

Ministry of Justice review for the State Service Commission's Inquiry into the Use of External Security Consultants

17 December 2018

These documents summarise an internal Ministry review of its use of private investigators or security consultants, as part of the State Service Commission's Inquiry into the Use of External Security Consultants.

The following documents have been proactively released by the Ministry of Justice:

No.	Document	Comments
1	Internal memo to Deputy Security – Corporate and Governance, which summarises the Inquiry and the Ministry's engagement of security consultants	<p>Some commercially sensitive information has been withheld as it is likely it would, if requested under the Official Information Act 1982, be withheld under section 9(2)(b)(ii) to avoid prejudice to the commercial position of the person who supplied or who is the subject of the information.</p> <p>Where this is the case, the information has been redacted and noted to be commercially sensitive.</p> <p>Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p>
2	Appendix 1 to the internal memo (Document No. 1): Letter from Doug Martin to Chief Executives, outlining the terms of the Inquiry	
3	A letter from the Ministry to Doug Martin, outlining the Ministry's findings	

Memorandum

To Andrew Bridgman, Chief Executive **Attachment:** Letter from Doug Martin re Expanded Terms of Reference of SSC Inquiry into Use of External Security Consultants

From Melissa Gill, GM Health, Safety & Security
Alistair Beckett, Director Privacy and Security Policy

Through Suzanne Stew, Deputy Secretary Corporate and Governance and Chief Security Officer

Cc: Mike Martelli, Director Risk and Assurance
Peter Hutchinson, Director PDS
Carl Crafar, Chief Operating Officer
Craig Candy, Acting Deputy Secretary ICT/CIO
Andy Fulbrook, Chief Financial Officer

Date 17 August 2018

Subject Report on Findings of State Services Commission Inquiry into the Use and External Security Consultants

For Approval Review Comment Action Noting

Purpose

1. This memorandum summarises an internal Ministry review of its use of private investigators or security consultants that has been requested by the State Service Commission's (SSC) Inquiry into Use of External Security Consultants.

Recommendations

2. It is recommended that you:
 - 2.1 **Note** that Thompson and Clark Investigation Ltd Services (TCIL) has been engaged by the Public Defence Service on two occasions in 2011 and 2012 to undertake investigations as part of cases.
 - 2.2 **Note** the engagement and procurement processes used by the Public Defence Service and by Health, Safety & Security have observed sound practice and offer a high degree of assurance that private investigator and security consultant services have been acquired properly.
 - 2.3 **Sign** by 20 August 2018, the attached letter to the Inquiry Head of the State Services' Commission of Inquiry into the Use of TCIL which states the Ministry has found no interactions with TCIL, its associated entities, or other providers that cause you concern. **YES/NO**

- 2.4 **Advise** the Ministry's State Services Assistant Commissioner of your comfort **YES/NO** that the Ministry found no interactions with TCIL, its associated entities, or other providers that cause you concern.

Background and request for assurance from CEs

3. On 16 March 2018, the SSC commenced an investigation into the use of private security consultants by Southern Response Earthquake Services Limited. Subsequently, on 19 June 2018, the investigation's terms of reference were expanded to include the 'nature and extent of engagement between State services agency employees and representatives of Thompson and Clark Investigations Limited (TCIL)'. The Ministry responded to this request.
4. Later, on 23 July, Doug Martin wrote to you explaining his newly expanded mandate to inquire into the use of external security consultants. He advised his new focus includes the use of all external security consultants, including (but not limited to) TCIL and its associated entities.
5. Given the breadth of the terms of reference, all Chief Executives were invited to satisfy themselves whether there are any matters that should be brought to the attention of the Inquiry. You were invited to assure yourself that:
 - 5.1. any use of external security consultants in general, and TCIL in particular, by the Ministry is appropriate, well managed and there are appropriate controls and oversight in place
 - 5.2. any interactions or relationships with external security consultants, including TCIL, are consistent with the professional expectations of the public service as expressed in the Code of Conduct for the State Services.
6. The Inquiry's period of interest is from 2008 to the present, but the Ministry was not precluded from looking beyond this period. In reviewing all financial records available and contract registries, the Inquiry head suggested that at a minimum steps should include:
 - 6.1. checking whether the Ministry has or has had any relationship with external security consultants (including private investigators) delivering specific services identified in the letter. The Inquiry is particularly interested in any relationships outside of a formal contract.
 - 6.2. checking whether the Ministry has used, or is using, platforms such as Wordpress or Slack to exchange information with external security consultants.
 - 6.3. checking whether any contract services are reviewed regularly, have requisite ownership/oversight, whether procured work matches the work delivered and whether the work delivered seems appropriate. Credentials and qualifications of providers should also be validated, e.g. are they licensed under the Private Security Personnel Licensing Authority.
 - 6.4. where there is not a contract, considering whether the interaction seems appropriate e.g. is the lack of contract explicable, do emails seem professional, is information exchanged consistent with what you would expect of state servants.
7. Assurance was to be informed by seven years' worth of financial records and, on a best endeavours basis, to seek assurance for at least the last ten years.

