; I refer to the NZDF bundle at pages 369- 372.

Q. And if we could do that, please? You'll have the smallest bundle in front of you, in fact right there. Yes, you have it in your hand, I believe, and if you go please to page 369, bottom right-hand corner. Do you have that there?

A. Yes, I do.

Q. And if you please turn over to page 371?

A. Yes.

Q. Do you confirm that that is the entry that you're referring to?

A. Yes, it is.

Q. Thank you. And perhaps just keep that open in front of you as we go through.

And we go back to your statement of evidence, please, at paragraph 3.

A. The OCDF Register shows that on 1 September 2011, the "DSO" - Director of Special Operations - marched in two secret documents described as the "Baghlan Province Brief for MINDEF". It also shows that, on the same day, the "DCOS" took a copy of the brief, which has the serial number 387/11. I was the DCOS, Deputy Chief of Staff, at that time, and can confirm that it was my signature alongside the word "DCOS" on the OCDF Register.

Q. Just pause there for a moment and we'll just find that on the page, please. So looking at page 371, can you point out your signature, please, there and just explain to the Inquiry where it is?

A. It's in column K, next to DCOS, and it's my initials in fact.

Q. Yes. Thank you.

And then paragraph 3, last sentence, please?

A. I did not write the words "Hoey folder" and do not know when they were recorded.

The OCDF Register indicates that the documents were marched in by the Director of Special Operations, who I believe at the time was Colonel Jim Blackwell. I still do not recall who gave me the documents, or what was said at the time, but I accept it could have been him.

I can see Chris Hoey's initials on the OCDF Register. He was the Military Secretary to the Minister of Defence in September 2011. It is likely that if his signature was on the OCDF Register, it is because he picked them up from Headquarters NZDF.

I can see from my classified document register, which is in the NZDF bundle at page 191, that I registered the two documents on 7 September 2011, described them as a "Briefing Pack on Civcasualties - Kabul Aug 2010", and gave them the serial number S116. I imagine that I described the bundle in that way because the title of the IAT report refers to civilian casualty allegations. I realise now that the IAT report is about an operation in Baghlan, not in Kabul. That was an oversight.

Q. Just pause there for a moment before we leave the paragraph. Can you go please to the NZDF bundle? It will be called bundle of documents accompanying NZDF witness briefs. I think it's the one underneath. Yes, thank you. And just to have a look at page 191; the pages are numbered on the bottom middle?

A. Yes, I have it.

Q. Is that the entry that you're referring to in paragraph 6?

A. Yes, it is.

Q. And that you gave evidence of at the last hearing?

A. Correct.

Q. Thank you.

And then paragraph 7 please?

A. Although I received the documents on 1 September 2011, it seems I didn't record them in the register until 7 September 2011. They would have been stored securely in the safe during this period, but I must not have recorded them in the register immediately.

I did not highlight or annotate the documents. I had no cause to do so and it is not what I would normally do with original documents going in to my safe.

Q. Thank you very much. Please would you now answer any questions my learned friends may have?

#### CROSS-EXAMINATION BY MR ISAC

MR ISAC: Mr Thompson, thank you for coming back to answer further questions for the Inquiry.

I want to begin by clarifying with you whether the IAT report, when it was originally received into NZDF, ought to have been logged or recorded or registered in some way in a classified register. Do you think that ought to have been the case?

A. I don't understand the question. Are you saying separately?

Q. Well, when it was received -- receipted within New Zealand ought it to have been lodged, registered in a classified document register?

A. If it was part of a bundle, as it was, I think it has been registered.

Q. Right. That's when it comes into OCDF?

A. Yes.

Q. -- Office of Chief of Defence Force. What about when it was received into the Directorate of Special Operations? Ought it have been lodged when it was received by that office?

A. Well, I think it has been through the Office of CDF?

Q. Right, so your office is registering it on behalf of the DSO?

A. No, not my office. The Office of CDF is registering it.

Q. Right. I mean, isn't the whole point of these registers to provide a careful audit trail so you can trace between the

different units and sections of New Zealand Defence Force where the document has been?

A. Or where it is?

Q. Yeah.

A. Yes.

Q. And where it's been?

A. Yes.

Q. All I'm suggesting to you is that an office, a unit within NZDF received the IAT report, and at the point in time that it was received, that fact ought to have been registered within one of the MD 392 documents? Do you accept that?

A. It could have been. I don't know, because I didn't receive it, so --

Q. I'm not trying to trip you up here. I'm simply saying, because we know that you didn't receive it initially within New Zealand Defence Force -- simply suggesting that the person who did receive it originally ought to have logged it?

A. If you're suggesting that it could have been logged into a -- for example, a Special Operations register before going to CDF, yes, it could have been.

Q. Yeah, well, we know that it wasn't. There is no record of it going in the register at the DSO. So what I'm suggesting to you is that it ought to have happened? Do you agree with that?

A. I would have thought it would normally happen, yes.

Q. Yeah. It's the case, isn't it, that when you receive this pack or bundle of papers that the issue of civilian casualties was actually reasonably proximate within the minds of senior officers, including yourself, within the Office of Chief of Defence Force, based on the publicity in the New York Times, the briefing notes to the Minister in December 2010? Do you agree with that?

A. It was a number of many issues that were running at that time, and it wasn't even probably, at that time, the most prominent of the issues around Special Forces.

- Q. Right, but it was a big deal, wasn't it? A report indicating that there may have been civilian casualties, as part of an operation which New Zealand formed part of the units operating, that was a big deal?
- A. I wouldn't call it a big deal; it was part of the post-operational reporting. There was -- been other reports on it in the media, as you said, but it was only part of a tapestry of things that were going on at that time.
- Q. Have you ever said on a previous occasion that it was a big deal, a report indicating civilian casualties associated with an operation by NZDF?
- A. I think it was a big deal in 2010, after it occurred.
- Q. Yes. Yeah. And do you remember giving evidence in September along these lines? You were asked:
- "And you'd be aware from your time in the CDF's Office that the ISAF report on potential civilian casualties was a big deal?"
- And your answer:
- "Yes, from the previous year."
- A. Yes.
- Q. That was your answer on oath?
- A. Yes, and that's the same answer I've just given you now, which is the previous year.
- Q. Yeah, thank you. So when it's received into the office in September, people have that knowledge, don't they, from the previous year, that this is a big deal, yeah?
- A. It's a significant issue, yes.
- Q. Yeah. All right. Well, Mr Kelly, when he gave his evidence, and I can refer you to the notes of evidence if you want to see them; they're at page 342. He said that, in particular, you and he were responsible for drafting the briefing note to the Minister of 10 December 2010, right? That was his evidence on oath, that you and he -- you in particular, and he were responsible?
- A. In 2010?

Q. Yes.

A. Yes.

Q. So you agree with him?

A. Yes.

Q. Okay. He said that he'd sit around in an office with you, often, and draft the notes for the Minister. Do you agree with what he said?

A. This is in 2010?

Q. Yes.

A. Yes.

Q. And your name in fact is on both of those briefing papers as a second contact below his, aren't they?

A. If that's the same ones I saw last time, yes, it is.

Q. Yes. All right, well, have you seen the Brief of Evidence that Mr Jim Blackwell has provided to the Inquiry, in relation to the matters that we're currently discussing?

A. No, I haven't.

Q. Okay, well, I'm going to ask for a copy of that to be provided to you. Mr Radich may have a --

MR RADICH: Here we are.

MR ISAC: So before we get into that, has anyone talked to you about what Mr Blackwell's evidence was going to be or what it was?

A. No.

Q. Okay.

A. And I have not seen anything on the media either.

Q. All right.

Can I take you to paragraph 15? He says:

"My recollection is that after reading the IAT report [and he says this is on the 1st of September] I printed a copy of it and took it to the Office of Chief of Defence. I gave it to Mike Thompson, who was the Deputy Chief of Staff in the OCDF, and who was responsible for coordinating between OCDF and the Office of the Minister of Defence."

And I take it you don't take issue with what he says there?

A. I don't recall it that way. I do not recall.

Q. Okay, well how do you recall it?

A. As I gave the evidence before, I wasn't sure who gave it to me, and even now, I'm still not convinced that might be the case, because it came out of the Office of the CDF's register.

Q. Right.

A. And as I indicated, it could have been a member of the OCDF staff.

Q. Right.

He then says very specifically:

"I said to him [that's you -- I said to Mike Thompson] that this was a document that the Chief of Defence Force and the Minister of Defence needed to see."

A. I don't recall that either.

Q. Did he say that to you?

A. I don't recall that.

Q. Well, do you disagree with him?

A. Well, if I don't recall it, I can't agree with it.

Q. All right.

And he says:

"I asked Mike to let me know when the CDF was ready to be briefed on the IAT report."

A. I don't recall that either.

Q. You disagree with him on that?

A. I don't disagree with him; I just don't recall it.

Q. Is it possible then that he did say these things to you?

A. No, I wouldn't want to speculate on that.

Q. Well he's very specific in his recollection, isn't he?

A. He is indeed.

Q. He's saying one copy, took it to you. Took it to you because you're the man who is responsible for making sure the CDF and the Minister get the document; that's what he's saying. Yeah?

A. Yep.

Q. And he's saying that, not only did he take it to you, but he, as you might expect, told you why he's giving it to you, right, that's what he's saying in paragraph 15?

A. Yeah, I do not recall that.

Q. All right. So it is possible he's right, and you don't disagree with that?

A. No, I can't accept that because I don't recall what was -- what happened.

Q. Can't accept my proposition, or what Jim Blackwell is saying to you?

A. What is said there.

Q. By Jim Blackwell?

A. Yeah.

Q. Yeah. He also, beyond that, gave evidence along these lines. He said, in answer to a question from Mr Salmon:

"Well I can absolutely remember receiving it, the IAT, 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 that conversation."

A. Well I equally do not remember that conversation at all.

Q. Right. It's okay to disagree with Jim Blackwell, if you don't accept those things happened?

A. No, I just don't recall.

Q. Right. Is it a logical implication in the fact that you don't recall, that Jim Blackwell might be right?

A. No, I can't accept that, because I don't -- I don't recall.

Q. Events that you can't recall could have happened, couldn't they?

A. Yes, they could have.

Q. Yeah. So how can you not accept them on the basis that you can't recall them?

A. I don't understand you -- what question --

- Q. Well, what I understand your answer to be is that you don't remember this discussion with Jim Blackwell; therefore you don't accept what he said about them, is that right?
- A. Correct.
- Q. What I'm suggesting is events that we don't recall in everyday life may have happened; we just don't remember them. Do you see what I'm saying, that distinction?
- A. Yes, I do.
- Q. So what I'm trying to get you to firm up on is either you don't remember and they may have happened, or you don't remember, or they didn't happen -- sorry, you don't remember because they didn't happen. Do you follow me?
- A. Yes, I do.
- Q. Yeah, so which is it?
- A. I mean, there's the potential they could have happened, but I don't recall this happening. That's the point.
- Q. Right. I mean, if it happens, you'd remember it, wouldn't you?
- A. That's the point I was just trying to make, I didn't -- I don't recall it, so --
- Q. It's unlikely it happened?
- A. It would stick in my mind, I'm sure.
- Q. Yeah, because he's not only just having a chat with you about passing some meaningless piece of paper on to the Minister, is he? He's passing you, according to his account, a three page document indicating that both the Minister of Defence and NZDF have made misleading public statements about the IAT report. That would stick in your mind, wouldn't it?
- A. Probably, yes.
- Q. Yeah. So, reflecting on that, the significance of the IAT report, the fact that you have no memory of any of this, do you disagree that -- with Jim Blackwell that these things happened?
- A. If on the basis that I don't recall, yes, I do.
- Q. He went on to say -- there was a question from Mr Salmon:

"Right, and the short point is, so you briefed Mike Thompson and not the CDF directly?" That was on the IAT.

