
IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2012-404-1928

UNDER THE	Judicature Amendment Act 1972
IN THE MATTER OF	An application for judicial review and application for order for interim relief pursuant to section 8
BETWEEN	KIM DOTCOM First Plaintiff
	FINN BATATO Second Plaintiff
	MATHIAS ORT MANN Third Plaintiff
	BRAM VAN DER KOLK Fourth Plaintiff
AND	ATTORNEY-GENERAL First Defendant
AND	THE DISTRICT COURT AT NORTH SHORE Second Defendant

AFFIDAVIT OF GRANT KENNETH WORMALD FOR FIRST
DEFENDANT IN RELATION TO MINUTE OF 28 SEPTEMBER 2012

19 October 2012

Judicial Officer: Winkelmann J
Next Event Date:

CROWN LAW
TE TARI TURE O TE KARAUNA
PO Box 2858
WELLINGTON 6140
Tel: 04 472 1719
Fax: 04 473 3482
Contact Person:
John Pike
Email: john.pike@crownlaw.govt.nz



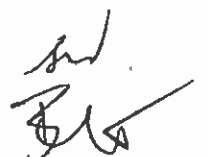
I, Grant Kenneth Wormald, of Wellington, Police Officer, swear:

Introduction

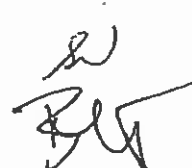
1. I have been a sworn member of the New Zealand Police for 27 years. I am a Detective Inspector currently assigned as a task force leader with the Organised and Financial Crime Agency of New Zealand (OFCANZ).
2. For the purpose of the initial open Court proceedings, a separate redacted version of this affidavit will be filed and served. This affidavit addresses the Court's direction that evidence be provided on the relationship between and GCSB including:
 - 2.1 any communications between the GCSB and the New Zealand Police;
 - 2.2 any records of the involvement of the GCSB and information provided there to or received therefrom.
3. I was the police officer in charge of Operation Debut. I have previously sworn a number of affidavits in this proceeding. In particular, I have described the planning of the operation that terminated on 20 January 2012 in my affidavit of 11 July 2012.

Origins of Operation and Early Inquiries

4. We had been advised by the FBI that Mr Dotcom may hold his birthday party in New Zealand on or about 21 January 2012. If that occurred, and all of the named suspects were here, we were asked whether we would be able to arrest and extradite them.
5. I took overall command of advancing the investigation following a briefing on 21 September 2011.
6. Detective Sergeant McMorran was my second-in-charge. In the period leading up to 21 September 2011, Detective Sergeant McMorran conducted various background inquiries. Those included establishing the whereabouts of Mr Dotcom and the other suspects, their citizenships and the nature of their connection with New Zealand. His inquiries included such things as residency, property ownership, vehicle registration and travel records.



7. When I was introduced to the investigation I received a thorough briefing by Detective Sergeant McMorran during which he explained to me that both Mr Dotcom and Mr Van Der Kolk were living in New Zealand. In the weeks that followed I had cause to refer to various documents on the file and attend several more briefings.
8. The background checks confirmed that Mr Dotcom and Mr van der Kolk were living in New Zealand, and that Mr Dotcom in particular was looking to stay here permanently. I was aware that Mr Dotcom had bank accounts in New Zealand, employed staff here, had a number of vehicles registered in New Zealand, and that he intended to undertake renovations to both 186 Mahenui Valley Road and 5H The Prom. Mr van der Kolk had bank accounts in New Zealand.
9. On 9 December 2011 I forwarded an Information Request to Immigration New Zealand requesting the Immigration files on the subjects of the investigation, including Mr Dotcom and Mr Van Der Kolk. The request sought records of the visa applications and immigration records and status for the period 1 January 2009 to the present for the various suspects. A true copy of the request is annexed marked A.
10. On the afternoon of the 16 December 2011 I received from Immigration New Zealand an email with travel details of the named suspects to and from New Zealand. A true copy of the email is annexed marked B.
11. Referring to these documents the top one is headed VESTOR/Kim aka DOTCOM/Kim. His last two arrivals into New Zealand on 15 December 2010 and 26 September 2011 identify Mr Dotcom as 'Resident' in the column marked 'Visa'.
12. Mr van der Kolk's latest arrival on 17 April 2011 identifies him as a 'Visitor' in the 'Visa' column.
13. The immigration file for Bram van der Kolk was received by Police on 23 December 2011, and the file for Kim Dotcom was received on 11 January 2012. The files confirmed that Mr van der Kolk was granted a residence visa



