



New Zealand
Security Intelligence
Service
Te Pā Whakamarumarū

New Zealand
Security Intelligence Service
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www.nzsis.govt.nz

30 January 2023

New Zealand Council for Civil Liberties
fyi-request-21467-53cfe515@requests.fyi.org.nz

Tēnā koe

Official information request

Thank you for your Official Information Act 1982 (OIA) request of 20 December 2022 to the New Zealand Security Intelligence Service (NZSIS) seeking information about the NZSIS apology to Nicky Hager.

Response

You requested:

1. *a copy of the media statement issued by the NZSIS regarding the settlement it reached with Mr Hager;*
2. *all advice and media planning information held on the publication of the media statement; and*
3. *all information held regarding the removal of the media statement from the NZSIS website.*

Please find a copy of the media statement attached to this letter as Annex One.

The NZSIS holds six emails within scope of your request. Three of these emails are withheld under section 9(2)(h) of the OIA, to maintain legal professional privilege. The remaining emails are on the publication on the media statement or 'no surprises' notifications regarding the statement being issued, and are enclosed. Some information has been withheld pursuant to section 6(a) of the OIA, where the making available of the information would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.

The statement was issued in accordance with the terms agreed between parties, and was widely reported by media. There are two further emails in scope of the third part of your request, which are also enclosed. Some information has been withheld pursuant to section 6(a).

Review

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

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

Ngā mihi



Rebecca Kitteridge

Te Tumu Whakarae mō Te Pā Whakamarumaru
Director-General of Security

Annex One: Media statement

NZSIS media statement - settlement with Mr Hager regarding 2012 activity

In 2019 the Inspector-General of Intelligence and Security made findings that, in 2012, the New Zealand Security Intelligence Service acted outside of its lawful scope of activity in that it obtained two months of call associated data for the home telephone line of journalist Nicky Hager.

The NZSIS accepted the IGIS findings in full and apologised to Mr Hager, in line with the Inspector-General's recommendation. The Director-General of Security reiterated that apology publicly following the release of the IGIS report.

In recognition of this breach, the NZSIS has agreed to pay compensation to Mr Hager, and a contribution towards his legal fees.

We recognise the important role that journalists play in a free, open and democratic society – the very society the New Zealand intelligence agencies exist to uphold. There is a comprehensive policy framework in place which requires very high levels of approval, justification and oversight if there is a situation where intelligence gathering activity touches on a journalist in any way.

The introduction of the Intelligence and Security Act 2017 has clarified the law we operate under and gives a clear legal mandate to take action to identify, assess and protect against threats to sensitive and classified information. In addition, NZSIS has overhauled and significantly strengthened its policy framework and legal and compliance systems in the decade since this incident occurred.

A summary of our policies around operational collection activity involving sensitive category individuals, which includes journalists, is publicly available in the NZSIS website.

The agreed statement with Mr Hager follows:

Agreed statement as part of settlement with Mr Hager

Following the release of Mr Hager's 2011 book, *Other People's Wars*, the New Zealand Defence Force sought the assistance of the New Zealand Security Intelligence Service to investigate the possible unlawful disclosure of classified information to Mr Hager. In 2012, NZSIS acquired two months of Mr Hager's call associated data for his home telephone line for the purposes of assisting NZDF with that investigation.

In 2019, Mr Hager made a complaint to the Inspector General of Intelligence and Security. Before the IGIS, the NZSIS justified its use powers against Mr Hager by claiming that it was investigating espionage. However, in her report the Acting IGIS found that the NZSIS had no reasonable grounds for suspecting that any espionage had occurred and that the acquisition of two months of call associated data had therefore been unlawful. The Acting IGIS also said NZSIS failed to show necessary caution, in a free and democratic society, before carrying out investigative activity into a journalist's source.

Mr Hager had a reasonable expectation of privacy in his home telephone, and NZSIS now accepts that it acted unlawfully in obtaining that data. Doing so breached Mr Hager's rights under ss 14 and 21 of the New Zealand Bill of Rights Act 1990, and some of the Information Privacy Principles of the Privacy Act 1993.