And Jim Blackwell's answer was:

"On the 1st of September, correct."

Again, I take it that you don't accept that?

A. Same as before.

Q. Yeah, you disagree with that?

A. Yeah.

Q. Did you ever have occasion in your role to doubt the accuracy of briefings that Jim Blackwell might have given to other NZDF officers or the Minister? You're on oath.

A. I'm trying to think back now, so -- no, I don't think so.

Q. Never?

A. I don't think so.

Q. If you refer again to Mr Blackwell's Brief of Evidence, this time at paragraph -- first line of paragraph 18, and then paragraph 19. So he's shown a bundle of documents. These are the documents that are recovered from --

A. Yes.

Q. -- what was formally your safe --

A. Yes.

Q. -- and then became Chris Hoey's? And he says, he didn't assemble the documents. Wouldn't have had access to them. Did not give that document, and that's an SNO email. I can take it to you, but you, I think --

A. Yep.

Q. -- talked about it at the last hearing. You know the one that we're talking about? Copy and pasted from Rian McKinstry email that was part of the bundle recovered --

A. Yes.

Q. -- from your safe on the 30th of June 2014. He's saying he didn't give that document to you, that SNO email?

A. Well, that is what I received in that bundle, as is the -- in the OCDF register as well.

Q. Yeah.

A. It doesn't talk about an IAT report; it talks about a bundle, a briefing bundle.

Q. Yeah, and we know from the metadata of that SNO email that it was actually created on the 1st of September 2011, were you aware of that?

A. No.

Q. So that's actually the same day that he marches documents into your -- well, the Office of the Chief of Defence, right?

A. Yes.

Q. So you accept that if it's created on the 1st of September --

A. Yes.

Q. -- it goes in your safe on the 7th of September 2011?

A. No, it goes in the safe on the 1st of September.

Q. One safe. In your safe, then, on the 7th --

A. Oh no, first it goes into my safe on the 1st.

Q. Well, we'll come back to that, but whatever, the 1st or the 7th, and then it's recovered on the 30th of June. That SNO document could only logically have come from Jim Blackwell, right?

A. I don't know. I don't follow that necessarily.

Q. Did you have access to emails between the SAS?

A. No.

Q. Or did he?

A. Yes.

Q. Yeah. And given the date it's created and the date he marches in the other papers, you accept he must have brought that in, and given it to you, right?

A. He could have done that.

Q. If you look at paragraph 16, he says he only marches in one copy of the IAT, but when he looks at the OCDF register, that another copy was made. Now, did you copy the IAT report?

A. No.

Q. Do you know anyone within OCDF who might have done?

A. I can't speculate on that.

Q. If you look back again at the OCDF register, have you got that?

A. Yes, I've got it.

Q. Yeah, we've got document 386, and 387, haven't we?

A. Oh yes.

Q. Both coming in on the 1st?

A. Yes.

Q. Both with the same originator?

A. Yes.

Q. DSO?

A. Yes.

Q. That indicates that any copying would have been done before it hit the Office of the Chief of Defence Force, doesn't it?

A. It appears so.

Q. Yeah.

You, in previous evidence, have been to the effect that you were given a bundle of papers, you don't recall by whom, and you were told to put them in your safe, effectively, which is what you do and you put them in your safe?

A. Yes.

Q. Did you realise that one of those documents was the IAT?

A. No, I said before I did not.

Q. You'd expect, wouldn't you, that whoever gave you those documents, if they knew that the IAT was in there, would have brought that to your attention?

A. Not necessarily.

Q. Okay. Did you organise a briefing between Jim Blackwell and the CDF, in relation to the IAT report?

A. I can't -- I can't recall doing that.

Q. Can you recall having any discussions with the CDF about needing to have a briefing between he and Jim Blackwell?

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

Q. Would --

A. To be fair though, the DSO could see the CDF whenever he wanted to see the CDF, didn't need my intervention in it.

Q. Right, because in fact he had a direct reporting line?

A. He had a direct reporting line, yes.

Q. All right, well, if I can refer you to the spiral bound large volume you have there, in the ring binder, and you'll see some tabs on the outside. Can you find the October tab, just turn behind the October tab, and then go to page 92. In fact, if you begin on page 91. Most of this has been redacted, but what it is, is an email we can see from Office of Chief of Defence Force to NZDF All, and then 42 pages of email addressees who have been removed from that, and then if you look at paragraph 92, this is an email from Rear Admiral Jack Steer. The date, we know from the day before, is the 2nd of September. If you look at the penultimate paragraph there, it's talking about the release of a book by Mr Nicky Hager the day before, and it says:

"The book goes on to make claims about an operation in Baghlan region August last year. This matter was fully investigated by NATO, by an IAT team."

And then the last sentence:

"After reviewing the evidence, the investigation concluded that the allegations of civilian casualties were unfounded and the ground force and Coalition air cleared of all allegations."

You see that?

A. Yes, I can.

Q. Do you remember this email --

A. No, I don't.

Q. -- now that you see it? It's very evident, isn't it, that when Rear Admiral Jack Steer sent that, he's unlikely to have been advised of the existence of the IAT. Is that fair?

A. That's fair.

Q. Because he wouldn't have made that comment, would he?

A. Yes, that's correct.

Q. So he's in the office on the 2nd of September, isn't he?

A. Yes.

Q. And if CDF are unavailable for any reason, Jim Blackwell could have had a word in his ear, couldn't he?

A. Yes, absolutely.

Q. And Jim Blackwell would have received this email, because it's sent to @NZDFall?

A. Yes.

Q. So wouldn't the first thing you'd expect Jim Blackwell to do is pick up the phone to the VCDF and say boss, we've got a problem, yeah?

A. Yes.

Q. I mean it's inexplicable he didn't do that, isn't it, given what he knew about the IAT report and how it contradicted a statement that's just been made to every member of the Armed Forces?

A. On the basis that he would have -- he received this, yes. I would have found it surprising if he haven't raised it.

Q. Yeah.

All right, well, I just want to deal briefly with the OCDF register, and I'm going to pass you a version of it which is a bit more fulsome than the version you have in the bundle there.

I just have a few relatively brief questions about it.

So this has a few more entries, and we need to be a bit careful. I'll just say, I'll put some quite specific questions to you --

A. I understand.

Q. -- about this material, but can you confirm that this register was attached to a -- what presumably was a large safe, which was principally for use by the Chief of Defence and the Vice Chief of Defence?

A. Yes.

Q. And one or both of their Executive Assistants were the people responsible for filling in this register?

A. Yes, that would not always be the case though. I have to say.

- Q. Sure. And we can see, can't we, this is one page, but it's fairly evident that there's quite a volume of material going through it?
- A. Yes.
- Q. Is it this safe where you would normally expect to see briefing papers for the Minister, if one's been run over to the Minister's Office, and a copy is retained within OCDF, it's in this safe, presumably, where they normally stay?
- A. Yes, I would think so.
- Q. Yeah. And in terms of something as sensitive as the discovery of the IAT report, how likely is it that just the storyboard and the report, with no accompanying briefing paper, no scheduled briefing for the Minister, literally no accompanying context, either written or verbal -- how likely is that to have occurred with a document such as the IAT report?
- A. Going to the Minister's Office?
- Q. Yeah.
- A. Sometimes things will go across like that, but most of them would go across with a cover sheet or some sort of --
- Q. If it's something as delicate as look, we've now got this, and we've put you wrong, and you've made statements Minister, and we've made statements, that are wrong, how likely is it that that critical information would just be passed over in some written form without someone actually accompanying it to a scheduled briefing to say, look, here we are? We're fronting up to explain. Do you see what I mean?
- A. Yeah, I don't recall around this specific one, but there will be occasions where someone would have rung the Minister.
- Q. Yeah, I've got to talk to you about something?
- A. Yep, and I would have expected something like this to come up at a subsequent meeting, yep.
- Q. Yeah. So you'd make an appointment to have a briefing and you'd take the material with you so you could explain it to the Minister, presumably? This wasn't a routine document that had come to light, was it?

A. If -- it could be raised as part of a regular meeting that's coming up, or it could be raised as a special one-off.

Q. So, just moving on then, perhaps, to you receiving the briefing pack. You indicated previously in your evidence that you'd never read the bundle, haven't read the IAT, and that remains the case, doesn't it, today?

A. Yes.

Q. And your safe would not be the usual place, presumably, that you would keep a copy of a Ministerial briefing, is it? You'd presumably keep that in the OCDF safe, wouldn't you?

A. There would be some occasions where I'd have stuff as well.

Q. Sure?

A. For example, I had other Afghanistan stuff in the safe, and they were in a file.

Q. And some of them were briefings, I acknowledge that immediately, but your safe dealt with a much smaller volume of material, didn't it?

A. Yes.

Q. A lot less frequently used, effectively, for classified material?

A. But for something like this, I'd expect it to actually probably be held in the DSO safe.

Q. Yes, right, for that briefing, rather than finding its way into yours? Yeah. I mean, given how important that material was, the fact that you're not told about what it is, and therefore don't have any reason to look at it thoroughly, doesn't it suggest that whoever gave it to you never brought to your attention what it was and its importance?

A. Other than telling me it was a briefing pack for --

Q. Yeah, put it in the safe?

A. Yep.

Q. Yeah. I'm going to get you another register, full register, and this is this time for your safe.

A. Thank you.

Q. And, if you can find on that document 116? So this is the -- this is your record of the pack and whatever it was that's received, isn't it?

A. Yes, it is.

Q. And, just briefly, we can see that you've recorded date of entry as the 7th of September?

A. Yes.

Q. So that's six odd days after it gets marched into OCDF?

A. Yes.

Q. And then date of origin's the 1st, and the title "Briefing pack on civ casualty Kabul, August 2010"?

A. Yes.

Q. I just wanted to get you to look at the way that's been entered in your safe register, and compare it to how its recorded in the OCDF register. The originator is no longer DSO, in your register it's OCDF. Do you see that?

A. Yes.

Q. Do you have any explanation for the change in the originator?

A. Because that's where it's come from.

Q. Right. So -- thank you, so what's likely is it's been marched in on the 1st?

A. Yes.

Q. Someone's worked on the papers -- worked on document 116, within the Office of Chief of Defence, and then you've put whatever it is that's been worked on into your safe on the 7th, is that fair?

