

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

**A GOVERNMENT INQUIRY INTO OPERATION BURNHAM
AND RELATED MATTERS**

**Memorandum for New Zealand Defence Force on the
provision of further information to the Inquiry**

29 October 2018

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1. In Minute No 4 of 14 September 2018 (**the Minute**), the Inquiry said that it would expect that classified material held by the New Zealand Defence Force (**NZDF**) and other agencies will be provided to the Inquiry as soon as practicable. In its memorandum to the Inquiry of 25 September 2018, NZDF addressed the ongoing provision to the Inquiry of information that is subject to its control. This memorandum covers the provision of further information to the Inquiry.

Details and roles of NZDF personnel deployed in Operation Wātea

2. Amongst the further information provided is a document which records the details and roles of the NZDF personnel deployed in Operation Wātea in Afghanistan during the period relevant to the Inquiry's Terms of Reference.
3. Operation Wātea is the name of the deployment of the New Zealand Special Air Service (**NZSAS**) to Afghanistan which Cabinet authorised initially for the period of 18 months from September 2009. The NZDF is planning to release publicly a redacted and unclassified version of the Cabinet paper considered at that Cabinet meeting. The redacted Cabinet paper will be made available on the NZDF website.¹
4. The document which records the details and roles of the NZDF personnel deployed in Operation Wātea in Afghanistan is classified. The primary basis for its classification is a need to protect the identities and roles of NZSAS and associated personnel, and the tactics, techniques and procedures of the NZSAS. This accords with the NZSAS Standard Operating Procedures.
5. In line with other international military special forces, the NZDF has a practice of protecting the identities and roles of individual members of the NZSAS and associated personnel, unless there is specific authorisation to the contrary. The NZDF adopted this practice around thirty years ago.
6. It is the position of NZDF that, if this practice was to be compromised, New Zealand's national interests would be adversely affected – by damaging or even seriously damaging the operational effectiveness and safety of New Zealand forces, valuable security and intelligence operations, and relations with friendly

¹ See www.nzdf.mil.nz/corporate-documents/Operation-Burnham/default.html.

government, and, furthermore, because the safety of the individuals and their families would be put at risk.²

7. The NZDF appreciates the point made by the Inquiry in paragraph [24] of the Minute that it will be scrupulous to avoid compromising any classified information in any material that it makes available to those who do not hold appropriate security clearances, subject to the process that the Inquiry is putting in place to review the protection in line with classifications of the documents provided to it.

Reasons for protection of NZSAS and associated personnel

8. The NZSAS is a highly specialised capability which the New Zealand Government may utilise in relation to a broad range of domestic and offshore national security issues. The NZDF is careful to protect the NZSAS' capabilities and operations, including tactics, techniques and procedures, which differ significantly from those of conventional forces.
9. The key reasons for protecting the identities of NZSAS and associated personnel, both current and previously serving personnel, concern the nature of special forces' operations and the threat that otherwise exists in relation to personnel and their families.
10. Special forces are a high value capability and target in military operations. NZSAS and associated personnel may also need to operate in an inconspicuous manner, including in advance parties, covert and clandestine operations, which can be compromised if those personnel are identifiable. The compromise of these operations may lead to damage or even serious damage to New Zealand's interests including its relations with other governments.
11. NZSAS and associated personnel have, or have had, responsibilities that related to counter terrorism and combatting of extremism, including in Afghanistan. In

² See criteria for classifications set out in the New Zealand Government 'Guidelines for Protection of Official Information', available at www.gcsb.govt.nz/Assets/GCSB-Documents/Guidelines-for-Protection-of-Official-Information-Wallchart.pdf.

this regard, NZSAS personnel and their families are more likely to be attractive targets for attacks and exploitation.

12. In addition, NZDF personnel and their family members need protection for their privacy, in order to prevent undue attention and threats to their safety, including through harassment and bullying, which can take place in social, educational and other contexts.

The nature of protection

13. Protection is provided on the basis that serving NZSAS members are not identified to external audiences by their name, photograph, rank, service, occupation or trade. In addition, the NZDF has adopted internal measures, including while NZSAS members are on deployment, to ensure the protection of the identities of NZSAS and associated personnel.
14. NZSAS personnel are instructed to minimise the profile and scope of disclosure of their identities, addresses, contact details and so forth and are required to protect the fact of their involvement with the special forces to the extent possible.
15. Once an NZSAS member is identified publicly, as was the case with Corporal Willie Apiata after his receipt of the Victoria Cross, it will lead to that member being required to stand down from an NZSAS role. Consequently, any decision to reveal voluntarily an NZSAS member's identity is not a decision taken lightly.
16. The NZDF approach to protection is similar to that taken by its international partners for their special forces. The NZDF will be able to provide further information on the protection of identities of NZSAS and associated personnel (and, more generally, NZDF personnel deployed in operations) if the Inquiry would find that to be useful for its work.



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