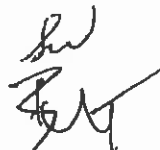
on 2 December 2012, and Mr Dotcom had been granted residence on 18 November 2010.

The approach to GCSB

14. As I explained in my affidavit of 26 April 2012, in developing plans to execute the various search and arrest warrants I was mindful of three important priorities from a policing perspective. The first was the retention of evidence. The second was to safely execute the arrest warrants. The third was to ensure that priorities one and two were achieved with the safety of those to be arrested, other occupants of the addresses, and all police staff, being at the forefront at all times.
15. In order to meet those objectives it was necessary to gain a full appreciation of the issues and circumstances which Police might be confronted with. Any intelligence regarding confirmation of a party to be held in New Zealand on 21 January and who may be travelling to New Zealand to attend would be considered useful.
16. The type of information which would assist us at this time would have been confirmation that Mr Dotcom's birthday would be celebrated in New Zealand or indeed somewhere else abroad. Similarly, that the people that the United States sought would be in New Zealand for the party, or in the other location if it was determined where this other location was abroad.
17. I made contact with the Government Communications Security Bureau (GCSB) to enquire whether they might be able to assist. Many of the targets were people from foreign countries and living abroad and I believed that potentially GCSB may be able to lawfully target them.

Meeting on 14 December 2011 - First phase

18. At 10.30 am on 14 December 2012 I hosted a meeting at OFCANZ in Wellington attended by representatives of the Crown Law Office, the Ministry of Justice, Police Legal Section, OFCANZ staff and a representative from GCSB (GCSB1). A second representative from GCSB arrived towards the end of the meeting (GCSB2). The Ministry of Foreign Affairs and Trade were to have attended but were unable to do so at that time.



- 19. This was the meeting previously referred to during my cross examination in the High Court in Auckland on Thursday 9 August 2011 (pg 244, line 25 Notes of Evidence).
- 20. I would describe this meeting as having two distinct phases.
- 21. The principal reason for having the meeting was to convey information about the operation to several more representatives of government departments. We had reached a point where steps were needed to process extradition documents and Mutual Assistance requests from the United States, which might arrive over the Christmas/New Year holiday period. I thought those specific people should be briefed as to the nature and scale of the investigation so they would fully understand the need for strict confidentiality and ensure as few people as possible became aware of the planned operation.
- 22. The second phase was to brief the GCSB and see whether they were in a position to assist us. It was convenient for them to attend the same background briefing we were providing to the other officials. This is why GCSB 1 and 2 attended the meeting's first phase. Aside from Police and GCSB, the other attendees were not informed of the second phase of the meeting.
- 23. The first phase was almost entirely taken up by Detective Sergeant McMorrin outlining the investigation. This included details of the alleged offending, details of the anticipated requests to originate from the United States, the timings of those requests and information about the targets. The targets were individually identified, and there was information on where they were from, their role in the company and where they were believed to be living.
- 24. The meeting included specific reference to Mr Dotcom and the fact he was residing at 186 Mahoenui Road, Coatesville. Details were given about the property and the fact Mr Dotcom was living there with his wife and children. I believe reference was made to his intention to buy the property outright but that this had been deferred on the basis his application for permanent residency under the overseas investor scheme, had been declined.