A. It could have been come into my safe before then.

Q. Right, we've heard that when the IAT report itself is pulled out of this safe in 2014, it's marked up. So someone's engaged with it. Was that you?

A. No. I've answered that question to you last time.

Q. So -- but someone's engaged with it, haven't they, within Defence, yes?

A. Yes.

Q. Do you have any idea who?

A. No, I don't.

Q. And whoever gave this to you didn't draw your attention to the fact that someone's worked on it, marked up the copy?

A. No.

Q. In addition to the originator changing from DSO to OCDF, the title of the pack has changed as well, hasn't it, because it came in as Baghlan Province Brief for MINDEF, two secret documents, correct? On the --

A. Yes.

Q. And then your title for it is actually more accurate, isn't it? You say, "Briefing pack on civ casualty Kabul 2010"?

A. Yes.

Q. Do you see that?

A. Yeah, I can.

Q. So, is it possible, again, just coming back, that I'm not saying you did it, but after the document or documents are marched in on the 1st, someone's worked on this before it's finally lodged in your safe on that date?

A. It's possible, but I don't -- I don't recall that.

Q. Well, why do you think the title changed?

A. That's an error. I should have used the same title as the one out of the OCDF register.

Q. Okay.

And I think you've already accepted that the SNO -- what I've referred to as the SNO email, but it's a copy and paste of that, logically has come in to your safe at the same time as the other papers that are recovered in June 2014?

A. Yes.

Q. Is that fair?

A. Yes.

Q. Did you hear any discussion within the Office of Chief of Defence, either in 2011, or in 2014, about the IAT report?

A. In OCDF?

Q. Yes.

A. In 2011?

Q. Yeah.

A. No, I can't remember any conversation.

Q. What about in 2014, when it's discovered again?

A. I can't recall then either. I wasn't there then, of course.

Q. Did Kevin -- sorry, did Ross Smith come and speak to you in late June, or more likely early July, about the IAT report and its origins?

SIR TERENCE: Is this 2014?

MR ISAC: Sorry, thank you. Yeah, in 2014?

A. He may have, but I can't remember the details of that.

Q. Right. Can you recall that there was something of an investigation at that point?

A. Yes, I do.

Q. Yeah?

A. Yes, I do.

Q. And do you know about that because of this process, or actually --

A. No, no, at the time.

Q. Yeah, because I mean it must have been a reasonably big deal, yeah, because Minister Coleman was pretty displeased about it, and as we understand it, Ross Smith was trying to get to the bottom of where the document came from. Is that right?

A. Yes, and I'd have to say that that surprised me in some respects. I've been reflecting on that in the last -- since I last gave evidence.

Q. Yeah, tell us?

A. Because, if a copy had gone to the Minister's office, there is a process that goes through when a new Minister comes in where he's briefed, and one of the briefings is the Special Forces brief. I find it very hard to believe this was not raised while that Special Forces brief was done.

Q. Right. Who would have done that, given that the DSO at the time was Jim Blackwell?

A. Well, I would have expected he probably would have, along with CDF, I would have thought.

Q. Yes, thank you.

RE-EXAMINATION BY MR RADICH - nil.

SIR TERENCE: We have no -- no further questions. So thank you very much and I'm sorry we've had to call you back, but it's very helpful thank you.

(Witness excused)

**GORDON ROSS SMITH (Sworn)**

EVIDENCE-IN-CHIEF BY MR RADICH

MR RADICH: Good afternoon, your full name is Gordon Ross Smith?

A. Correct.

Q. And you are a retired Commodore at the New Zealand Defence Force?

A. That is correct.

Q. And you've given a Brief of Evidence, Mr Smith, haven't you, before to the Inquiry and spoken to it, at the September hearing?

A. That's correct.

Q. And you now have a further Brief of Evidence that's dated 3 October 2019. Is that correct? Is that in front of you?

A. That's correct.

Q. Yes, thank you. Please would you now begin reading the brief for the Inquiry beginning from paragraph 1?

A. This supplementary Brief of Evidence is provided further to my brief of 10 September 2019. In the initial brief, I explained at paragraph 30, that the Minister of Defence, the Honourable Dr Jonathan Coleman, asked me to contact Rian McKinstry - who was the Senior National Officer in Afghanistan when Operation Burnham was conducted - to ask him what he knew about the IAT report.

I did not understand the Minister to be requesting a formal investigation into the matter. If it had been a formal investigation, there would have been terms of reference drafted by lawyers, and the investigation would have been

conducted by someone independent of the OCDF, that's the Office for the Chief of Defence Force. Rather, as I viewed it, I was simply following up a factual matter raised by the Minister.

In the initial brief, at paragraphs 32 to 38, I set out the steps I took to understand how the NZDF obtained a copy of the IAT report:

I immediately contacted Peter Kelly, who was the Director of Special Operations at the time of Operation Burnham, and Rian McKinstry to ask them to see me the following morning.

I met with Peter Kelly the following day at 9am.

I met with Rian McKinstry the following day at 9:30am; and based on a comment made by Peter Kelly, I contacted Defence Legal Services to ascertain whether they had received the IAT report.

I have since been shown an email exchange, which is in the NZDF bundle at pages 377-382, which indicates that I also contacted the Senior National Officer in Afghanistan to ask for a full copy of the IAT report. This was based on the understanding that we only had the "executive summary".

Q. And just pause there, please, and I'll take you to the document. In the smallest of the spiral bound volumes at your left-hand, there should be -- yes, that's a supplementary bundle of documents, accompanying NZDF witness briefs?

A. Yes, it does.

Q. It does. And please go to page 377, and if you turn over to -- please, to page, I think 381, and then work backwards, being an email chain. Is this the chain that you're referring to, of emails?

A. Yes, it is.

Q. Yes, thank you. And could I ask you please, if you look at page 377, is that you who has sent an email at the very top of the chain?

A. At the very top of the chain, that's an email from me back to Wing Commander Thomas.

- Q. Yes, and can you just please explain what it is that you are saying thank you for?
- A. She had received information from Lieutenant Colonel Matt Weston, the SNO in Afghanistan at the time, that he had made a -- spent a bit of time, made an exhaustive search, or a search, for the full report that I had asked for earlier in the piece, and on that Friday the 11th of July, Wing Commander Thomas is pointing to Lieutenant Colonel Weston's response, and it seems to be the same executive report, as in executive summary, was the report. I'm saying thanks, good work, and copies will be required for DCOORD and the DSO records.
- Q. Yes, thank you, and just referring to the email at the bottom of the chain that is being forwarded on to you, by the Wing Commander, can you just tell us what you were reading when you saw that?
- A. You're talking about the bottom of page 380?
- Q. 377, sorry? Page 377, the bottom of that page?
- A. That's from Wing Commander Thomas to Lieutenant Colonel Weston.
- Q. The one at the very -- oh, I'm sorry I've put you -- if you come up one, I'm looking at the one that says from Mathew Weston, Lieutenant Colonel, to Lorena Thomas, Wing Commander?
- A. He's telling her that he has sent the only substantial/official report that can be found on ISAF files. I think it was you already -- he's supposing that it was the one that we already have. We've used the archivists and the civil casualty cell to conduct a search. The CIVCAS specialist told me that the report I have sent is very likely to be the final piece of staff work for an incident of this nature. The only other information available is the joint operation centre watch entries. And he's saying they add little to what is in the report that he has sent, and the report should be with Lieutenant Colonel Taylor. I'm not sure which Lieutenant Colonel Taylor that is, but he is confirming, this is what I read into this, that the executive summary that

we had was the extent of the report. There was nothing further.

Q. Yes, thank you. Back to your Brief of Evidence, now please, at paragraph -- I think you've read paragraph 4, and we'll move on to paragraph 5, please?

A. Okay, paragraph 5.

I have now seen the classified document register from the Office of the Chief of Defence Force. It shows that a "Baghlan Province Brief for MINDEF", comprising two secret documents, was marched in on 1 September 2011. The serial number given to those documents - namely, 387/11 - matches the serial number on the bundle containing the IAT report. It also shows that the sender or originator of those documents was the Director of Special Operations who, in September 2011, was Colonel Jim Blackwell.

I don't recall ever seeing these entries in the OCDF Register. I did not seek to trace the origins of the IAT report by way of the various classified document registers at the NZDF. In retrospect, knowing what I now know, it would have been prudent to take that step.

However, at that time, I thought I knew when the IAT report had arrived. I assumed, based on the date of the IAT report, that is, 26 August 2010, and the Minister's suggestion that I contact Rian McKinstry, who was the SNO in August 2010, that the IAT report arrived in the NZDF in August 2010. My line of inquiry had that assumption at its core. I believe that is why I focussed my attention on those in the relevant roles in August 2010.

For that same reason, I don't recall whether I followed up with the existing DSO or with the Directorate of Special Operations.

I don't recall what I did with the information I obtained. I have not made a written note of it. I believe I would have briefed the Chief of Defence Force so that he could relay the information back to the Minister. If the Minister had wanted

a formal briefing conveying our findings, he would have made that request, and we'd have responded by way of a formal Note to the Minister. There is no formal Note to the Minister on this subject. I can only deduce that this is because he was satisfied with the briefing he received.

That completes the Brief of Evidence.

Q. Thank you very much. Please now, would you answer any questions my learned friends may have for you?

#### CROSS-EXAMINATION BY MR ISAC

MR ISAC: Thank you, Mr Smith. I might begin by taking you to the email that you've been discussing with Mr Radich, but in a different location. If you -- and helpfully for you, if you -- oh look, no. Get the one that you have, if you have it in front of you. I'll refer to it in my bundle. Have you got that in front of you?

A. Yes, this is the -- basically the email I just referred to.

Q. And so, the chain, which begins chronologically, really at the bottom of page 124, carries on for four pages, this is the communication, if you like, between officers who are following up on essentially your direction that, look, let's find out what this jolly document is, isn't it? I think, is that right?

A. Yes, I would have made a request from someone in some directorate to chase up the SNO in Afghanistan to see what he could find with respect to that IAT executive summary.

Q. And if we look at the top of page 123 --

A. I'm going to have to go to your bundle because I've got different page numbers.

Q. Oh sorry, that -- yeah, that is a problem. It's -- yeah?

A. So which -- am I looking in here, or in here?

Q. Yeah, look in there, October bundle. So there will be a tab with October. The big -- yeah, the big bundle, and there's a tab, right-hand side, with October. There we go.

A. And the page number you referred to just then was?

Q. Yeah, 123?

A. I'm there now.

Q. Just, at the top of that page, we've got Matt Weston, who is the Chair SNO? Is that right?

A. Who's the SNO in Afghanistan at that time, July 2014.

Q. Yeah, and he's asking colleagues, have we asked TG6/DSO about the IAT executive summary, is that right?

A. That's what it looks like, yep.

Q. What is the reference to TG6? Do you know?

A. That's shorthand for NZSAS.

Q. All right. And then, we have at the bottom of page 122, a reply from a Major saying yes, and most likely source, see that?

A. Yes.

Q. Thinking about that now, do you remember becoming aware, through the DSO at the time, that he had obtained the IAT on the 1st of September 2011?

