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Mahrukh Sarwar
Via FYI.org.nz website

Dear Ms Sarwar

Official Information Act Request

I am writing regarding your recent feedback to my Official Information Act 1982 (OIA) response of 8 November 2019. Please find enclosed some additional context to explain my first response to you in relation to your original questions 1, 12, 22, 24, 26, 28, 29, 30, 31 & 32. I have also provided further information in regards to your original questions 3 and 11. You will also find enclosed information regarding your follow up questions in relation to the original questions 4, 7, 9 and 13.

I must stand by my decision to withhold information in relation to questions 2, 5, 6, 19, 20 and 33 of your original OIA request under sections 6(a), 6(b) and 9(2)(ba)(i) of the OIA. I cannot provide you with further information as to why this information must be withheld, as the giving of this information would itself prejudice the interests protected by section 6 and section 9 of the OIA.

It is important that the NZSIS protects its activities, sources of information, methods, partners and staff identities. To release this kind of information publicly would potentially have an impact on people's safety, as well as limit the NZSIS's ability to achieve its objectives. Furthermore, a lot of information is provided to the NZSIS on the basis of confidence. Providing further detail could risk international and domestic relationships and reduce the likelihood of similar important information being provided to the NZSIS in future.

NZSIS approach to information requests

Due to the sensitive nature of what we do, revealing details about information we do or do not hold can have security implications. We therefore make decisions on requests on a case-by-case basis, taking into account our relevant statutory obligations.

Ombudsman

You do have the right to seek an investigation and review by the Ombudsman of my response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please know that the NZSIS co-operates fully with investigations undertaken by the Ombudsman. If, during the course of their investigation, the Office of the Ombudsmen determines that it needs to review classified information, the NZSIS will work with their cleared staff in order to make that classified information available. This means that the Office of the Ombudsmen has access to all the relevant information, including classified information, in order to make its assessments.

Question one

Original question: Copies of SIS documents, correspondences and addresses (including but not limited to emails, letters, and presentations), for periods A, B, C and D, referring to any of the following terms:

- a. Arab / Muslim / Islam / Islamist / Islamicist / Jihadist /
- b. Terrorists / Extremists / Radical / Far-right / White supremacy

Your follow-up comment: This information has been withheld under section 18(f) of the OIA. Under sections 18A and 18B of the Official Information Act, you were required to consider whether the reason for your refusal can be removed either by consultation, fixing a charge or extending the time period for a response. Your response simply states that you think an extension of the timeframe would not enable the NZSIS to provide a response. We note that failing to follow the steps in sections 18A and 18B of the Act was held by the High Court as unlawful (*Kelsey v Minister of Trade*). You have not made any effort to make this information available through avenues set by Parliament. This clearly goes against Parliament's intent in ensuring agencies engage with the requests before they refuse them under section 18(f).

This request was refused on the grounds that the information could not be made available without substantial collation or research. I do not consider that any extension of the timeframe, or charging you an amount of money, would enable us to answer this request. This would be a largely manual exercise that would draw resources for a significant period of time.

I encourage you to make a more refined request, if there is a more specific topic that you are interested in.

Question three

Original request: All interviews, speeches and lectures on the topic of the 'Role of the SIS' from periods A, B, C and D.

Your follow up comment: We do not believe refusing under section 18(f) is appropriate in the circumstances given the significance of the events. In addition to this, the steps outlined in sections 18A and 18B of the Act were not followed and therefore, you have acted unlawfully. This shows us that you have not made any effort to try and make this information available, despite the avenues set by Parliament to ensure agencies engage with the requests before they refuse them under section 18(f).

In my previous response to you, I provided you with information on where to find all NZSIS's publicly available speeches and provided you with copies of further speeches going back to 2002. We have since completed a search for the years 1990 – 2000 and identified two further speeches that fall into scope of your request. Please find enclosed:

- Untitled speech given by the Director to the Hutt Valley Chamber of Commerce - 1 December 1997 (note: this same speech went to various other New Zealand organisations in 1997/1998); and
- Untitled speech given by the Director to the Kelburn Club - 17 August 1999 (note: this same speech went to various organisations in 1998/1999).