8. The Inquirer also asked that if the Ministry had been subject by restructure or merger (i.e. the 2011 Legal Services Agency merger into the Ministry), to take reasonable steps to provide the assurance for the organisation that predated establishment where those records are available.
9. The Ministry's response is required no later than 20 August 2018.

Headline results

<p>Public Defence Service - use of private investigators and security consultants</p>	<ul style="list-style-type: none"> • Thompson and Clark has previously been engaged on two occasions: <ul style="list-style-type: none"> ○ 2011 – witness interviews (11), file review and case preparation costing \$4,986.02 ○ 2012 - witness interviews (2), file review, case preparation and disbursements costing \$1,863.00 • There were no contract procurement requirements as the engagement was less than \$5,000. Nor is there documentation describing how Thompson and Clark were selected. • Private Investigators <table border="1" data-bbox="544 904 1406 1323"> <thead> <tr> <th>Year</th> <th>Amount</th> <th>Purposes include: Investigation/File Review/Witness Interview/Tracing Enquiry/Issue Summons</th> </tr> </thead> <tbody> <tr> <td>2018</td> <td>5,122.15</td> <td>6</td> </tr> <tr> <td>2017</td> <td>10,837.51</td> <td>15</td> </tr> <tr> <td>2016</td> <td>7,233.37</td> <td>9</td> </tr> <tr> <td>2015</td> <td>9,365.1</td> <td>6</td> </tr> <tr> <td>2014</td> <td>12,212.34</td> <td>14</td> </tr> <tr> <td>2013</td> <td>12,402.14</td> <td>11</td> </tr> <tr> <td>2012</td> <td>6,926.88</td> <td>9</td> </tr> <tr> <td></td> <td>64,099.80</td> <td>70 engagements</td> </tr> </tbody> </table> <ul style="list-style-type: none"> • Security consultant Allsafe has provided numerous 'self safe training courses' for PDS employees between March 2015 and April 2018 totalling approx. \$107k. 	Year	Amount	Purposes include: Investigation/File Review/Witness Interview/Tracing Enquiry/Issue Summons	2018	5,122.15	6	2017	10,837.51	15	2016	7,233.37	9	2015	9,365.1	6	2014	12,212.34	14	2013	12,402.14	11	2012	6,926.88	9		64,099.80	70 engagements
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<p>Health Safety & Security (and in its earlier incarnations) – use of security consultants only</p>	<p>Court Security</p> <ul style="list-style-type: none"> • contracted security consultant G Mann & Associates between Dec 2015 through to June 2017 (18 invoices) to advise on security setting requirements for the Christchurch Justice Emergency services Precinct, and latterly as the acting Precinct Security Manager. <p>Privacy & Security Policy</p> <ul style="list-style-type: none"> • engaged security advisor M Hubbard in September 2016 to conduct 12 site risk assessments (contract procurement process followed) • contracted security consultant G Mann & Associates between June – Nov 2017 to advise on the RISQ analytic tool and to conduct nationwide site security assessments (2 invoices) and then re-engaged in Feb 2018 to conduct further site assessments (1 invoice) (contract procurement process followed) 																											