A. No.

Q. When did you find out that he had?

A. When I was having a meeting with counsel in the last two or three weeks.

Q. Okay, all right. So Jim Blackwell never disclosed to you that he had the IAT from 1 September 2011?

A. Not that I recall.

Q. Because presumably, if he'd told you that, you wouldn't have to direct these officers to diligently go and search for it over in the ISAF records, is that fair? It's all right. I won't press you on that point.

But what I would like to do is take you to the email at page 122, just after the Major's email. So this is Matt Weston to the other officers, you see that?

A. That's the email where he's -- "I have started searching" et cetera?

Q. Yeah.

A. Yeah.

Q. Yeah, so what he's saying is he's actually searching the drives in ISAF, isn't he?

A. That's what he said.

Q. And then he says, nothing to report to so far. And he says, there are millions of documents; can you give me a bit more detail about what I'm searching for? Can you see that?

A. Yes.

Q. And then the reply to that, from the Wing Commander, provides him precisely with the title to the document. Can you see that?

A. Yes.

Q. And then, over the page from 121, Matt Weston replies saying, and this is the email that my friend took you to, he says, "I've sent the only substantial official report that can be found on ISAF files".

See that?

A. Yes.

Q. So that that's the 7th of July 2014, isn't it?

A. Correct.

Q. And the email on page 122, that he sent dated 3 July, indicates that he's searching the drives, yeah, the ISAF drives? So he's got a copy of the IAT report in four days, hasn't he?

A. Once he's got some more information with regard to what he's searching for, yes.

Q. And what he's actually doing, he's not having to negotiate with Joint Forces Command, or go through the Special Forces people, who are apparently never going to provide this to New Zealand. He's actually electronically interrogating the ISAF drives, isn't he? He's running computer searches. Do you agree?

A. Well, he's put it in a personal sort of case, but I don't necessarily read into that he's personally going through the ISAF drives; he's certainly having someone conduct that search.

- Q. Okay. "I have started searching the drives in ISAF", yeah? Well, what I'm suggesting is that, at least in July 2014, your SNO literally appears to be able to plug in to the computer, the ISAF drives, do a search, and get the IAT report. Is that fair?
- A. Once he knew what he was searching for, yes.
- Q. Yeah. Because ISAF is a coalition isn't it, of States who are contributing? It would make sense that each contributing nation would have access directly into the data information, doesn't it?
- A. Depends on the data he was looking for. I mean, there would be a number of drives at a number of classifications, and each nationality would also have their own drives with their own information, which was not shared.
- Q. Yeah, but within four days of a request to get that document, you've got it coming back, right? It hasn't taken months and months of negotiation, has it?
- A. Not to receive a copy, no.
- Q. No. And then the email that Matt Weston sends at 121, at the bottom of that page, he's actually saying -- because I think he's been tasked to find the underlying big report, if I can put it that way -- he's saying what you've got is all there is essentially, isn't it?
- A. That appears to be the case.
- Q. And then your email, at the very top of the page, the last in the chain, you're saying, copies of the IAT exec summary will be required for DCOORD, that's the Director of Coordination?
- A. Director of Coordination, yes.
- Q. And DSO records --
- A. Yes.
- Q. -- is that right? So you're actually directing that the DSO should get a copy of the IAT, because based on how you understand things at that point in time, they don't even have a copy of it? Is that right?
- A. That's correct.

- Q. Do you think it's extraordinary that Jim Blackwell didn't tell you, when you were doing all of this, that he'd had the report for years, and that he'd briefed the Minister about it, the previous Minister?
- A. I can't comment on that. You'd have to ask Colonel Blackwell.
- Q. I mean, he worked in the same building as you, didn't he?
- A. In the same building, yes.
- Q. Yeah. He'd be regularly in the Office of the Chief of Defence, wouldn't he? It's not as if you don't see each other around the office regularly?
- A. No, we're on separate floors, but yeah, we'd see each other around the office.
- Q. Thank you. I think you indicated that the investigation that was undertaken wasn't a formal investigation --
- A. That's correct.
- Q. But it was an interrogation of what the facts were, wasn't it, because the Minister wanted to know what the answers were?
- A. He was wanting to know how we managed to get that -- or have that IAT report, without knowing we had that IAT report.
- Q. And in the supplementary bundle, which is another tag there, we've got your diary notes of the time?
- A. You might have to give me a page number.
- Q. Yeah, I'll give you Kevin Short's reference first. If you go to page 11, page 11 and 18 are the two relevant pages -- 18 is your note of the meeting with --
- A. I'm looking at a page where 11 is in the top right-hand corner, because there's another page number down the bottom. So I'm looking at top right-hand corner 11?
- Q. That's it. So this is Kevin Short's diary note of the briefing that you attended with the Minister of Defence, Chief of Staff, and Secretary of Defence, and SECDEF, on 1 July at 8.30am, 1 July 2014?
- A. Yes.

Q. And then at the top of page 11, we've got assessment team summary, "when/how did NZDF get this? Rian McKinstry interview. What did he know? How did he interpret?" Yeah?

And then page 18, again, you've noted "Rian McKinstry interview, what did he know? How did he interpret?" How did he interpret -- does that mean how did he interpret the IAT?

A. Which page are you on now, 18?

Q. 18, yeah.

A. I'm just -- going back to page 17, there's certainly -- refers to Rian McKinstry.

Q. Yes.

A. Just confirm we're looking at the same page -- it's page 17?

Q. I think you may have a different --

SIR TERENCE: I think the witness may have an edited version?

MR ISAC: Right. Yeah, I've got 11 and 18 Mr Smith, sorry. It may be that we've got different pages.

Just look at page 11. So, "Rian McKinstry interview. What did he know? How did he interpret?", and that exact expression, "How did he interpret" appears in your diary as well. Is that the Minister saying how did he interpret the IAT?

A. Yes.

Q. Now, I just want to -- I'm not trying to trip you up here, I just want to put something to you, as a matter of inference, to see if you agree with it. Dr Jonathan Coleman wouldn't know who Rian McKinstry was, unless he'd been told by someone, is that right?

A. He --

Q. He would know he was the SNO in August 2010?

A. No. No, no, he would have probably -- he would have asked, yeah.

Q. Yeah, and we know that one of the papers that he received in the bundle, through his Military Secretary on the 30th of June, was a document that said -- it was an email copy and paste, essentially, that says, from the SNO at the time, and

then that's it. So it doesn't name Rian McKinstry. So what I'm going to suggest to you is that the fact that the Minister was asking for Rian McKinstry to be interviewed, it's not because he knew who he was and knew he was the SNO. More likely, is that he's seen that piece of paper, and said to one of you or to your colleagues, who's this guy? I want him interviewed. Does that sound sensible?

- A. I can't recollect the conversation of how we got to Rian McKinstry, but if he had asked who was the SNO at the time of that particular action, the answer would have been Rian McKinstry.
- Q. So that might explain, perhaps, why the Minister and then your investigation became focused on speaking to Rian McKinstry and Peter Kelly, who were SNO and DSO in August 2010, rather than Jim Blackwell, and the SNOs who were in Afghanistan a year later in September 2011, is that fair? It's the composition of the bundle that the Minister's seen that's led everyone off down on that path, August 2010, and the staff involved then, not the ones who were actually involved when the IAT was received in September 2011?
- A. Yeah, but you've told me that September 2011 is when it is believed that IAT report did come into the Headquarters, but I was involved in 2014.
- Q. Yeah. Okay.
- A. Yeah.
- Q. All right, well, I'm not trying to trap you up on that, Mr Smith.
- All right, well, if I can take you to another page in that bundle? So -- just before I do, before we leave page 11, this is a note of a briefing with the Minister, 8.30am, 1 July 2014, is that right?
- A. That's certainly indicated on the bottom of page 10, yes.
- Q. And, can you see what time it concludes? I actually find that quite hard to read.
- A. Looks like 0910?

Q. Right, so a 40 minute meeting, roughly?

A. That's -- if it started at 8.30, yes.

Q. And then you come back to the Office of Chief of Defence?

A. Yes.

Q. If you turn to page 77 of that bundle, have you got that?

A. This is --

Q. An email?

A. From --

Q. Dated 1 July 2014?

A. At 10.15am?

Q. Yep.

A. Yes, got that.

Q. So this is from DSO, so this is Jim Blackwell, yeah? To CO, this is Rian McKinstry, and this is within an hour of you getting out of the meeting with Jonathan Coleman?

A. Yes.

Q. Yeah? And take it from me that what this is, is an email from Jim Blackwell to Rian McKinstry, attaching Jim Blackwell's electronic copy of the IAT report, okay? And there's no text there, is there, that we can see? It's just an email with an attachment.

A. Correct, that looks like it's -- yeah, yep.

Q. Given the timing of that, and the fact that it attached the IAT, it suggests it's likely you've had some discussion, after the meeting, with Jim Blackwell, because he is Rian McKinstry's Commanding Officer and Rian McKinstry is being ordered to come and have an interview with you the following morning about the IAT, isn't he?

A. Yes.

Q. So just -- does that jog your memory? I mean the chain of command, presumably you'd go to Rian's boss; you work in the same building as Jim Blackwell, and you'd say Rian's -- tell Rian he's got to get on a plane. I'm going to be grilling him tomorrow about the IAT. Is that fair?

A. I'm pretty sure I would have talked to Rian direct.

Q. Do you?

A. Yeah.

Q. Do you remember having any discussion with Jim Blackwell at this time, about the IAT?

A. I don't remember.

Q. Did Rian McKinstry tell you he had received a copy of the IAT from Jim Blackwell?

A. I understood that he had, at some time after the conversation with the Minister, but I would have understood that to have been a scanned copy of the one we had.

Q. Ah, right. So you didn't have the copy -- you didn't give Jim Blackwell a copy of the scanned document, did you?

A. I personally didn't.

Q. No. So if he received a copy of the IAT from Jim Blackwell, it's because Jim Blackwell had it already, isn't it? That's in fact the evidence. Yeah?

A. Well, I imagine the way it would have gone is, I would have gone to Rian McKinstry, say, hey we've got a report here which we didn't know we had. You're going to come down to Wellington tomorrow and we're going to discuss it.

Q. But you didn't send it to him, did you?

A. No. No, no.

Q. And you didn't give it to Jim Blackwell, you've just said?

A. I personally didn't, no.

Q. Well, did someone else?

A. May have, I don't know.

Q. Okay, Jim Blackwell hasn't emailed the marked up scanned version; he's emailed a word version to Rian McKinstry. Were you not aware of that?

A. No.

Q. So when Rian McKinstry tells you the next day, I didn't know about the report, hadn't read it until his boss had sent it to him the day before, the penny didn't drop with you that maybe Jim had a copy of it?