25. Mr Van Der Kolk was also specifically mentioned in the briefing as residing at 37 Ngaiwi Street, Orakei, Auckland with his wife and child.
26. It is my recollection that Detective Sergeant McMorran made several references to the fact that both Mr Dotcom and van der Kolk were living in New Zealand.
27. During the first phase of the meeting there was no discussion of the possible involvement of GCSB in our planning or what we intended to discuss with GCSB. The GCSB were there to be briefed on the investigation. Having them at the first phase of the meeting meant we did not have to repeat ourselves.
28. The GCSI played no active part in this phase of the meeting. As I recall they made no comments save for an apology when the second GCSB member came into the meeting as it was drawing to a close.
29. During the first phase of the meeting, I made the comment that the Police and OFCANZ had considered a domestic interception warrant but were unable to make application for one. That fact, together with the background information included in the briefing were all matters the GCSB had to be satisfied of before they could consider assisting us. I raised this matter in the first phase so that a member of the Police legal team could comment if need be. This was a brief remark which caused no discussion from others present.

Meeting of 14 December 2011; Second Phase

30. At the conclusion of the main meeting Detective Sergeant McMorran showed all the attendees out of the room with the exception of the two GCSB representatives. When everyone but the two GCSB representatives had left we had a discussion about the general viability of any GCSB assistance in providing intelligence.
31. I made no notes of this conversation.
32. I do not recall either of the GCSB staff making any notes at the time.
33. My recollection was that the meeting was for a matter of perhaps three to five minutes in total. There was acknowledgement by the GCSB representatives as

to the process undertaken to establish that the option of a domestic interception warrant was not open to us.

34. Thereafter it is my recollection that one of the GCSB staff (GCSB2) talked generally about what they might be able to achieve and we discussed some parameters. These parameters focused specifically on issues relevant to our intelligence around the timing and location of any birthday party for Mr Dotcom and the locations and likely travel plans of the other suspects sought by the USA.
35. I believe I spoke briefly to convey that the request to them was about the party and travel and not an intention to have them gather any form of evidence about the offending alleged by the FBI.
36. Essentially I wanted to know if GCSB could assist by providing intelligence about
- 36.1 Whether the party was going to take place, and if so whether New Zealand was the venue.
 - 36.2 Which of the targets would be attending the party, and when they would be arriving.
 - 36.3 Any information which may assist in assessing, addressing or mitigating risks such as talk about security measures or access to or possession of firearms.
37. Thereafter, it is my recollection that the conversation turned to the issue of who could be intercepted. There was general consensus that all of the parties under discussion were not New Zealand citizens and were indeed citizens of other countries.
38. I believe I made a comment that I did not think that it was possible for the GCSB to intercept either Mr Dotcom or Mr Van der Kolk on the basis that they were living in New Zealand.
39. I recall one of the GCSB representatives making comments about the application of their intercept powers and how they were able to intercept

provided the persons involved were not New Zealand Citizens or permanent residents of New Zealand.

40. I reiterated that we were sure that Mr Dotcom and Mr Van der Kolk were not citizens but that we could not advise with any certainty what type of 'residency' they held.
41. I recall comments by GCSB2 who explained that different types of residency existed and this affected what they could do regarding people living in New Zealand.
42. I conveyed to the two GCSB members that both Mr Dotcom and Mr van der Kolk were residing in New Zealand and were able to come and go, so they must have a form of residency.
43. I made the offer that if required I would be happy to be a go between for GCSB for enquires with New Zealand Immigration for the purpose of clarifying this point if required. Following a brief discussion, this did not seem to be necessary at the time.
44. GCSB1 then commented that another relevant consideration for them was the fact that there appeared to be serious offending being orchestrated in New Zealand and there were provisions in the Act governing GCSB to enable work to be done to address risks to New Zealand or words to that effect.
45. On that note the meeting ended with agreement that we would forward as soon as practical documents to GCSB which would afford them details to assist them in determining what they might be able to do to assist. No undertakings or agreements other than that were made at that time.

