



31 May 2018

Ross Francis
fyi-request-7761-d0d7d563@requests.fyi.org.nz

Dear Mr Francis

Thank you for your message of 3 May 2018 submitted via the FYI website, in which you requested the following information under the Official Information Act 1982 (the Act):

- *Have Messrs Palmer and or Arnold been asked if they have any possible or potential conflicts of interest to declare? If so, please supply me with a copy of their declaration.*
- *What practical measures (if any) have been or will be taken to ensure the inquiry is independent, impartial and fair? Please supply me with all records that are held in regard to this question.*
- *What practical measures (if any) were taken to ensure the previous inquiry was independent, impartial and fair?*
- *Please supply me with a copy of a standard Contract for Services that is given to those appointed to head inquiries.*

The Department of Internal Affairs (the Department) has identified the information that falls within scope of your request. A list of the information is attached as **Appendix A**.

Copies of conflicts of interest declarations

The conflicts of interest declarations provided by Sir Geoffrey Palmer and Sir Terence Arnold have been withheld in full under section 9(2)(ba)(i) of the Act, as the information is subject to an obligation of confidence. I have evaluated the public interest in the material and have concluded that it does not outweigh the reason for withholding the information.

Details and records about practical measures taken to ensure the inquiry is independent, impartial, and fair

The Inquiries Act 2013 provides for the establishment of an inquiry, and outlines its duties, powers, immunities and privileges at a high level. In terms of duties, the legislation expressly provides that an inquiry and its members must act independently, impartially, and fairly. This information is publicly available via the New Zealand Legislation website: www.legislation.govt.nz/act/public/2013/0060/42.0/DLM1566106.html.

Details and records about the previous inquiry

There has not been a previous inquiry into Operation Burnham. However, an investigation was carried out by a joint Afghan Ministry of Defence and Ministry of the Interior, and International Security Assistance Force assessment team. Information about Operation Burnham and related activities, including the investigation, is publicly available via the New Zealand Defence Force website: www.nzdf.mil.nz/corporate-documents/operation-burnham/default.htm.

Copies of the standard Contract for Services

Members are not appointed to an Inquiry by way of a contract for services. However, the Department has provided copies of the letters of agreement between the Appointing Minister, Hon David Parker, and Sir Geoffrey Palmer and Sir Terence Arnold. Personal information has been withheld under section 9(2)(a) of the Act. These documents are attached as **Appendix B**.

If you are dissatisfied with this response you have the right to seek an investigation and review of this decision by an Ombudsman under section 28(3) of the Act. The contact address is: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

Karen Hope-Cross

Karen Hope-Cross
Director Operational Services

Appendix A: Schedule of Documents

| Document number | Name of document | Summary of contents | Date |
|-----------------|---|---|---------------|
| 1 | New Zealand Legislation webpage | Published version of the Inquiries Act 2013 | 1 July 2017 |
| 2 | Appointment Disclosure Form – Sir Geoffrey Palmer | Consent to be a member, conflicts of interest, disclosure of any other matters, and authorisation for the Department to check the accuracy of information | 11 April 2018 |
| 3 | Letter of Agreement – Sir Geoffrey Palmer | Appointment to the Government Inquiry into Operation Burnham | 13 April 2018 |
| 4 | Letter of Agreement – Sir Terence Arnold | Appointment to the Government Inquiry into Operation Burnham | 13 April 2018 |
| 5 | Appointment Disclosure Form – Sir Terence Arnold | Consent to be a member, conflicts of interest, disclosure of any other matters, and authorisation for the Department to check the accuracy of information | 16 April 2018 |
| 6 | New Zealand Defence Force webpage | Information about Operation Burnham | 23 May 2018 |

Appendix B: Letters of Agreement



Attorney-General

Associate Minister of Finance

Minister for Economic Development

Minister for the Environment

Minister for Trade and Export Growth

13 APR 2018

Sir Geoffrey Palmer

S(9)(2)(a)

Dear Sir Geoffrey

Appoint to the Government Inquiry into Operation Burnham

As the Appointing Minister for the Government Inquiry into Operation Burnham (the Inquiry), I am pleased to advise that you are appointed as a member of the Inquiry.

Your appointment is made under the authority of section 6(3) of the Inquiries Act 2013 (the Act). This letter serves as the formal instrument of appointment.