- A. No, I would have assumed that he had sent a scanned version of the copy that we had.
- Q. Right. So, you're thinking that Rian may have telephoned Jim to get a copy of the IAT?
- A. I'm pretty sure as soon as he put the phone down to me, he would have rung DSO to say hey, I've been hauled down to Wellington tomorrow to talk about this thing. I haven't got a copy of that thing.
- Q. All right. And it will only be Jim Blackwell and Rian McKinstry who would be able to tell us what they discussed about Jim Blackwell having received the IAT report on the 1st of September 2011, is that fair?
- A. Yes.
- Q. Rian McKinstry didn't say anything to you, when you interviewed him the next morning, about Jim Blackwell having received it three years earlier, did he?
- A. No.
- Q. Because that would have been the answer to your investigation. Jim got it. Correct?
- A. Yes.
- Q. So either he wasn't being frank with you -- Rian McKinstry wasn't being frank with you, or he didn't know that Jim Blackwell had received it on the 1st of September 2011. That's fair, isn't it?
- A. Yeah, either he did not know, or he was not telling me he knew.
- Q. Yeah?
- A. Yeah.
- Q. Would you have expected him not to tell you he knew when the very purpose of the discussion, the interview you were having, was to find out how the IAT report got back into the Office of Chief of Defence without the CDF knowing about it?
- A. I'd expect he would have told me, because that was the reason he was there.
- Q. Yeah. Yeah, exactly.

All right, I'm going to move forward in time then to 30 June 2014, which is the day that the -- well, back in time in fact, sorry. The actual discovery, the day of the discovery of the IAT report inside the safe that Chris Hoey kept at that time. Do you remember what occurred in the series of events surrounding its discovery?

A. I think we might have discussed this last time, but it was when that -- a bundle of papers went across to the Minister to provide him some background in the lead up to the *Native Affairs* programme. It was found as the Minister or his staff were going through that bundle.

Q. Mr Hoey seemed to accept that it was possible that the Minister's Military Secretary came over and met with him, early on the Monday the 30th of June 2014, and it was in fact the Military Secretary who'd found the IAT stapled to the back of briefing note or notes. Does that ring a bell with you?

A. No.

Q. And, Mr Hoey, I believe, also thought it might be possible that as those two men had discovered the IAT and the -- that Defence had it, and the implications of what it meant in terms of public statements by Defence and the Minister, that you wandered into the office as well, and the door was shut, and the papers were laid out, does this ring a bell with you?

A. No.

Q. Is it possible that happened but you don't recall? So this would be early in the day on the 30th, before the papers actually went over to the Minister's office?

A. I don't recall meeting with Mark Chadwick, or walking into a discussion between he and Chris Hoey. On that morning, according to my diary, I would have been in an executive committee meeting from 8.30 onwards.

Q. Right, on the 30th, is that?

A. Yes.

Q. Okay. So when did you first become aware of the discovery of the IAT?

A. Again, discussed this last time I was here, but on the evening of the 30th when the CDF rang me from Australia.

Q. Okay. Thank you.

Sorry, one final question Mr Smith; we've heard that Minister Coleman was briefed on the -- late in the day on Saturday the 28th of June 2014. Do you know who undertook that briefing?

A. I don't recall. It's not in my notebook. I don't recall.

Q. If the briefing occurred at Defence House, would there be records of who signed in to the building? I mean, most buildings you have pass cards and so on, you have to put in your code. Does NZDF -- did NZDF have something like that where it could monitor entry and exit of staff into a building over the weekend?

A. Yes, although if it were the Minister, he doesn't have a card to come in and out. Someone would have let him in and out.

Q. Sure.

A. But I'm not sure whether there would have been a note taken. Normally, when Ministers are briefed, and they don't require a SCIF in which to brief them, officials go to the Minister.

Q. Yeah, but if this happened at Defence House, it's likely there would be some record of who was coming out of the building on the afternoon of the 28th, won't there?

A. I -- well, there should be, but I don't know if it would be a hundred percent accurate. Certainly, if the Minister's military assistant, or Military Secretary, had been with him, he'd have tagged in and out. He would have used his own access card, but the Minister didn't have an access card; he normally came through as a -- as part of a bunch.

Q. If the briefer wasn't CDF, is it likely to have been a subject matter expert who did the briefing on Op Burnham?

A. I don't know. CDF would have been in the country at the time. I don't think he -- he left, I think, on the Sunday to head across to Australia, from recollection. It would normally be the CDF on these sorts of occasions if he was available.

Q. And if he wasn't, Jim Blackwell would be the obvious individual as the DSO?

A. If he was in town, perhaps? I don't know.

Q. Okay. Thank you.

RE-EXAMINATION BY MR RADICH - nil.

QUESTIONS FROM INQUIRY MEMBERS

SIR TERENCE: Can I just -- I just have a couple of questions.

When you last gave evidence, you said that the -- or accepted that the Minister was very angry at having been given an incorrect briefing, and that appears to relate to the briefing he got on the --

A. Saturday, yeah.

SIR TERENCE: -- Saturday, on the 28th. Given that you attended the later meeting with him, when he expressed -- you know, as part of the NZDF group, when he expressed his concerns?

A. From the Tuesday morning?

SIR TERENCE: Yeah.

A. Yes.

SIR TERENCE: What was the incorrect element of the briefing that he identified?

A. I expect it would be that, rather than the statement that we had made with regard to allegations being baseless and unfounded with regard to civilian casualties, it would have been around the fact that there may have been, or you cannot rule out, that there were civilian casualties, when it became known to him that the -- there was a malfunction with the gun on one of the Apache gunships.

SIR TERENCE: And, you also said in your earlier evidence, I think you described it, and I'm referring to page 131 of the transcript, that the main issue for the Minister was how it was that NZDF came to have IAT report and CDF didn't know about it? Do you recall that?

A. Yes, that was -- certainly came across loud and clear on the Monday evening when CDF rang me.

SIR TERENCE: And then, so there's -- the Minister then said he wanted a number of things done, and you did them. Spoke to Rian McKinstry, Peter Kelly; you had inquiries made, as we've seen, into whether there was a full report underlying the executive summary?

A. Yes.

SIR TERENCE: And you made some inquiries about the IAT report. What -- if you look under the supplementary bundle at page 55, and --

A. I'm looking at a storyboard?

SIR TERENCE: The storyboard, yes. So this was the bundle of documents found in Chris Hoey's safe, which included the IAT report.

A. And, yeah, draft notes to the Minister, yes.

SIR TERENCE: Now when you undertook your inquiry into where this had come from, one of the things that puzzles me is, you have this rectangular stamp on the front of the bundle containing the IAT report, which tells you that it's got an OCDF 387 item number 2011. I mean, wasn't it fairly obvious, as an investigative tool, that one should go and look at that register and see who had entered it, where it had come from, when it originally arrived?

A. I did not do that. I didn't review the classified registers, the MD 392s.

SIR TERENCE: But as an investigative step, wasn't that almost the first thing you'd do?

A. No, the first thing I did was talk to the people who were involved at the time, to establish how that report, that executive summary, came back to New Zealand. We were aware that we had had a verbal brief on it, and that was evident from talking to Rian McKinstry, but he wasn't allowed to take a copy at that stage. He was not -- I'm not sure whether he read the copy, but I think from recollection, he was basically read the pieces that were pertinent to him as the New Zealand SAS representative there.

SIR TERENCE: Okay. Yes, well --

A. No, I did not look at the registers, and as I stated in my supplementary Brief of Evidence, knowing now what I know, I probably should have.

SIR TERENCE: Yes, well I take your point that the logical place to start was where you started with the people involved at the time, but that drew a blank, and so one would have thought the next logical thing to do is to say okay, we've got this copy. What can I tell from this? And that does lead you, as I think you accept --

A. Yes.

SIR TERENCE: -- to that register?

A. Yes, but as I also said in my supplementary brief, I think when we had got to a certain stage and had back-briefed the Minister, whoever did that, and I imagine it was verbal, because there is no written record of that, that once he was satisfied and had moved on to other things, we probably let it go, and we moved on to other things.

SIR TERENCE: Yes, well that is -- I mean another thing that certainly strikes me as strange. You had an obviously very angry Minister, who had received a misleading briefing, and the consequence of that was the Prime Minister had made a statement on the Tuesday morning on the 1st of July, in an interview, that turned out to be incorrect, which was corrected later in the day. So it does seem a reasonably serious matter, and given that he wanted a report in two days, it is, to my mind anyway, a little surprising that there was nothing in writing. It wouldn't be normal, would it, for there not to be a written response to a query of this sort from an angry Minister?

A. I wouldn't say that it's unusual. I personally have conducted a number of briefings to the Minister which were just a verbal -- based on a verbal request across the table at a weekly meeting, for example.

SIR TERENCE: In circumstances where he was angry about being put in a particular position of -- which is what we're talking about. I'm not talking about just the ordinary?

A. No. No, no, no. So I think the fact that someone had briefed the Minister on what we had done in response to the questions he had raised on that Tuesday morning, and if he had been not satisfied with that and said this is not good enough, I want a full written, or a full formal verbal briefing, we would have swung into action.

SIR TERENCE: Right. How widely known was it, as far as you can recall, within the upper echelons, if you like, the people in the CDF office there, so on and so on, about the fact that the hunt was on for the origins of the -- or the original source of the IAT report?

A. It wouldn't have been hugely wide, because we're dealing with a classified document.

SIR TERENCE: Right.

A. And that would contract the circle of people to a need to know basis.

SIR TERENCE: So would you have expected the DSO to be aware that these enquiries were being made?

A. Yes.

SIR TERENCE: All right. Well, that's all I wanted to know, thank you. Is there any arising out of that?

#### QUESTIONS ARISING BY MR RADICH

MR RADICH: Mr Smith, do you have any knowledge of the Minister's demeanour later in that day, 1 July 2014? Do you know whether it was the same or whether it changed?

A. I imagine that after -- in his initial anger, some action, some further briefings back to him, his demeanour -- he would have probably calmed down.

Q. Okay. You don't know for sure?

A. I don't -- no.

Q. Thank you.

A. But there were other things going on at the time in the political arena.

Q. Yes. All right. Thank you very much.

#### QUESTIONS FROM INQUIRY MEMBERS

SIR GEOFFREY: It seems to me that the Minister was asking what did NZDF know about the IAT report and when did they know it? That's the nature of his question, wasn't it?

A. Yes.

SIR GEOFFREY: And doesn't it seem a bit surprising that that piece of information cannot be readily found? The systems don't seem to allow it? Repeatedly, for years, we go on in a situation where the search has to be conducted all over again. I just don't understand the systems that allow that to happen? Is it because of the secrecy, or is it because of the systems? Why is it?

A. I imagine it's because we have a number of systems where various classification of documentations are kept, whether electronically or in file form. Our document management systems, I would suspect, are not the greatest.

SIR GEOFFREY: Well, you see it does seem to me surprising that when a failure of that sort occurs, and a Minister becomes annoyed, that no written report is given to the Minister about it. I find that remarkable. You say that was common?

A. I'm saying that not all briefings back to the Minister are conducted on paper in formal reporting.

SIR GEOFFREY: Not all of them, but important interchanges of this sort, one would have thought would have produced a note at least?