Documents forwarded to GCSB on 14 and 19 December 2011

46. Later on 14 December 2011, Detective Sergeant McMorran sent two documents to GCSB. The first was a document containing personal and biographical information. The document was emailed by an OFCANZ employee OFCANZ1 to GCSB2 at 1:50 pm. A true copy of the word document is annexed marked C.

47. A copy of a preliminary/draft search warrant application was emailed at 2:01 pm on 14 December 2011 by OFCANZ1. A true copy of the draft application is annexed marked D.
48. GCSB2 acknowledged receipt of both documents by email at 2:04 pm. A true copy of the receipt is annexed marked E.

The Request for Information (RFI)

49. On 15 December 2011, I flew to Auckland on unrelated matters. I remained in Auckland until my return flight at 9.15 pm on Friday 16 December 2011.
50. Whilst in Auckland on Friday 16 December 2011, I spoke to Detective Sergeant McMorran by telephone regarding the formalisation of the request to GCSB to assist us. This formal request is made to GCSB in the form of a written document referred to as a "Request For Information" and commonly referred to as an RFI. The RFI essentially articulates what has been proposed in any earlier discussions.
51. An RFI is not an authorisation for GCSB to intercept anyone. The RFI sets out what the requesting agency, in the case OFCANZ, would like GCSB to consider doing for them.
52. In my telephone call with Detective Sergeant McMorran, we discussed what the content should be. I confirmed my intention that the focus be narrow, seeking only information that assists in establishing if the party is to occur, details of any of those sought by the FBI who could be travelling and any intelligence relevant to safety.
53. It is my understanding that the document was initially prepared by GCSB2, who subsequently conferred with Detective Sergeant McMorran. Thereafter, whether in the same phone call or later on Friday 16 December 2011, I authorised Detective Sergeant McMorran to sign the RFI document on my behalf.
54. Detective Sergeant McMorran went to GCSB in Wellington and met with GCSB2 late on the afternoon of Friday 16 December 2011 where he signed the RFI on my behalf. A true copy of the signed RFI is annexed marked F.



55. At that point I had not been told by GCSB one way or the other who they may or may not be able to intercept at that time. It was my understanding that those decisions could not be made and certainly not formally confirmed within GCSB without the submission of the RFI.
56. Referring to the RFI, paragraph 3 records the focus of the request. This was a focus on the type of information being sought.
57. Paragraph 4 records who OFCANZ specifically requested GCSB to consider inquiries against. Mr Dotcom and Mr van der Kolk are named in this paragraph. The purpose of the document was to repeat in a formal manner the request we had made earlier at our meeting on the 14 December 2011.
58. To the best of my recollection, I did not see a copy of the RFI submitted to GCSB until late February 2012, after some concern had been raised about the legitimacy of the interception of Mr Dotcom and Van der Kolk by GCSB. I will refer to this development in more detail later in my affidavit (refer paragraphs 86-91).
59. At 2.53 pm on Monday 19 December 2011 Detective Sergeant McMorrان had OFCANZ1 email a further word document to GCSB2. This document was an extensive list of known addresses and other personal information which might potentially assist the GCSB in any interception they might have been able to undertake for us. A true copy of the document is annexed marked G.

The passing of information from GCSB to Police

60. Information from GCSB was passed to Detective Sergeant McMorrان and me through what might be termed a buffer zone. The process worked in this way. Reports from the GCSB are usually communicated via an electronic deposit or secure email that is only accessible to certain designated individuals.
61. The only staff entitled to access that material were selected OFCANZ staff. For the purpose of this affidavit, I have designated them as OFCANZ1, OFCANZ2, and OFCANZ3. Detective Sergeant McMorrان and I did not have that access entitlement.
62. GCSB periodically posted reports in this manner. Those reports were then screened by the selected staff. Either Detective Sergeant McMorrان or I

would be orally briefed (depending on how each of us was placed). My expectations were that I would only receive indications that were particularly relevant to the questions of travel plans, whether the party was going ahead and risks to staff. In fact, that was the nature of the information I did receive in the briefings that I had.