	<ul style="list-style-type: none"> engaged security consultant KPMG in Nov 2016 to complete a security risk assessment of the RISQ analytic tool (contract procurement process followed) engaged security consultant C O'Donnell August 2017 to advise on the RISQ analytic tool contracted security consultant ICARAS between Nov 2016 – Apr 2017 to conduct a threat assessment of the Ministry (contract procurement process followed).
Legal Aid Services provides approval for external legal aid lawyers to engage private investigators	<ul style="list-style-type: none"> Provides approval to a legal aid lawyer to hire a private investigator if the lawyer can demonstrate why the services of a private investigator are required, and how these services will contribute to a successful outcome for their client. Their request will advise who they intend to hire and some background on the person or firm. This information will be kept on the paper file. They will also need to provide an estimate of the cost of services. The legal aid lawyer selects and hires the private investigator, and manages their activity. The lawyer pays the investigator and the Ministry reimburses the lawyer. Reimbursement is on an actual and reasonable basis with a GST receipt to support the claim Legal Aid Services does not require to know the name of the private investigator.
Risk and Assurance	The team have never used external security agents. The only forensic work completed has been specific fraud related and excluded from this terms of reference.
Financial system	<p>FMIS records disclosed PDS' engagement of Thompson and Clark on two occasions (see previous comment) but not of associated companies. All were checked as per the Appendix to the SSC request.</p> <p>NOTE - private investigators and security consultants are not identified as such in a 'natural account' and they can only be identified if the individual business name is checked against records.</p>
Procurement system	<p>TCIL, or associated companies, are not evidenced in Ministry procurement and contract registers.</p> <p>NOTE private investigators and security consultants are not identified in a 'natural account' and that they can only be identified if the individual business name is checked against records.</p>
Email system	Systems not searched due to prohibitive costs – see detailed explanation in Appendix B below.
Re Legal Services Agency	Unable to access records of the former Legal Services Agency between 2008 and 2011 due to technical and cost constraints.

Use of Slack and/or Wordpress application	ICT has no record of these applications being used in the Ministry
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Assurance – “take all reasonable steps”

10. In terms of the Inquirer’s ‘take all reasonable steps to achieve ... assurance’ requirement, given the Ministry’s minimal contact with TCIL, and associated companies, (as evidenced by review of payment systems and enquiry) it is highly unlikely there is any relevant information in any part of the Ministry’s email system, that would justify the expenditure outlined in Appendix B. What we do know is that the current members of the HSS team who may have had any contact from TCIL have confirmed that there has been no email or personal contact made. We also have clear records on the HSS’ teams use of security contractors and consultants over the past few years. Similarly, PDS’ and Legal Aid Services processes are indicative of the contact with security consultants over the past few years.

11. Following a review of financial and procurement systems, there is no evidence the Ministry has:
 - 11.1. ever engaged private investigators and security consultants to undertake high-level security assessments and private investigations of individuals or groups
 - 11.2. ever engaged third parties to gather intelligence from open source documents on security related issues
 - 11.3. ever engaged private investigators and security consultants to conduct surveillance on individuals, groups or meetings
 - 11.4. ever engaged private investigators and security consultants to conduct security threat assessments of individuals or groups, nor undertake analysis of any information or intelligence gathered.

12. Ministry practice for engaging private investigators is best represented by PDS’ practice, controls and oversight as evidenced by:
 - 12.1. PDS Support Services Managers (essentially the Practice Managers) receive a week’s induction that includes requirements for a Purchase Order and accompanying Memorandum to be completed to engage a private investigator or security consultant
 - 12.2. engagement applications are checked and authorised subject to the Purchase Order and signed Memorandum being reviewed
 - 12.3. subject to delegations, engagements over \$1,000 can be authorised by a Public Defender and those over \$5,000 require Director approval and sign off
 - 12.4. all private investigators or security consultant engagements are to be entered into the PDS Contract Register
 - 12.5. all engagements/contracts are reviewed by the Chief Legal Officer
 - 12.6. all engagements/contracts are monitored monthly and subject to a quarterly return to the PDS leadership team.

13. HSS engagement of private investigators or security consultants observes similar approval and management oversight processes as well as reporting and governance processes employed by PDS.

Next Steps

14. Subject to your satisfaction with the assurance provided, it is proposed you sign the attached letter advising the Ministry has found no interactions with TCIL, its associated entities, or other providers that cause you concern. This letter is required to be sent to the Inquiry head by Friday, 20 August 2018.
15. Advise the Ministry's State Services Assistant Commissioner of your comfort that the Ministry found no interactions with TCIL, its associated entities, or other providers that cause you concern.

Attachment

- Appendix A **Letter from Doug Martin re Expanded Terms of Reference of SSC Inquiry into Use of Security Consultants**
- Appendix B **Detailed rationale for not searching email systems**

Appendix A Letter from Doug Martin re Expanded Terms of Reference of SSC Inquiry into Use of Security Consultants (see pdf attachment)