Your term of appointment commenced on Monday 16 April 2018 and expires when the Inquiry provides its final report to the Attorney-General. In the event the Inquiry is anticipated to not be in a position to complete its final report within 12 months of establishment, the Inquiry will be extended at the time of review. The terms of reference may also be amended, in accordance with section 7 of the Act, to reflect the extension of your term of appointment.

The members of the Inquiry are Sir Terence Arnold as Chair and yourself.

The Inquiry

As per section 7 of the Act, the Inquiry has been formally established by publication of notice in the *New Zealand Gazette*. The Inquiry is to:

- Seek to establish the facts in connection with the allegations of wrongdoing on the part of NZDF personnel during the Operations;
- examine the treatment by NZDF of reports of civilian casualties following Operation Burnham;
- examine the circumstances of Qari Miraj's transfer and/or transportation to the Afghanistan National Directorate of Security;
- examine the extent to which NZDF rules of engagement authorised the predetermined and offensive use of force, whether this was apparent to those approving the rules of engagement, and whether NZDF's application of this aspect of the rules of engagement changed; and
- report its findings and any recommendations to the Attorney-General as appointing Minister.

Reporting dates

The Inquiry is to report its findings and opinions, together with recommendations, to the Attorney-General in writing no later than 12 months after the establishment date. In order to ensure the Attorney-General is kept appropriately informed as to progress, the Chair will provide regular updates to the Attorney-General on the Inquiry's progress throughout the course of the Inquiry.

The *Gazette* notice has been published and a copy of it is attached to this letter. Pursuant to the Act, it sets out the Inquiry's focus, membership, the date on which the Inquiry can begin considering evidence and the terms of reference. The duties, powers, immunities and privileges of a government inquiry are set out in the Act.

Fees

As a member of the Inquiry you will receive a fee of \$1350 per day while working on the Inquiry. All reasonable costs incurred during the course of the Inquiry will be met by the Department of Internal Affairs (the Department).

Your appointment as a member of the Inquiry is at the pleasure of the Government. You should note that if, for any reason, we decide to terminate the Inquiry prior to its reporting date, the Government is required to pay you fees only for the time up to termination. There is no obligation to compensate you for the early termination of the inquiry.

Resignation and removal

You may, at any time, resign from office by writing to me as the appointing Minister. As appointing Minister I may, by notice in the *Gazette*, remove you from office due to misconduct, an inability to perform the functions of your role, or neglect of your duty.

Conflicts of interest

As part of the appointment process you have declared various interests and agreed to abide by decisions made to manage any actual or potential conflicts of interest. A register of interests, and their resulting management, will be overseen by the Inquiry Chair. If at any stage during your term of appointment you feel that your interests have changed or that further relevant interests have arisen or may arise, please bring them promptly to the attention of the Chair.

The Department will provide administrative support to the Inquiry. If you require any specific information please contact Trina Tautau by telephone 027 565 6181, or by email trina.tautau@dia.govt.nz.

Thank you for agreeing to serve in this important matter. Please accept our best wishes for your term of appointment.

Yours sincerely



Hon David Parker
Attorney-General



13 APR 2018

Sir Terence Arnold
S(9)(2)(a)

Dear Sir Terence

Appoint to the Government Inquiry into Operation Burnham

As the Appointing Minister for the Government Inquiry into Operation Burnham (the Inquiry), I am pleased to advise that you are appointed as Chair of the Inquiry.

Your appointment is made under the authority of section 6(3) of the Inquiries Act 2013 (the Act). This letter serves as the formal instrument of appointment.

Your term of appointment commenced on Monday 16 April 2018 and expires when the Inquiry provides its final report to the Attorney-General. In the event the Inquiry is anticipated to not be in a position to complete its final report within 12 months of establishment, the Inquiry will be extended at the time of review. The terms of reference may also be amended, in accordance with section 7 of the Act, to reflect the extension of your term of appointment.

The members of the Inquiry are Sir Geoffrey Palmer and you as Chair.

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As Chair of the Inquiry you will receive a fee of \$1400 per day while working on the Inquiry. All reasonable costs incurred during the course of the Inquiry will be met by the Department of Internal Affairs (the Department).

Your appointment as Chair of the Inquiry is at the pleasure of the Government. You should note that if, for any reason, we decide to terminate the Inquiry prior to its reporting date, the Government is required to pay you fees only for the time up to termination. There is no obligation to compensate you for the early termination of the inquiry.

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Thank you for agreeing to serve in this important matter. Please accept our best wishes for your term of appointment.

Yours sincerely



Hon David Parker
Attorney-General