A. It did not.

SIR GEOFFREY: Well, is it that the NZDF conducts its business quite differently from ordinary agencies of the Government where there is ministerial responsibility? This seems to me to be quite extraordinary? Oh well, you don't need to comment.

A. I can't; I have not worked in any other agencies.

SIR TERENCE: All right. Thank you very much for your time; I'm sorry we had to call you back, but it's been very helpful. Thank you.

A. Thank you.

(Witness excused)

MR GEIRINGER: Sir, sorry to interrupt, but just out of politeness, may I be excused now?

SIR TERENCE: Oh yes, please.

MR GEIRINGER: (Inaudible) and just to let you know, sir, I am (inaudible) High Court on Friday, and if I may, I will try and come in (inaudible).

SIR TERENCE: Yes, that's fine Mr Geiringer. Thank you.

MR RADICH: Thank you Sir Terence. I call Richard Rhys Jones.

**RICHARD RHYS JONES (Affirmed)**

**EVIDENCE-IN-CHIEF BY MR RADICH**

MR RADICH: Now your full name is Richard Rhys Jones?

A. Yes.

Q. And you are now the Chief Executive Officer of Fire and Emergency New Zealand?

A. Yes, I am.

Q. And prior to that you were the Commander of the Defence Force?

A. I was.

Q. And you've given a Brief of Evidence to us before in this Inquiry, and appeared at its September hearing, so I won't go back through your biographical details, but you have given a new Brief of Evidence dated 3 October 2019?

A. Yes, I have.

Q. And would you please now read that to the Inquiry beginning at paragraph 1?

A. This supplementary Brief of Evidence is provided further to my Brief of Evidence of 13 September 2019.

I am aware that, on 19 September 2019, following a request from the Chair of the Inquiry, Sir Terence Arnold QC, a

classified document register in the Office of the Chief of Defence Force, the OCDF Register, was checked.

The relevant entries from the OCDF Register, which are in the NZDF Bundle at pages 369-372, show that two copies of the bundle - described as "Baghlan Province Brief for MINDEF" and containing two secret documents - were marched in by the Director of Special Operations on 1 September 2011.

The OCDF Register also records that, on the same day, one copy was transferred to the Office of the Minister of Defence and one copy was transferred to the Deputy Chief of Staff, Mike Thompson.

I understand that one of the two secret documents was the IAT report. I was not aware that there was a copy of the IAT report at Headquarters NZDF during my time as Chief of Defence Force. I did not see the IAT report until it was shown to me in preparation for the Inquiry's public hearing that commenced on 16 September 2019.

I have no recollection of being briefed on the IAT report in September 2011. I was in China and Afghanistan between 2 and 16 September 2011. It may be that I was not briefed because I was away, although, in those circumstances, I would expect to have been briefed on my return. Alternatively, it may be that I was not briefed, or do not recall being briefed, because Headquarters NZDF were focussed at that time on a number of matters, including supporting the families and the New Zealand Special Air Service team following the death of Corporal Doug Grant, an NZSAS member who was killed in Afghanistan in August 2011.

I do not know whether the Minister of Defence was briefed on the IAT report.

Q. Thank you very much. Please now would you answer any questions my learned friends may have?

CROSS-EXAMINATION BY MS McDONALD

MS McDONALD: Good afternoon, Mr Jones.

Can we start just by going back in time a little bit, just to make sure we understand the context, when things occurred in 2011? You would have been aware, I believe, of Operation Burnham and that unfolding in 2010, because I think at that time, you were Chief of Army? Is that correct?

A. I was, but at that time, the Special Air Service operations were pretty compartmentalised and I was only informed after the event and not -- I wasn't aware of the actual event or the details.

Q. But you were aware after the event?

A. Yes. I was.

Q. Okay. And were you also aware after the event that there were allegations, soon afterwards, of civilian casualties and an ISAF investigation?

A. Yes.

Q. And just to show that, if you look in the large black binder in front of you, at page 79, you'll see what I believe to be a briefing document on Operation Wātea, which sets out a range of matters including the civilian casualty investigation update, and really it's just that front page I want to take you to, and ask you if you could just confirm that you would have been one of those in attendance for that briefing, as Service of Chiefs or Deputies? You would have been in that role, presumably, your deputy anyway?

A. Yes, I would have been in that role. I can't recall the brief, but I could have been there, yeah.

Q. But broadly, you were aware of those matters at that time?

A. Yes.

Q. That's all I'm really wanting to establish with you.

And, I think you would agree with me, wouldn't you, just as Sir Jerry Mateparae did, that allegations of civilian casualties, regardless of how they might have arisen, were a matter of significance to the New Zealand Defence Force, just generally, any suggestion of that?

A. Yes. Yes, of course.

Q. And of course they would also be a matter of some significance to the Government of the day, and the Minister of Defence?

A. Yes.

Q. And we may have looked at these documents last time you gave evidence, so I may not need to take you to them, but please if I do, just let me know and I can, but you were aware that there were briefings to the Minister of Defence of the day in late 2010, December 2010? I can take you to those briefings --

A. Yes.

Q. -- but it is clear from them that the content of them, in relation to the issues around civilian casualties, was very inaccurate, very wrong, and there were statements to the effect that the ISAF investigation had found that there were no way there were civilian casualties, that subsequently, we know that that's not right. Sir Jerry accepted that?

A. Yes, we know that --

Q. We know that.

A. -- with later knowledge they're inaccurate, yeah.

Q. So that was the sort of context.

And, I will take you to this document though. If you go to page 184 of that bundle, you will see there, the NZDF media statement from the 20th of April 2011, and if you look four paragraphs up from the bottom, the statement from NZDF that the investigation, that's the ISAF investigation, concluded that the allegations of civilian casualties were unfounded. So that's what's being said by NZDF in April 2011?

A. Yes.

Q. And we know, and the pages just following that show, that the Minister became engaged with the media around this time. He was interviewed by Guyon Espiner, and he, of course, maintained that position. That was as he understood things as well.

So that was the context in -- at that stage in 2011?

A. Yes.

- Q. You've said in your Brief of Evidence that you were not aware that there was a copy of the IAT report at NZDF Headquarters during your time as the Chief of Defence?
- A. That's correct.
- Q. And that's the correct position, isn't it?
- A. Yes, it is. Yep.
- Q. So you never read it at that time?
- A. No. Probably best to say I do not recall it, and my memory, my whole image was based on that 2010 facts. That's, as I understood, it still sat. So I said, do not recall, and from my perspective, did not know that there was an IAT report in our hands.
- Q. And in fact, at paragraph 5 of your Brief of Evidence, you say you did not see the IAT report until it was shown to you for the purposes of this Inquiry?
- A. That's right.
- Q. And that's the correct position, isn't it?
- A. Yes.
- Q. And it must follow from that, that Mike Thompson never gave it to you; Jim Blackwell never gave it to you, in 2011?
- A. No.
- Q. Okay. And, of course, had they, particularly Mr Blackwell, given the contents of it, and the inconsistent position that would have been apparent to you immediately from looking at it, from what NZDF had been saying, given the role that you had as CDF, you would have done something about that, wouldn't you?
- A. Yes, and probably useful to also explain, as a Chief of Defence, if I was being briefed on something, it would be given to quite a few staff members to analyse. So part of that would have been legal staff, part of that might have been comms staff. So there would have been joint advice to say well, what's actually in this document? What sort of relevance to us? And that would have been highlighted, that there is an anomaly in there, but --

- Q. And, as a matter of pure logic, if any of that had happened, you would have been concerned about the inaccurate media statements that NZDF had made in April, and the position that the Minister had taken, and you'd be taking some steps to address that in some way, presumably?
- A. Yes.
- Q. And of course none of that was -- none of that happened?
- A. No.
- Q. And that is all entirely consistent with the fact that you weren't given the IAT report?
- A. Yes.
- Q. And you go on to say that -- in paragraph 6, that you have no recollection of being briefed on the IAT report, and that -- I take it from that, that you weren't briefed by Mr Blackwell about it?
- A. No.
- Q. Right. So when he says that you were definitely aware of it, and he has given evidence to this Inquiry to this effect, that you were definitely aware of it, I think, or that you were aware of it and he briefed you on it, that would be wrong?
- A. I have no memory of being briefed on it, and I was not aware that we had the report. However, you know, that's my memory. I'm quite happy to concede if someone has a distinct memory of it, I might have been wrong, but from my recollection, from my knowledge, I was not briefed on it.
- Q. Well, Mr Jones, you just need to be careful about this. You don't have to agree with Mr Blackwell, simply because he said something.
- A. Yeah, I know. No, no, but I'm saying, I suppose my view is, I have no memory, and I have no subconscious awareness of that, through any particular way, but, you know, I trust if someone has a distinct memory of it, then it's quite possible.
- Q. Are you saying that Mr Blackwell's right then, and you're wrong?

A. I don't know. All I'm just saying is I have no memory of it. I am pretty sure I was not aware of it, but I can't be one hundred percent certain, because I have no memory of -- it's hard to say I've a memory of not being briefed, but.

Q. But Mr Jones, you've just accepted that if you had become aware of that report --

A. Yep.

Q. -- you were the CDF, you're a responsible CDF who understood the need to talk to Ministers, no surprises, be honest with the public and with the Government?

A. Yes.

Q. And isn't it inconceivable that you wouldn't have done something about it?

A. That's right.

Q. And that, I suggest to you, shows very clearly that what you're telling us about not having had it and not being briefed on it is the correct position and what Mr Blackwell has told this Inquiry is incorrect. You accept that?

A. I don't know what his statement was, um --

Q. He has told the Inquiry that you were aware of it, and that he briefed you on it, and I think, Mr Jones, you need to be quite clear, because if your position is that that's not right, then you need to say so.

A. Okay. I have no memory. I do not think I was briefed on the document, or had knowledge of the IAT report.

Q. All right. And, can I just also take you to page 92? If you look in that volume towards the back, you'll see a tab that says "October"? And if you go to page 92 in that, it's quite far back? You'll see there an email. Have you got it yet?

No.

SIR TERENCE: Sorry, what was the page number?

MS McDONALD: 92.

SIR TERENCE: Thank you.

MS McDONALD: And you'll see there that that's an email, and I can tell you it's dated 2 September 2011, and it's from Mr Steer, Jack Steer, Vice CDF at that stage, your deputy?

A. Yes.

Q. And it's to all staff, and the reason I'm referring it to you is because in it, if you go towards the bottom of it, he's referring there to the Nicky Hager book, *Other People's Wars*, and he's sending out a communication to all staff, but in the second to last paragraph, he says in the very last sentence, talking about the NATO-led ISAF investigation:

"After reviewing the evidence the investigation concluded that allegations of civilian casualties were unfounded."

A. Yes.

Q. "And the ground force and Coalition air were cleared of all allegations", doesn't he?

A. Yes, it does.

Q. And that, you'd accept wouldn't you, is consistent with what you've told us, and that Mr Steer was, at that time, as at the 2nd of September, of the same view that you were?

A. Yes.

Q. And it may call for some speculation on your part, but you know Mr Steer, I would assume that that would suggest that he hadn't seen the IAT report, or presumably he wouldn't be saying that?