The NZSIS has also identified more speeches in the 2014 – 2019 period that are in scope of your request. Please find enclosed:

- PowerPoint presentation – 2016
- Director's speech to new Ministry of Defence staff – 7 September 2016
- Speech to Serious Fraud Office staff – 12 June 2017
- Presentation to Auckland University Keeping New Zealand and New Zealanders safe – the role and focus of the NZSIS – 14 June 2017 (note: this speech was also presented to Otago University on 18 July)
- Hugo Group speech – 25 August 2017
- Acting Director-General's speech to new Ministry of Defence staff - Friday 23 February 2018
- Speech to Ombudsmen Association Conference – 21 May 2018
- Wellington Rotary Club speech – 29 April 2019

Additionally, I have reconsidered my decision in regards to the classified speeches and decided to release six of these speeches. You will find copies of the following speeches enclosed:

- Presentation to Customs - The importance of leadership and customer focus in a dynamic security and intelligence environment –September 2014
- Speech to NZDF Command and Staff College – October 2015
- Speech to New Zealand Defence Force (NZDF) Staff College -May 2017
- Speech [Title withheld under section 6(a)] –May 2018
- Speech to the NZDF Staff College –June 2018
- Speech [Title withheld under section 6(a)] – 2019

Parts of the speeches listed above have been withheld under section 6(a) of the OIA, as the release of this information would prejudice national security or the international relationships of New Zealand.

Please note that the 2017 speech to the NZDF Staff College refers to the Director-General of the GCSB, Andrew Hampton, speaking first. This GCSB portion of the speech cannot be located, therefore I must refuse to provide this under section 18(e) of the OIA: the document containing the information cannot be found, despite reasonable efforts to locate it.

There remain 10 in-scope speeches that I am withholding under section 6(a) of the OIA. I cannot provide you with any further information about these speeches, beyond the fact that they all took place during the 2014-2019 period. Releasing further information about these speeches would prejudice national security or the international relationships of New Zealand (section 6(a) of the OIA).

Question four

Original request: The dates of all meetings with Muslim organisations in New Zealand and minutes of such meetings from periods A, B, C and D.

Your follow-up comments and questions: Can you please clarify that FIANZ and IWCNZ are the only Muslim organisations you have met with in your role as Director-General of Security? You have not cited any details regarding the NZSIS's engagement with Muslim organisations, including the number, type of organisations and type of engagement. This makes it difficult to gauge the extent of your refusal. There seems to be no apparent reasoning for the refusal, particularly when some organisations have been cited and others have not.

As the Director-General of Security, I engage with a range of organisations to foster trusting, collaborative relationships with a focus on national security matters, including improving NZSIS's understanding of issues impacting their communities. I can confirm that FIANZ and IWCNZ are the only Muslim organisations I have met with as part of this engagement programme.

While I can discuss engagements I have had with the Muslim community, I cannot provide further details about NZSIS operational staff's engagement with the Muslim community. Individuals (and organisations) provide in-confidence information to the NZSIS with the expectation that it will not be shared publicly. It is crucial that NZSIS continues to receive information and reports of security concern, therefore I stand by my decision to refuse your request under sections 6(a) and 9(2)(ba)(i) of the OIA, as the release of this information would prejudice the security or defence of New Zealand, and in order to protect information which is subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information.

If any Muslim organisations or individuals have information or concerns relating to national security, they are welcome to contact the NZSIS via one of our open channels, such as our phone line (0800 747 224) or online Public Contribution Form (<https://providinginformation.nzsis.govt.nz>).

However if anyone has immediate concerns for safety, it is important to get in touch with New Zealand Police in the first instance.

Question seven

Original request: Copies of staff training documentation and audio-visual programmes on Islam and Muslim from periods A, B, C and D.

Your follow up questions: Firstly, we would like to confirm whether you are saying that for the relevant time periods (periods A, B, C and D) the only training that has been arranged regarding Islam and Muslims are the two workshops stated.

The two workshops stated were/are the only training in relation to Islam and Muslims that are offered to all staff. NZSIS staff whose specific roles require engagement with the Muslim community have received additional training.

Furthermore, would it be possible to get an indication of how many staff (generally or specifically; number or percentage) have attended each of these workshops?

125 people from the GCSB and NZSIS have attended these workshops in the years 2016-2020.

Finally, would you be able to provide the qualifications and expertise of those who carried out the training?