63. Because of my movements, the information was predominantly relayed to me through oral reports from Detective Sergeant M' Morran. (The situation changed, as I explain below, during the week before termination.)
64. I commenced leave on Wednesday 21 December 2011 although I worked some of the afternoon and early evening. My leave concluded on Sunday 8 January 2012 and I returned to work on Monday 9 January 2012.
65. During this period I was essentially overseeing any issues arising at OFCANZ and I was available to take phone calls and deal with requests for assistance. I was in regular contact with Detective Sergeant McMorran during this period.
66. Between 3 and 7 January 2012 I was in Napier.
67. During one of the telephone conversations I had with Detective Sergeant McMorran at this time, he mentioned to me that we had picked up "a bit of something about someone seeing someone in January" or words to that effect.
68. This was effectively a coded message which I understood to mean GCSB had had some success with a relevant intercept. On the basis we could not talk freely on the telephone Detective Sergeant McMorran was only able to advise "it was nothing concrete or detailed but indicated something was happening in January" or words to that effect.
69. The message he gave me was vague and very guarded. It had to be, as we were talking on open telephone lines.
70. While I was away I received regular updates from Detective Sergeant McMorran as to the progress of various aspects of the investigation. There was very limited discussion about information coming from GCSB.



71. I returned to work after my holiday as previously stated on Monday 9 January 2012. Detective Sergeant McMorran informed me that although some further information had been received it was of little value.
72. On Sunday 15 January 2012 I flew to Auckland. The OFCANZ analyst (OFCANZ3) travelled to Auckland on 17 January 2012.
73. Prior to leaving for Auckland, OFCANZ2 and 3 had a meeting with staff from GCSB involved in the investigation. The purpose of the meeting was to advise GCSB that the operation was likely to terminate on 20 January 2012, and for OFCANZ3 to provide a verbal update. In particular, OFCANZ3 advised GCSB2 and 3 that we were seeking information as to potential risks to the operation, such as drugs, firearms, awareness of the Police operations, and confirmation of the party and travel. OFCANZ3 did not receive any new information from that meeting which was relevant to the type of information being sought.
74. OFCANZ3 confirmed at that meeting how he would communicate with GCSB during the period that he would be in Auckland. He did not have direct access to the GCSB written material whilst there. He was still able to receive some updates from GCSB, which he was able to relay to Detective Sergeant McMorran and me verbally if required. I recall being told at some stage early in the week that Mr Ortmann had mentioned Mr Dotcom's party and someone else could possibly attend it on or about 21 January.
75. This was good intelligence and was the first real confirmation from this source that our planning towards executing the search warrants later in the week was appropriate.
76. At about the same time as we received the information from GCSB from the Ortmann intercept, we were also in receipt of information relating to travel movements from "watches" we had through other mechanisms such as airlines, Immigration and Customs sources.

The influence of the GCSB intelligence on the planning of the termination of the operation

77. Although the information sent to Police by GCSB had some relevance, its timing and content did not add any real value to the planning process for the execution of the warrants later that week. In the week of termination, the GCSB information was consistent with other information that the party was going ahead. We knew that from other sources.
78. The ultimate decisions relating to the termination and execution of the search warrants on 20 January 2012 were mine. The tactical decisions I made about the timing and manner of the execution of the search warrants were not influenced by the GCSB information that I received.

Information Reports Received from GCSB

79. For the purposes of preparing this affidavit, I have reviewed the Information Reports that were forwarded by the secure means I have outlined, from GCSB to OFCANZ.
80. In total nine Information Reports were forwarded to OFCANZ by GCSB:
- 80.1 IR1, 20 Dec 2011, Serial 1890-11, a true copy of which is annexed marked H and HH.
 - 80.2 IR2, 5 Jan 2012, Serial 3-12, a true copy of which is annexed marked I and II.
 - 80.3 IR3, 12 Jan 2012, Serial 20-12, a true copy of which is annexed marked J and JJ.
 - 80.4 IR4, 16 Jan 2012, Serial 30-12, a true copy of which is annexed marked K and KK.
 - 80.5 IR5, 16 Jan, Serial 31-12, a true copy of which is annexed marked L and LL.
 - 80.6 IR6, 18 Jan 2012, Serial 43-12, a true copy of which is annexed marked M and MM.