A. Exactly, yep.

RE-EXAMINATION BY MR RADICH - nil.

#### QUESTIONS FROM INQUIRY MEMBERS

SIR GEOFFREY: I have some questions. Mr Rhys Jones, I am worried about what Ministers are being told about the activities of the NZDF, and particularly the NZSAS, and the lack of consistency in what they're told, and the contradictions in it. How does this come about?

A. I'm sorry, I'm not sure which inconsistencies you are talking about?

SIR GEOFFREY: Well, we've got a situation where, first of all, we have -- we have three or four different periods when the whole question has gone into again. We have it in 2011. We have it in 2014. We have in 2017. What happened, on this operation, becomes a matter of contention on all those occasions. How is it that it is not possible to put that matter to bed for once and for all, rather than have it repeated?

A. I don't know. In my last time I was here, I talked about when I came in as CDF and came back from a visit when the -- when the April 2011 media release went out. I was then updated on the briefing, and I -- for the first time, I didn't see in that first briefing in 2010 -- saw the briefings to the Minister, and made a comment, but where is the source document? That was my comment to say, okay, but it would be really useful to get that source document so we have that.

And so, it was my concern also to say, well, you know, we've -- why haven't we got that? The briefing, I was told, from what I recall, was a classified document, but we've seen it, and all our evidence was based on that.

And I suppose the fact that no-one knew for some reason that we had the document, it meant that that first lot of information consisted -- consistently was put forward for that.

Why it was not known that we had it, I do not know. That's a mystery to me, but as a Chief of Defence, I accept it happened during my time, and it was a lapse during my time, and I have to accept that that is a failure of my staff that I'll front up to.

But I'd say the Defence view was consistent, based on the organisational knowledge that we had at the time. The Chiefs of Defence, and the Vice Chief, Jack Steer, who spoke into my time, had that same impression that I had.

SIR GEOFFREY: But it was wrong, wasn't it?

A. Yes, it was. Yes. Yes.

SIR GEOFFREY: And that's a significant failure, for the organisation to be as wrong for as long as it was, and I wonder if there are -- do you think there are remedial measures that need to be taken to avoid this sort of thing happening in the future?

A. Yes, it has to be looked at. The reality, though, of dealing with another nation's very confidential reports and having access to that, I think has always been a problem, and I think this was the source of this particular issue. We were not given visibility of the entire report, and from what I gather, even this report was kind of surreptitiously gained, which is why it may not have come back in through a more formal, here it is, let's analyse it type approach, but that is supposition, I have to accept.

SIR GEOFFREY: Well, is it partly because of the nature of Special Operations that are conducted by the NZSAS that causes this problem? That they have to be very secret?

A. Yep, Special Forces, and intelligence operations are handled in a much different way, much more compartmentalised, and therefore, yes. There is less access for the normal analysis and impact, you know, what does it mean for us type approach. That's true, yeah.

SIR GEOFFREY: And in that particular situation therefore, it's more important than in more open situations that Ministers receive correct information, isn't it?

A. Yes, it is. And during my time, and the reason why Jim Blackwell, whom I gather was able to go over there, we had actually instituted quite regular briefings of both Murray McCully and Wayne Mapp, as Minister of Foreign Affairs and Defence, about what the SAS operations were, but extremely, you know, but classified. The same briefings that we were getting as the Chief of Defence about where the operations were going, to try and avoid that problem.

SIR GEOFFREY: Because Ministers have to answer Parliamentary questions; they have to front issues for the media, and if

they get it wrong, they're in trouble. And so, it's really important, since they take the constitutional responsibility for this, they send the force to Afghanistan, that they get accurate information about what happens there, isn't it?

A. True, that's the requirement, yes, but I suppose our limitation is, can we get accurate information? And this was an example where we did not. And therefore, the basis for our advice and the basis of the briefings of the Minister was based on partial information which led us to incorrect judgements to that. The problem occurred is how come we didn't register though that the document that we had wanted, had arrived, and why wasn't that, I suppose, properly briefed?

SIR GEOFFREY: But on an operation that New Zealand led, that involved the use of force, we are responsible for our own nation's behaviour, as a matter of international law, and we are entitled to do our own investigation into what happened in that circumstance. I put that to General Mateparae and he agreed with that, but that didn't happen, did it?

A. No. No, these were American resources that we used, aircraft, helicopters and fixed wing aircraft, and so I suppose the problem with the investigation is they were examining equipments and capabilities that were classified even from us, and that was -- that would have been reason why the Americans would have run that. But I agree, as a nation that was leading and participating in it, we should have had far more access to the information, participation far more in the investigation into that.

SIR GEOFFREY: Don't you think that we had such a slender resource in Afghanistan that we didn't have the personnel to do the follow-up? The NZSAS were doing operations two or three times a week. They didn't have the resource to follow it up, and bigger nations probably would have been able to report more accurately what had happened. Do you think?

A. Possibly, but we did consistently through -- well, particularly in the later SAS deployments, we had legal people

as part of our contingents, so that we did have that ability to, I suppose, access what was going on more, but their prime role still was, though, because of the role we were having of -- is part of the judicial system that we were supporting with our Crisis Response Unit. That was their main role, but it did allow us access into the ISAF legal system and part of that was investigation.

So, in many ways, I suppose we were trying.

SIR GEOFFREY: But New Zealand is entitled to find out what its own soldiers did?

A. Yes.

SIR GEOFFREY: Because it's going to take international responsibility for it, isn't it?

A. Yes, it is. Yeah.

SIR TERENCE: And so it really has to be able to get to the bottom of these matters, because it may suffer later if it doesn't.

A. Yeah.

SIR GEOFFREY: And I'm just wondering, from your point of view, who occupied high office in the Defence Force, what lessons can we learn from this for the future?

A. Probably the very ones that you're saying, that even though we're a small nation and we join as a component of a larger aspect of machinery, you know, that we do need to have the ability to say, okay, but what are we being involved in? What are the implications for us?

I will say though, New Zealand and Australia had a much more privileged position in -- than Germany or Italy or those countries, because of the relationships that we have with that. So we were given far more information. In hindsight, it was not enough. I totally agree.

SIR GEOFFREY: I'm very grateful to you. Thank you.

SIR TERENCE: Anything arising out of that?

Well, thank you very much, Mr Rhys Jones. Sorry we had to call you back.

(Witness excused)

SIR TERENCE: Are we ready to go?

MS McDONALD: So who are we doing next?

MR RADICH: Kevin Short.

MS McDONALD: Oh we're going to do Mr Short first?

SIR TERENCE: Just take a moment to -- Dr Mapp is going to be giving evidence, so what I wondered is this, we perhaps make a start with Air Marshal Short and on Friday morning interrupt with Dr Mapp, get him -- hear his evidence and get him cross-examined and so on, and then revert back to Air Marshal Short.

Now the other way is just to finish now and start again on Friday. The only concern I have about that is whether we will have enough time to do both of them in the day?

MR RADICH: I wonder if he reads his brief into evidence just now, if we just get that far, because look it's about five pages, and that will probably get us to pretty close to 5pm, and just go from there.

SIR TERENCE: That's what I think, and then we can call him back.

Now the other thing, just while we've stopped, do you have an issue on Friday morning?

MR RADICH: Look I do Sir Terence, and the difficulty is that I've got a one hour hearing that's been long arranged before Justice Mallon. And it's on a matter that is quite significant and I do need to present on, and I can give more detail of that if you require?

SIR TERENCE: No no.

MR RADICH: And so I'm before Her Honour who has a trial, a long running trial, but just between 9 and 10.

Now I know that we have a 9.30 start and so I'm just trying to think how we might accommodate -- I'm very hopeful that we might get through that hearing quite quickly.

SIR TERENCE: I mean, the other possibility is if we do proceed as I've discussed, Dr Mapp could start reading his brief at 9.30 and then Ms McDonald will have questions and presumably you'll have some.

MR RADICH: I'll only have a very very limited number of questions, so I won't be very long at all, I can tell you that.

SIR TERENCE: So we could -- how do you feel if we started him reading his brief, would that be all right?

MR RADICH: Absolutely fine, and Ms van Dam can -- although she is involved in the other matter with me, since the trial, but she can be here at 9.30 if that suits and we'll make it work.

SIR TERENCE: All right.

MR RADICH: Yes thank you.

SIR TERENCE: That's what we'll do then.

MR RADICH: Thank you.

Well we'll call Air Marshal Kevin Ronald Short.

**KEVIN RONALD SHORT (Affirmed)**  
EVIDENCE-IN-CHIEF BY MR RADICH

MR RADICH: Good afternoon, your name is Air Marshal Kevin Ronald Short?

A. Correct.

Q. And you are the Chief of the Defence Force -- Chief of Defence of the New Zealand Defence Force?

A. Yes.

Q. Now, you have a Brief of Evidence in front of you that you've signed, would you please begin reading the brief to the Inquiry starting at paragraph number 2?

A. Thank you.

I joined the Royal New Zealand Air Force in 1976 as a General Duties Navigator. In my early career I was a Navigator, Tactical Coordinator and Aircraft Captain in the No 5 Squadron.

At a senior level, I held a number of project, plans, and development related appointments, in which I initiated the upgrade of the aircraft operated by the Royal New Zealand Air Force at that time, that's the Hercules and Orions, and the purchase of a Boeing 757. I have also filled a range of senior command and representational appointments, including

serving as the Senior National Officer or SNO in United States Central Command as part of Operation Enduring Freedom in 2002 and the SNO and Commander of the New Zealand Provincial Reconstruction Team in Afghanistan in 2006.

Between 2007 and 2014, I held the following appointments: Assistant Chief Development in Headquarters New Zealand Defence Force, Assistant Chief Strategic Commitments and Intelligence, Deputy Chief of Air Force, and Commander Joint Forces. And On 31 March 2014 I became the Vice Chief of the New Zealand Defence Force or VCDF. I was in that role until 1 July 2018 when I was appointed the Chief of Defence Force (CDF).

Shall I continue with the *Native Affairs* report?

Q. Yes, please?

A. Okay.

On the night of 30 June 2014, I watched an item on the Native Affairs programme on Māori Television that was presented by Jon Stephenson, entitled *Collateral Damage*. I refer to the bundle, at p 217, for a transcript of the report.

Q. We'll just do that, although it won't -- I'll just have you identify documents as we go, I don't need to trouble you with their content, I don't believe, but what you're looking for is the bundle to your left-hand, the larger of the two, yes the one at the -- come forward, yes this one there thank you, and the numbers are at the bottom of the page, 217.

A. Okay.

Q. And would you confirm that that is the report that you're referring to?

A. Yes, it is.

Q. Thank you very much.

Paragraph 6 now of your Brief of Evidence.