I cannot provide you with this information as to do so could risk identifying the trainer(s).

NZSIS does not provide information that could reveal the identity of external suppliers for the reason that the release of their identity would be likely to prejudice the national security or defence of New Zealand (section 6(a) of the OIA). Releasing information that could reveal the trainer's identity could make them a target for adversaries.

Furthermore, section 227(1)(b) of the Intelligence and Security Act 2017 (ISA) restricts the publication of information that indicates that any person is connected in any way with an employee of an intelligence and security agency, so section 18(c)(i) of the OIA also applies.

Question nine

***Original request:* The annual reports list warrants that allow SIS to monitor people but do not specify why they have been issued. What were the warrants issued for between 2002 and 2018? Were any of these warrants for white supremacists?**

***Your follow up question:* Would you please be able to clarify the relationship between the counter-terrorism risk register and obtaining and executing warrants? Presumably, the NZSIS would have obtained warrants for at least some of the people on the counter-terrorism risk register.**

The NZSIS cannot provide detailed information about how we investigate national security threats, or the specific threats we are investigating. Releasing this type of information can allow individuals of concern to change their behaviours, making it more difficult for security agencies to identify and protect against that harm.

The NZSIS applies a proportionate approach to investigations, and acts when it is necessary and in a lawful way. We use the least intrusive investigative method necessary and proportionate to the threat we are investigating. Where it is required, however, more intrusive intelligence collection may be carried out under an intelligence warrant.

Some guidance the NZSIS has created that further explains the purpose of security intelligence investigations and the intelligence cycle can be found online:

<https://www.nzsis.govt.nz/assets/media/NZSIS-what-are-security-intelligence-investigations.pdf>.

***Your follow up comment:* In the 2017 Briefing to the Incoming Minister, it was said "all but one of NZSIS's current counter-terrorism investigations concern ISIL-linked extremism." This shows that NZSIS is willing to share some information about its areas of focus and capabilities, and not other information. We would suggest that the information they have been willing to share is information specifically regarding Islamist extremists. You have not provided with sufficient particularity, the nature of the prejudice effect. There is no information about why you have refused to provide information beyond citing section 6(a). Under section 19(a)(ii) we are entitled to ask for grounds in support of your reason for refusal.**

Typically, providing details about what our intelligence investigations specifically focus on would prejudice national security, as there is the potential that this would alert persons of security interest to the fact that their activities were under scrutiny, making it harder for the NZSIS to perform its functions.

The uniquely high-profile nature of ISIL, and the number of terrorist acts attributed to them globally, meant that acknowledging them as a known-threat to New Zealand citizens was not information that would prejudice national security.

Question 11

Original request: What is the ethnic cultural composition over the periods A, B, C and D of your senior operational staff?

Your follow up comment: Although the NZSIS might not record the ethnic identity for senior operational staff separately from the whole organisation, we believe that the NZSIS has the means to collate this data. For an agency of this size, this is a modest exercise to undertake.

The NZSIS has now compiled this information for you. Please find attached, in Annex A, a table providing the ethnic identity of senior operational staff for the financial years 2007 – 2019.

The NZSIS remains unable to provide you with the figures for earlier years as collating this information would be a large administrative burden, due to the way the information is stored, and for some years it is possible that this type of information was not recorded. Therefore I must refuse your request for the data for the years 1990 – 2006 as this information cannot be made available without substantial collation (section 18(f) of the OIA).

For a career service like the NZSIS where roles require specific skills and knowledge which are not easily obtained outside the organisation, increasing diversity at the senior level is a more lengthy process than it is for other organisations. This is because the skills and experience our roles require are often not available in the external market. Therefore the best way for us to grow a more diverse workforce is the recruitment of diverse staff at lower levels and developing these staff to enable them to move into more senior roles. We are working to do this through our Diversity and Inclusion Strategy.

Question 12

Original request: What are the number of people from the UK, US, Canada and Australia who have been appointed as staff or have been consulted for the periods A, B, C and D?

Your follow up questions: You have not provided with sufficient particularity, the nature of the prejudice effect. There is no information about why you have refused to provide information beyond citing section 6(a) and 6(b)(i). Under section 19(a)(ii) we are entitled to ask for grounds in support of your reason for refusal. Would you please be able to clarify how disclosing information about how many people were appointed as staff or consulted would be prejudicial?