- 80.7 IR7, 18 Jan 2012, Serial 44-12, a true copy of which is annexed marked N and NN.
- 80.8 IR8, 19 Jan 2012, Serial 59-12, a true copy of which is annexed marked O and OO.
- 80.9 IR9, 20 Jan 2012, Serial 57-12, a true copy of which is annexed marked P and PP.
81. The Information Reports received were all marked classified. The level of classified puts security protocols around the document affecting who can view it, how it is communicated and transported and how it must be stored.
82. So that relevant material could be made available for these proceedings the National Intelligence Manager for New Zealand Police oversaw the development of a small group of people from GCSB and the Police National Intelligence Centre. Their task was to redact some features of the otherwise classified documents which existed as correspondence between OFCANZ/Police and the GCSB.
83. As part of that process, the nine GCSB Information Reports were considered. The outcome of those considerations was that the entire document in its form had to be redacted. To assist the Court, a precis of the relevant communications contained in the Information Report has been produced. The precis can be read in the annexures identified above.

Email correspondence between GCSB and Police

84. As best as can be ascertained, from the meeting involving GCSB on 14 December 2011 through to mid-September 2012, all emails between GCSB and Police staff have been identified.
85. True copies of the emails are annexed marked Q. Annexure Q comprises a number of pages which have been individually numbered for ease of reference.

February Debrief with GCSB

86. On 16 February 2012 I and several other OFCANZ staff attended a debrief at GCSB in Wellington with members of their staff.

87. Following the meeting I had a brief conversation with GCSB1. GCSB1 raised a possible issue surrounding the fact that Mr Dotcom and Mr van der Kolk had been intercepted. It appeared to GCSB that the interception may not have been lawful because of their residency status.
88. I was surprised this matter had come up at this point given we were some three weeks after the termination and after interceptions had ended.
89. GCSB1 and I agreed that we needed to deal with the matter promptly. GCSB1 determined to make further enquires to get to the bottom of it without delay. I offered my resources in making any enquires necessary to assist.
90. As part of this exercise, OFCANZ 2 and 3 obtained information from several sources, including the New Zealand Immigration Service, and forwarded it to GCSB1. That information was passed by secure email and is found in the correspondence in annexure Q.
91. On 27 February 2012 GCSB1 reported by email that neither Mr Dotcom nor Mr Van Der Kolk had been unlawfully intercepted. A true copy of the email is annexed marked R.

SWORN at Wellington this)

19th day of October 2012)

before me: 

A Solicitor of the High Court of New Zealand

Benedict Tompkins
Solicitor
Wellington

WORMALD, Grant

From: WORMALD, Grant
Sent: Friday, 9 December 2011 16:12
To: [REDACTED]
Cc: MCMORRAN, Nigel
Subject: Operation Debut IN CONFIDENCE [SEEMAIL]
Attachments: SWX ATX Immigration NMG297 091211.doc

Hello [REDACTED]

As discussed a formal request for any information DoL may have on the subjects named in the application. Please ensure no online searches are made of the targets as they may have the capability to trace who's looking at them online.

Any issues please let me know.

I am in Auckland next week on Tuesday and then later on Thursday and Friday. If I was able to get something from you next week that would really assist. Our actions are in planning for the early new year so not too much time to put things in place.

Thank you in anticipation.

Grant

GRANT WORMALD

Detective Inspector

OFCANZ Organised & Financial Crime Agency New Zealand

Kia Mau Pūmāu Ki te Tūre

180 Aokesworth Street PO Box 3017, WELLINGTON 6111

contact details [REDACTED]