



27 September 2012

Rt Hon John Key
Prime Minister
House of Representatives

Dear Prime Minister

I am writing to formally request that you initiate a wide-ranging and independent inquiry into the performance of all New Zealand's intelligence agencies in order to restore public confidence in our intelligence operations.

Ultimately, our agencies are accountable to democratically elected representatives who need to be able to exercise the appropriate oversight and control.

While in the Kim Dotcom case, the Government Communications Security Bureau clearly did not act in accordance with the law, there remain other unanswered concerns about the broader functions of our intelligence and security systems and their accountabilities.

Parliament and the New Zealand public have a right to be confident that New Zealand's intelligence agencies, which by their very nature operate secretly, are using their powers as intended, in accordance with the law. It is also important to restore our reputation internationally as a country of the highest integrity and transparency.

I acknowledge that the Inspector-General of Intelligence and Security has inquired into the particular issue of the failings of the GCSB and its unlawful interception of information in the case of Kim Dotcom. However, I consider that this report was too narrow in scope, and a large number of more fundamental issues remain in doubt.

I note too, that the Inspector-General as part of his functions has an on-going responsibility to ensure that GCSB complies with the law. His investigation into how the GCSB came to break the law necessarily encompasses how he has performed his own role, a potential conflict of interest. This adds weight to the need for an independent, wide-ranging review headed by a person of great standing and high integrity.

I note that you undertook a reorganisation of the intelligence agencies in 2009. An independent inquiry would also provide an opportunity to consider whether the configuration, division of labour, and communications and linkages between the agencies is working effectively and with sufficient accountability.

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The outstanding issues that need to be addressed relate both to the specifics of GCSB's involvement in the Kim Dotcom case and the actions and accountabilities of our intelligence agencies more broadly. For example:

- It remains unclear as to why GCSB was required to become involved in this particular operation, when they first became involved and how they came to be involved.
- It is not clear what GCSB's role and function was in the operation and what they were required to do.
- It remains unanswered whether other intelligence agencies were also involved or to what degree were aware of the operation, and when the government was informed both of GCSB's role in the operation and of the illegality of their action.
- There is no certainty as to whether the agency is operating according to its accountabilities as required under Section 8.3 of the Act, which states that the performance of the Bureau's functions is subject to the control of the Minister.
- There is also uncertainty regarding how the communication of information relating to our national security is passed between Ministers and acting Ministers.

The scope of the terms of reference for such an inquiry would include:

- Inquiry into the intelligence collection functions of each New Zealand intelligence agency and the appropriateness of the division of functions among the agencies and the communications between them;
- Inquiry into the effectiveness of the current oversight and accountability mechanisms and framework surrounding the intelligence agencies.

There are precedents to such an inquiry. In 2004, Australia's then Prime Minister acted on a recommendation of a Parliamentary Joint Committee inquiry into intelligence on Iraq's weapons of mass destruction and ordered a broad independent assessment of the performance of the intelligence agencies. This may be a useful example for you to consider.

I look forward to your response.

Yours sincerely



David Shearer
Leader of the Labour Party