The NZSIS has previously provided you with the total number of people from the UK, US, Canada and Australia who have been appointed as staff, as requested.

We have refused to provide you with the number of people from the UK, US, Canada and Australia who have been consulted with over the periods within November 1990 – September

2019. This is because, as New Zealand is part of the Five Eyes partnership, we have often sought advice and consulted with those countries on a range of matters. As previously discussed, information provided by other countries is provided with the expectation that it will remain confidential and classified. To release this information would compromise the quality and supply of similar information in the future, which would prejudice New Zealand's security and damage international relations.

Question 13

Original request: How do security agencies identify threats as either "potential threats" or "possible threats" or "imminent threats"?

Your follow-up question: Would you please be able to clarify how the NZSIS is able to uphold its statutory duty to act "impartially and independently" as stated in question 5 of your response, if the areas of focus are set out by Cabinet?

As the NZSIS is a government department, we are accountable to the democratically elected Government of New Zealand, which sets the National Security and Intelligence Priorities that guide all our work.

A key component of New Zealand's constitutional arrangements is that public sector organisations, including the NZSIS, are apolitical. We are required to provide support for the government of the day, regardless of the political composition of the Government.

Section 18(a)(ii) of the Intelligence and Security Act 2017 (ISA) requires that the NZSIS conduct its activities in a politically neutral manner. Furthermore, the ISA also requires us to regularly consult the Leader of the Opposition for the purpose of keeping the Leader of the Opposition informed about matters relating to the agency's functions (section 20 of the ISA).

Because of the apolitical way we carry out our functions, those who may be in Government at some future date can be confident that we will support them and be equally fit to carry out the work of government under their administration.

The State Services Commission has produced guidelines for public sector agencies around political neutrality. You can find a copy of this guidance online at <https://ssc.govt.nz/resources/political-neutrality-guidance>.

Your follow-up question: Furthermore, how much information does NZSIS provide the National Assessments Bureau (NAB) and Cabinet which would help influence their assessments and decisions? For example, in the Briefing to the Incoming Minister 2017, the report clearly states the "counter-terrorism environment in New Zealand is still dominated by the influence of so-called Islamic State of Iraq and the Levant (ISIL)." This is the only area of violent extremism explicitly mentioned in the report. How does the NZSIS determine what information about their focus they are allowed to share that is not prejudicial and what information they are not able to share? For example, the NZSIS has repeatedly mentioned ISIL and Islamist extremism in speeches, annual reports, briefings and in the media but does not disclose further examples of focus. This is, for example, despite the threat of far-right extremism and white supremacy world-wide.

As I mentioned previously, the uniquely high-profile nature of ISIL, and the number of terrorist acts attributed to them globally, meant that acknowledging them as a known-threat to New Zealand citizens was not information that would prejudice national security.

The NZSIS has also publicly referenced our work to obtain a better picture of the threat posed to New Zealand by far right extremist groups.

While the NZSIS is limited in what we can say publicly about the work we undertake, one of the focuses of the Royal Commission of Inquiry is determining whether the NZSIS's work was adequately focussed. The Royal Commission of Inquiry is the appropriate mechanism for examining the work done by the NZSIS in this context.

Question 22

***Original request:* What has prevented more proportionate and appropriately conducted raids from being carried out against white supremacist groups?**

***Your follow-up questions:* We understand the NZSIS does not have enforcement functions. However we are also aware that the NZSIS will work with police where there is a risk to public safety. We are also aware that, as an intelligence agency, the NZSIS will pass information on to police. We are requesting the information in this context.**

When there is a risk to public safety the NZSIS does work closely with the New Zealand Police. However, as enforcement action is the purview of the New Zealand Police, I cannot speak to how their raids are conducted. For that information, I recommend you contact the New Zealand Police directly.

Question 24

***Original request:* How do the SIS distinguish between white supremacists and far-right extremist groups?**

***Your follow-up question:* Would you be able to clarify whether you are suggesting that the NZSIS does not distinguish between white supremacists and far-right extremists?**

The NZSIS's focus is on those with extreme views who are intending to cause harm, and/or facilitate acts of violence in support of their ideology. We are aware that there is a range of loosely connected ideologies that cannot be put in one neat box.