Appendix B Detailed rationale for not searching email systems

Limitations to Ministry email retrieval

16. Discussions with ICT indicate considerable time and cost implications to search Ministry email systems.
17. Fujitsu has been the Ministry's ICT provider since late 2012 and administers the Ministry's email system. At the time, the Ministry was using GroupWise for email. Subsequently, the Ministry migrated to Microsoft Exchange in March 2014 (called the Fujitsu Messaging Service (FMS)).
18. Users who left the Ministry prior to the FMS migration in 2014 had their email archived into the legacy mail archiving system for GroupWise. No legacy archive data was ingested into FMS, only live data from that time (e.g. active mailboxes). The legacy archive data was exported out of the old archive system into Microsoft compatible archive files (called PST files), then backed up to tape and the original data deleted as the old GroupWise system was decommissioned.
19. As the Ministry has a 90 or 30-day archiving policy, any search conducted in Enterprise Vault will only cover emails up to 90 days old for individual mailboxes or 30 days old for the top 100 shared mailboxes for existing users. The Ministry currently has approximately 12Tb of email data stored in 45 databases.
20. Against this background, a forensic review also needs to account for the following:

20.1. Exchange restores:

- 20.1.1. Five years of the Ministry's current Microsoft Exchange environment would need to be restored. Commercially sensitive [REDACTED]
- 20.1.2. Commercially sensitive [REDACTED]
- 20.1.3. Commercially sensitive [REDACTED] restores would cost approximately \$3,420,000. Commercially sensitive [REDACTED]

20.2. GroupWise 2011 – 2013:

- 20.2.1. Fujitsu would need to build a Novell environment including restoring eDirectory to enable it to do the restore for GroupWise mailboxes between 2011 and 2013 and then perform the required restores and search. Commercially sensitive [REDACTED]
[REDACTED] The estimate for these activities is \$516,000. Commercially sensitive [REDACTED]
- 20.2.2. Note: Searches in GroupWise may not even be successful due to the scale of the searches being proposed.

20.3. PST restores:

- 20.3.1. Commercially sensitive [REDACTED] PST files would need to be restored and re-imported into eVault. Commercially sensitive [REDACTED]

Commercially sensitive

activity is \$200,000.

The estimate for this

21. Additional costs of organising servers and disk increases (numbers cannot be estimated because the total size of restores is unknown) have not been factored into estimates. Also, the Ministry would also be liable for Revera's costs. Fujitsu has not included these in its estimations, as it is not able to estimate them.
22. Historic treatment of emails, the nature of forensic searching and the associated prohibitive retrieval costs compound to make email searching an uneconomic reality.

CONFIDENTIAL

23 July 2018

State Sector Agency Chief Executives

State Services Commission Inquiry into the Use of External Security Consultants

Dear Chief Executive

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

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

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

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

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

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

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

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

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

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

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

Please could you report on the outcome of your internal review to Sarah Baddeley at MartinJenkins: sarah.baddeley@martinjenkins.co.nz. In particular please advise whether:

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

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



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

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

Yours sincerely



Doug Martin
Inquiry Head



APPENDIX 1: EXTRACT FROM INQUIRY TERMS OF REFERENCE

All agencies

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



APPENDIX 2: THOMPSON AND CLARK AND ASSOCIATED COMPANIES

THOMPSON & CLARK INVESTIGATIONS LIMITED (1287169)

EYELA LIMITED (5679387)

CYCLOPS MONITORING LIMITED (4458600)

BIKINI RED LIMITED (2354132)

Commercially sensitive

CLARK CAPITAL LIMITED (6276850)

Commercially sensitive

THOMPSON CAPITAL LIMITED

THOMPSON TRUSTEE (2011) LIMITED (3430191)

Associated URLs

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

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

Commercially sensitive

Commercially sensitive





20 August 2018

Doug Martin
Inquiry Head
Inquiry into the Use of External Security Consultants

State Services Commission Inquiry into the Use of External Security Consultants

Dear Doug

In your 23 July 2018 letter to State Sector Agency Chief Executives you invited me to take appropriate steps to assure myself that:

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

The Ministry took all reasonable steps to provide me assurance, including accessing all financial records available and reviewing contract registries.

However, the prohibitive costs of restoring and forensically reviewing seven years of archived emails (estimated to be more than \$3.5m) precluded detailed examination of that domain. Notwithstanding this, given that the Ministry was only able to identify two engagements with Thompson & Clark in 2011 and 2012 through its payment system, I am satisfied that a forensic analysis of the email system would be unlikely to disclose anything untoward.

The Ministry did not identify any interactions or relationships with external security consultants, including TCIL, that were inconsistent with the professional expectations of the public service as expressed in the Code of Conduct for the State Services.

In the final analysis, the Ministry has found no interactions with TCIL, its associated entities, or other providers that cause me concern.

Please let me know if you have any questions about this response.

Yours sincerely

Andrew Bridgman
Chief Executive