Investigative journalists such as Mr Hager play an important role in society, including to provide an additional check on executive functions and powers. The role of Mr Hager is considerably more difficult given his subject matter of expertise and the difficulties of obtaining information which is protected by various and numerous confidentiality mechanisms. NZSIS recognises that its actions in 2012 could have resulted in a chilling effect on such important work.

Accordingly, NZSIS apologises unreservedly for breaching Mr Hager's rights. Its conduct fell short of its own expectations. In recognition of this breach, NZSIS have agreed to pay compensation to Mr Hager and a contribution towards his legal fees.

From: s 6(a)
To: TONY.VALE@nzdf.mil.nz
Subject: FW: Lines regarding settlement

Hi Tony, in confidence – see below:

s 6(a)

From: s 6(a)
Sent: Wednesday, 30 November 2022 11:07 AM
To: s 6(a) @parliament.govt.nz'; s 6(a) @parliament.govt.nz'
Cc: s 6(a) ; 'Cherie.Blithe@dpmc.govt.nz'
Subject: Lines regarding settlement
Hi s 6(a) and s 6(a), FYI:

See below – statement that will go on the NZSIS website, and reactive statement to be provided, if approached and required.

The intention is we'll put the statement online on Thursday afternoon (the agreed time; 48-hours after the settlement being signed).

Let me know if you need anything further.

s 6(a)

Statement to go on NZSIS website:

Following the release of Mr Hager's 2011 book, *Other People's Wars*, the New Zealand Defence Force sought the assistance of the New Zealand Security Intelligence Service to investigate the possible unlawful disclosure of classified information to Mr Hager. In 2012, NZSIS acquired two months of Mr Hager's call associated data for his home telephone line for the purposes of assisting NZDF with that investigation.

In 2019, Mr Hager made a complaint to the Inspector General of Intelligence and Security. Before the IGIS, the NZSIS justified its use powers against Mr Hager by claiming that it was investigating espionage. However, in her report the Acting IGIS found that the NZSIS had no reasonable grounds for suspecting that any espionage had occurred and that the acquisition of two months of call associated data had therefore been unlawful. The Acting IGIS also said NZSIS failed to show necessary caution, in a free and democratic society, before carrying out investigative activity into a journalist's source.

Mr Hager had a reasonable expectation of privacy in his home telephone, and NZSIS now accepts that it acted unlawfully in obtaining that data. Doing so breached Mr Hager's rights under ss 14 and 21 of the New Zealand Bill of Rights Act 1990, and some of the Information Privacy Principles of the Privacy Act 1993.

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Accordingly, NZSIS apologises unreservedly for breaching Mr Hager's rights. Its conduct fell short of its own expectations. In recognition of this breach, NZSIS have agreed to pay compensation to Mr Hager and a contribution towards his legal fees.

Reactive media statement, if required:

In 2019 the Inspector-General of Intelligence and Security made findings that, in 2012, the New Zealand Security Intelligence Service acted outside of its lawful scope of activity in that it obtained two months of call associated data for the home telephone line of journalist Nicky Hager.

Released under the Official Information Act 1982

The NZSIS accepted the IGIS findings in full and apologised to Mr Hager, in line with the Inspector-General's recommendation. The Director-General of Security reiterated that apology publicly following the release of the IGIS report.

We recognise the important role that journalists play in a free, open and democratic society – the very society the New Zealand intelligence agencies exist to uphold. There is a comprehensive policy framework in place which requires very high levels of approval, justification and oversight if there is a situation where intelligence gathering activity touches on a journalist in any way.

The introduction of the Intelligence and Security Act 2017 has clarified the law we operate under and gives a clear legal mandate to take action to identify, assess and protect against threats to sensitive and classified information. In addition, NZSIS has overhauled and significantly strengthened its policy framework and legal and compliance systems in the decade since this incident occurred.

In recognition of this breach, the NZSIS has agreed to pay compensation to Mr Hager, and a contribution towards his legal fees.