New Zealand has a Counter-Terrorism Strategy, which is about working together to prevent terrorism and violent extremism of all kinds in New Zealand. A copy of this strategy can be found online at <https://dpmc.govt.nz/publications/new-zealands-counter-terrorism-strategy>.

Question 26

***Original request:* On how many occasions has there been a review of policies regarding Muslims by any persons outside the SIS for periods A, B, C and D?**

***Your follow-up question:* We understand that the SIS has met with the Muslim community on a number of occasions, as highlighted in the media and in your response to question 4. We are requesting information within this context. To further clarify, we are asking about policies regarding interaction with the Muslim community more generally.**

As I have explained, the NZSIS engages with various communities for a range of reasons and at a range of levels. Not all engagements require specific policies.

There is however, a Ministerial Policy Statement that provides guidance for the NZSIS about the conduct of human intelligence activities. In doing so, the NZSIS must have regard to the following principles: legality, necessity, proportionality, minimal impact on third parties and oversight.

This MPS can be found online at <https://www.nzic.govt.nz/assets/assets/mpss/Ministerial-Policy-Statement-Collecting-information-lawfully.pdf>.

Question 28 and 29

Original request: What cultural intelligence and cultural awareness and sensitivity training and reform arose out of the consequences of the Ahmed Zaoui Case? What cultural intelligence and cultural awareness and sensitivity training and reform arose out of the consequences of the Urewera Raids?

Your follow-up question: We would like to clarify that despite the national and international significance of these cases, no policy changes were made.

I note my original response to you related to cultural awareness and sensitivity training, which is developed in response to identified organisational needs and relevant directions from the New Zealand Government.

The Ahmed Zaoui case and the Urewera raids were events that happened in the early 2000s. While I have not identified any specific policy changes that were a direct result of these matters, I can confirm that the NZSIS does update and refresh its policies regularly, taking into account legal developments, among other things. The NZSIS policies that were in place in the early 2000s are not the same policies that are in place now.

Question 30, 31 and 32

Original request: How does the SIS claim it properly prioritises and curate their intelligence given their lack of key target community and lack of cultural contextual understanding of the communities under threat (or of some threat)? 31. How does the SIS claim to properly curate their intelligence given their approach to a key target community lacks any multi-dimensional integration or reflection of the complexity of those communities? How can the SIS expect to properly prioritise and curate their intelligence when the government and the society in which it operates and informs their work have not undertaken any substantive engagement with the world's second largest faith community?

Your follow-up question: To clarify, we asked if the NZSIS has not engaged in understanding target or threatened communities, how can it organise its intelligence work in those areas?

I note this question does not appear to be asking for official information, but rather asking for an explanation or an opinion, which would require the NZSIS to create new information. This work is out of scope of the OIA, and therefore I must refuse it under section 18(e) of the OIA: the information requested does not exist.

With that said, I must reiterate that the NZSIS is always seeking to broaden its relationships within the communities that make up New Zealand. Through building and maintaining good

working relationships, NZSIS provides the community with a public face to engage with about national security-related issues.

Furthermore, the NZSIS does not target communities, nor do we have any mandate to target communities. We gather intelligence on individuals or groups that we assess to be a threat to national security as required by, and within the limits of, our legislation,

If you wish to discuss this response with us, please feel free to contact oia.privacy@nzsis.govt.nz.

As stated previously, you have the right to seek an investigation and review by the Ombudsman in relation to my decisions in my OIA responses. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Yours sincerely



Rebecca Kitteridge
Director-General of Security

Annex A

Table 1: Ethnic identification of NZSIS senior operational staff (financial years 2007-2019)

NZSIS	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
NZ European	75.0%	100.0%	50.0%		66.7%	66.7%	100.0%	40.0%	57.1%	66.7%	83.3%	75.0%	75.0%
European	25.0%		50.0%	100.0%				40.0%	28.6%	16.7%	16.7%	25.0%	25.0%
NZ Maori		33.3%					33.3%	20.0%	14.3%				
New Zealander					33.3%	33.3%		20.0%	28.6%	16.7%			

Please note:

- This data excludes operational staff from Protective Security Requirements team as they were deemed out of scope of your request;
- Where figures sum to above 100% it reflects the fact staff identify with more than one ethnicity; and
- Some staff opted not to provide their ethnic identification, so in those cases the data could not be collated.