A. Okay, in the report, Mr Stephenson alleged that the New Zealand Special Air Service, or NZSAS, had been involved in an operation in Afghanistan that, to use his words, "went wrong". He also claimed that there were no insurgents in the

village that night, that six civilians were killed, and a further 15 civilians were injured. Mr Stephenson described an investigation by the International Security Assistance Force, or ISAF, into the allegations of civilian casualties and I read:

"Investigators checked footage from the mission. They found that several rounds from US helicopters had missed their target and struck the wrong building and said this may have resulted in civilian deaths and injuries. They blamed this on a faulty helicopter gun [sight]. This admission ... does call into question [Minister] Mapp's categorical denial that civilians were killed or injured. It also raises the question of why our Defence Force said claims of civilian casualties were unfounded ..."

The news anchor concluded the report by saying that "the NZDF stands by its statement made on 20 April 2011 and will not be making further comment".

I refer to the bundle at page 187. And this is the NZDF statement of 20 April 2011.

Q. Just turn to that please if you would in that same bundle, 187? And can you confirm that to be the media release that you're referring to?

A. I can confirm that.

Q. Thank you.

Paragraph 8, sentence 2.

A. In summary, it recorded that:

The NZSAS, together with Afghan National Security Forces and other Coalition elements, conducted an operation against an insurgent group;

The operation was conducted as part of the wider ISAF mission to improve the security of the Afghan people and to protect the New Zealand Provincial Reconstruction Team in Bamyán province;

The operation was approved by both the Afghan Government and ISAF;

Nine insurgents were killed;

Allegations of civilian casualties were investigated by an ISAF joint assessment team; and

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

I do not recall having been involved in drafting the response to Jon Stephenson. The then CDF, Lieutenant General Tim Keating, was in Australia at a change of command ceremony for the then Australian Chief of Defence Force. I understand that, in CDF's absence, the matter was overseen by the Chief of Staff, Commodore Ross Smith.

At 9.35pm, after the programme had finished, I received a call from the Minister of Defence's Political Adviser, Josh Cameron. I made a note of this call in my personal diary, which is in the bundle at page 231.

Q. Just if you'd have a look at that please, page 231 of that same volume?

A. That is from my personal diary.

Q. Yes, and can you just point out where on the page that entry appears?

A. It's just below halfway where I talk about Josh Cameron, 0935pm.

Q. Yes, thank you.

A. Just under halfway.

Q. Yes thank you.

And then back to your evidence at paragraph 11?

A. The Political Adviser told me that the Minister's Military Secretary had taken a bundle of documents from the NZDF Headquarters to the Minister's Office. He explained that, amongst those documents, was a report drafted by an International Security Assistance Force (ISAF) assessment team, concluding that there may have been civilian casualties and that was the IAT report.

The Political Adviser said that the IAT report's conclusion that there may have been civilian casualties contradicted the

briefing that the Minister of Defence, the then Hon Dr Jonathan Coleman, had received. My notes indicate that there was a briefing on Saturday 28 June 2014 with Minister Coleman. But I do not know who participated in that briefing or what was said.

At 8.30am the following morning, 1 July 2014, Commodore Ross Smith and I met with Minister Coleman and the then Secretary of Defence. I refer to the bundle at page 231, which are the notes that I took at that meeting. And I'll stop there.

Q. Yes, if you'd have a look at page 231 in the first instance, and can you confirm that to be the page?

A. Yes, it is.

Q. And can you point out where on the page your notes begin?

A. Yes, I drew a line in the bottom part of the page to denote a new meeting and a new day. So that heading "Minister of Defence brief 1 July".

Q. Yes, thank you.

And then back to your paragraph 13, the last sentence?

A. In my notes I record that the Minister:

- felt let down by his Saturday briefing as it was too casual and did not contain all the information held - a critical piece was left out;

- wanted to understand when and how the NZDF got the IAT report; and

- wanted NZDF to interview the SNO at the time of the Operation to ascertain what he knew at the time and how he had interpreted the IAT report.

- why the IAT report was not available to CDF;
- the outcome of the interview with the SNO;
- how the NZDF obtained a copy of the IAT report and by whom it had been handled; and.

- whether the full report could be obtained.

Following this briefing, Minister Coleman addressed the media on his way into caucus meeting. He clarified the

position, in light of the IAT report. A number of media organisations reported what Minister Coleman had said, including that "there is absolutely no suggestion that New Zealand soldiers were involved in inflicting civilian casualties or deaths" but that "you probably can't rule out" the possibility of civilian casualties caused by a malfunctioning gunsight on a Coalition helicopter. And I refer to the bundle, at pages 243 and 247, for copies of those articles.

Q. If you'd just look at those pages to identify them as being the correct ones? 243?

A. Yes, it is.

Q. Thank you. And then again 247?

A. Yes, that's correct.

Q. Thank you very much.

At paragraph 16 now.

A. My recollection is that, after CDF returned from Australia that afternoon, I debriefed him on the meeting with the Minister and handed the matter back to him.

I had no further involvement; matters involving the NZSAS were held tightly by CDF, the Directorate of Special Operations, and the Commanding Officer of the NZSAS. That closed command structure was well entrenched, having been in place for many decades.

On to *Hit & Run*.

Nicky Hager and Jon Stephenson's book *Hit & Run: The New Zealand SAS in Afghanistan and the Meaning of Honour* was launched at 5.15pm on 21 March 2017. My understanding is that we had not been consulted during the drafting of the book.

The then CDF, Lieutenant General Tim Keating, was in Iraq with the then Minister of Defence the Hon Gerry Brownlee, so I was at the helm until his return to New Zealand on 25 March 2017.

By the time of the launch, at 5.15pm, most people had gone home for the day. There were not many of us left except what

was the -- called the Office of CDF staff in the office to review the book and to consider our response. My preference was to take our time to digest the book and the allegations, and to look across all documents, to talk to the right people within NZDF, and to provide a measured response.

Unfortunately, within an hour of the book being launched, we'd only just managed to get hold of the book, and we started fielding calls. There was substantial pressure to respond immediately. In those circumstances, we agreed that the best way to proceed, in the first instance, was to be consistent with what had previously been said by the NZDF.

My recollection is that someone searched the database of media releases for operations in Afghanistan in August 2010, and found the press release of 20 April 2011. Stapled into my diary on 21 March 2017 is a copy of the 20 April 2011 press release with a line around one sentence; that is: "The investigation concluded that the allegations of civilian casualties were unfounded." The annotation below reads 6.20 - that is, an hour after the book launch. I imagine that it was at 6.20pm that we found the press release. I refer to the bundle at page 261 for a copy of this document.

Q. Yes, if you'd just do so please? Is that the document that was stapled into your diary?

A. Yes that is.

Q. Yes, thank you.

A. This press release and, in particular, that statement formed the basis for our response to *Hit & Run*.

With all that was going on that evening, I didn't appreciate that the allegations in *Hit & Run* arose out of the same operation addressed in the *Native Affairs* report some three years earlier. In that moment, I did not connect the two reports. And obviously, if I had made that connection, it would have served as a prompt to review the IAT report.

Our intention in referring back to a previous media release was to exercise caution and moderation at a time where we did

not have all the information in front of us, until we had reached a more informed position. And I regret this approach resulted in the NZDF, in its initial response, mischaracterising the conclusions of the ISAF investigation.

However, what I must say with some force is that we didn't do so knowingly or intentionally.

The reality is that the NZDF never had any reason to obfuscate the conclusions of the IAT report.

The NZSAS actions were not impugned. It follows that there was no logical basis for the NZDF to seek to "cover up" the IAT's actual determinations.

Returning then to the night of 21 March 2017, it seems from my email records that by 7.43pm I had discussed the proposed response with then CDF Lieutenant General Tim Keating; and that it was issued at 8.25pm. Those emails are in the bundle at pages 263 and 265.

Q. And if you'd just look at those pages please to confirm them to be correct?

A. Yeah, both those pages are correct.

Q. Thank you.

A. The following day, at 12.30pm, I briefed the Prime Minister. By this point in time, that's the 22nd of March, even though less than a day had passed since the launch of *Hit & Run*, we had read, reflected on, and summarised *Hit & Run*; reviewed the CDF's Notes to the Minister of August and December 2010; and, through this work, come to realise the significance of the IAT report in this context.

I refer to the bundle, at page 271.

Q. If you'd do so please? Are they the talking points that you're going to come on to identify and refer to?

A. Yes, they are.

Q. Yes, thank you.

A. Okay these are the talking points I used to brief the Prime Minister, the Rt Hon Bill English. I advised the Prime Minister that:

- in August 2010 the threat to Afghan National Security Forces, to Coalition forces, and to the New Zealand Provincial Reconstruction Team was escalating;
- an operation was planned to disrupt the insurgent group responsible for the violence, which was approved by the Afghan Ministry of the Interior and the Commander of ISAF;
- the operation was conducted on 22 August 2010 by personnel from the Afghan Crisis Response Unit and the NZSAS, with Coalition support;
- nine insurgents were killed, including one by the NZSAS;
- one member of the NZSAS was injured;
- the NZSAS post-operation Battle Damage Assessment did not find non-combatant casualties;
- allegations of civilian casualties surfaced and were investigated by a joint assessment team of Afghan and ISAF officials; and
- the investigation concluded that civilian casualties may have been possible due to the malfunction of an air weapon system.

Although I knew on the morning of 22 March 2017 that there was an error in the initial response, I thought that, with CDF back in New Zealand within a matter of days, it was better to wait and develop a more coherent and considered response all together.

For that reason, after briefing the Prime Minister, I decided to take a "holding position" and not to comment further until CDF had returned to New Zealand. See, for instance, page 273 of the bundle.

Q. And if you'd just have a look at that please now, and can you identify what is on that page and perhaps the best way to do it is to continue reading your paragraph 33 from the third line?

A. Yes, okay.

For instance in that bundle 273 is an email of 22 March 2017, at 22.33 GMT, in which the Commander of the Special

Operations advises that "we are currently in a holding position re further engagement with media until the [return to New Zealand] of [the Minister of Defence] and CDF". Aside from the initial response to *Hit & Run* on the night of 21 March 2017, NZDF did not make any public statements until after CDF's return.

I know that Lieutenant General Tim Keating has given evidence about statements he made to the public and briefings he gave to the Government upon his return to New Zealand on 25 March 2017.

Q. Air Marshal, thank you very much. Now normally at this time there would be some questions from others, but given our timing, I'm afraid that your schedule needs to be interrupted a little further and we're likely to conclude the hearing here today and if you're available, have you back on Friday for some questions after Dr Mapp has given evidence?

A. Certainly.

Q. Thank you very much.

SIR TERENCE: Yes, so what we'll do is start at 9.45, that will give you an extra 15 minutes.

MR RADICH: I'm most obliged to you.

SIR TERENCE: So that, with luck, the cross-examination, won't begin until shortly after 10 or something, and then --

MR RADICH: Yes, yes, I see, yes.

SIR TERENCE: So you'll be able to hear what Ms McDonald is doing, and then so on.

MR RADICH: I'm most obliged, thank you Sir.

SIR TERENCE: And I imagine Dr Mapp will not be a long witness, so we should be able to return to your evidence in the course of the morning, late in the morning.

A. Okay.

SIR TERENCE: So thank you very much for coming and we'll see you on Friday.

We'll adjourn until 9.45 on Friday.

(The hearing adjourned until Friday, 18 October 2019  
at 9.45am)