A summary of our policies around operational collection activity involving sensitive category individuals, which includes journalists, is publicly available in the NZSIS [website](#).

From: [Media](#)
To: [DL WEB](#)
Subject: For NZSIS website - news section
Date: Wednesday, 30 November 2022 4:17:52 p.m.

NZSIS media statement - settlement with Mr Hager regarding 2012 activity

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In 2019, Mr Hager made a complaint to the Inspector General of Intelligence and Security. Before the IGIS, the NZSIS justified its use powers against Mr Hager by claiming that it was investigating espionage. However, in her report the Acting IGIS found that the NZSIS had no reasonable grounds for suspecting that any espionage had occurred and that the acquisition of

Released under the Official Information Act 1982

two months of call associated data had therefore been unlawful. The Acting IGIS also said NZSIS failed to show necessary caution, in a free and democratic society, before carrying out investigative activity into a journalist's source.

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Investigative journalists such as Mr Hager play an important role in society, including to provide an additional check on executive functions and powers. The role of Mr Hager is considerably more difficult given his subject matter of expertise and the difficulties of obtaining information which is protected by various and numerous confidentiality mechanisms. NZSIS recognises that its actions in 2012 could have resulted in a chilling effect on such important work.

Accordingly, NZSIS apologises unreservedly for breaching Mr Hager's rights. Its conduct fell short of its own expectations. In recognition of this breach, NZSIS have agreed to pay compensation to Mr Hager and a contribution towards his legal fees.

From: s 6(a)
To: s 6(a)
Subject: FW: Press statements on Service website ~~[SEC-SENSITIVE]~~
Date: Tuesday, 20 December 2022 3:18:56 p.m.
Importance: High

~~Classification: SENSITIVE~~

From: s 6(a)
Sent: Tuesday, 13 December 2022 5:18 p.m.
To: s 6(a)
s 6(a)
Cc: s 6(a)
Subject: Press statements on Service website ~~[SEC-SENSITIVE]~~
Importance: High

~~Classification: SENSITIVE~~

s 6(a)

Can we now please remove the Hager press statement from the website (if not done already), as that story has passed. I think it would be good to remove this prior to any further (unrelated) press statements being posted to our site (noting Coordinated Review statement will go out tomorrow afternoon).

Thanks,

s 6(a) (*she/her*)

General Counsel / Kaitohutohu Mātāmua ā-Ture

This information is the property of the New Zealand Security Intelligence Service. It is provided to your agency in confidence and is to be used for intelligence purposes only. It may contain information that is legally privileged. Without the prior written consent of the Director-General of Security it must not be: disseminated further; used or disclosed in any legal, administrative, or review proceedings; or reclassified, declassified or disclosed under any freedom of information law.

NZSIS identities are sensitive and we ask that these be maintained in confidence. It is an offence in New Zealand (Intelligence and Security Act 2017, s 227) to publish or broadcast the fact that an individual is employed by, or connected in any way with, the NZSIS. If you have received this email by mistake, please: (a) reply promptly to that effect and delete this email and the reply from your system; and (b) do not further disseminate, distribute, copy or in any other way act on this email. Thank you.

From: s 6(a)

Sent: Wednesday, 14 December 2022 9:33 a.m.

To: s 6(a)

[Redacted]

Subject: RE: Web request - 12noon TODAY

Classification: ~~RESTRICTED~~

Hey s 6(a)

I can do this ☺ I'll remove that post now, and can post the other one at noon pending confirmation.

out of scope

out of scope

Cheers

s 6(a)

From: s 6(a)

Sent: Wednesday, 14 December 2022 9:25 a.m.

To: s 6(a)

Subject: Web request - 12noon TODAY

Importance: High

Classification: ~~RESTRICTED~~

Hi s 6(a) and s 6(a),

Are you able to help with 2 x NZSIS web posting jobs today.

1. The first job can happen now, and that's removing the last press release that was posted on NZSIS titled 'NZSIS media statement – settlement with Mr Hager regarding 2012 activity'

out of scope

Thank you both,

s 6(a)

