

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 ORTMANN

 Third Plaintiff

 BRAM VAN DER KOLK

 Fourth Plaintiff

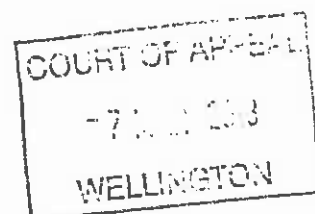
 ...CONT'D

AFFIDAVIT OF DISCLOSURE FOR THE THIRD DEFENDANT

20 December 2012

Judicial Officer: Winkelmann J

CROWN LAW
TE TARI TURE O TE KARAUNA
PO Box 2858
WELLINGTON 6140
Tel: 04 472 1719
Fax: 04 473 3482
Contact Person:
F Sinclair
Email: fergus.sinclair@crownlaw.govt.nz



...CONT'D

AND

ATTORNEY-GENERAL in respect of the
New Zealand Police

First Defendant

AND

THE DISTRICT COURT AT NORTH
SHORE

Second Defendant

AND

ATTORNEY-GENERAL in respect of the
Government Communications Security Bureau

Third Defendant

I, _____, of Wellington, public servant, swear:

1. I am the Assistant Director, Production and Outreach, at the Government Communications Security Bureau (GCSB).
2. I make this affidavit under an order for discovery by judgment of the High Court dated 5 December 2012, as elaborated by a minute dated 12 December 2012 (the discovery order). This affidavit addresses the orders at paragraphs [26] (a)-(c) of the judgment.
3. In order to fulfil those obligations, I have ensured a diligent search for all documents required to be discovered by the third defendant in terms of the discovery order, including locating all physical and electronic documents, including email communications.
4. In response to paragraph [26](a) of the 5 December 2012 judgment I can advise that GCSB first received the signed Request For Information from NZ Police (OFCANZ) on 16 December 2011. Consultation with the managers and staff involved confirms that it was received by hand on this date, in the afternoon.
5. In response to paragraph [26](b) of the 5 December 2012 judgment I can advise that there was no information-sharing agreement in place between GCSB and Immigration New Zealand during the period 1 September 2011-1 September 2012.
6. In response to paragraph [26](c) of the 5 December 2012 judgment, further documentation held by GCSB in relation to the residency status of Mr Dotcom and Mr Van Der Kolk is attached as follows:

Date	Description	Attachment
15/02/11	Diary entry (redacted relevant to residency). Reads: "kim.com 2IC Bram van der Kolk (Dutch resident in NZ) These 2 will be arrested regardless"	1
Various dates from	Spreadsheet (redacted relevant to residency)	2

15/12/11		
16/12/11	Internal GCSB email	3
	<ul style="list-style-type: none"> • 14/12/11 Internal GCSB email with Task Force DEBUT Draft Warrant attached • 14/12/11 Internal GCSB email with Task Force Debut Briefing documents attached 	
19/12/11	Internal GCSB email (part privileged)	4
	<ul style="list-style-type: none"> • Op DEBUT RFI attached 	
19/12/11	Internal GCSB email	5
	<ul style="list-style-type: none"> • All known target details document attached 	
Undated	Selectors of Interest (redacted relevant to residency)	6
17/02/12	Internal GCSB email	7
20/02/12	Internal GCSB email	8
22/02/12	Internal GCSB email	9
24/09/12	Internal GCSB email	10

7. Privileged material falling within this category of disclosure has been identified and withheld, as identified at 11.
8. I can also advise that, to date, the information that GCSB has passed to Five Eyes partner agencies is limited to selector information provided by OFCANZ, which included selectors associated with Mr Dotcom and Mr van der Kolk. No information concerning Mr Dotcom or Mr van der Kolk which GCSB obtained as a result has to date been shared with the Five Eyes.
9. The only information related to Operation DEBUT otherwise circulated by GCSB beyond the department or the Responsible Minister were the emails and End Product Reports supplied to OFCANZ and attached to the affidavit of Detective Inspector Grant Wormald, as well as the February debriefing with OFCANZ and DPMC.
10. However, in September 2012 GCSB supplied information to the Inspector General of Intelligence and Security to assist his investigation and Police have requested information as part of their criminal investigation. On 19 December 2012 New Zealand Police viewed the material to be attached to the disclosure affidavit due on 21 December 2012, for the purpose of redacting Police

material. GCSB has also shared information with Crown Law for the purpose of seeking legal advice in relation to the present proceeding.

11. To the best of my knowledge and belief, this affidavit is correct in all respects and carries out my obligations under the discovery order.

SWORN

at Wellington this 20th day of
December 2012
before me:

)
)
)
)

~~A Solicitor of the High Court of New Zealand~~

TOP SECRET COMINT
KILL N32L FVEY

Drury

2011 DECEMBER

15 Thursday
349-016 week 50

7.00 am *Plan 27 - IF NEDOT*

8.00

9.00

10.00

11.00

12 noon

*Breakfast
11.00 Brain power with (not to mention in the)*

1.00

2.00

Plan 2 will be in actual operation

3.00

4.00

5.00

6.00

7.00

8.00

Evening

JUNE 2011

F	S	M	T	W	T	F	S	S
	1		2	3	4	5		
6	7	8	9	10	11	12		
13	14	15	16	17	18	19		
20	21	22	23	24	25	26		
27	28	29	30					

JULY 2011	AUGUST 2011	SEPTEMBER 2011	OCTOBER 2011	NOVEMBER 2011	DECEMBER 2011
M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S
1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7 8 9	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Look for Classification Marking in Message Body

GCSB18

From: GCSB1
Sent: Friday, 16 December 2011 8:26 a.m.
To: DL-UNIT: ICT
Subject: Taskforce DEBUT briefing

Expires: Sunday, 12 February 2012 12:00 a.m.

Classification: CONFIDENTIAL//COMINT//NEW ZEALAND EYES ONLY

GCSB1

Manager | Global Issues Production (IC)
5.L.3 | ISTN 359-5239 | Unclass DDI: +64 (0)4

GCSB



FW:

[CONFIDENTIAL ...



FW:

[CONFIDENTIAL ...

Look for Classification Marking in Message Body

GCSB18

From: GCSB2
Sent: Wednesday, 14 December 2011 4:45 p.m.
To: GCSB1
Cc: GCSB2
Subject: [CONFIDENTIAL COMINT] RE Task Force Debut Briefing documents - Attn GCSB1
Attachments: Task Force DEBUT, First briefing.pdf

Classification: CONFIDENTIAL COMINT

FYI

GCSB2

Team Leader Transnational Issues (ICT)

lassified (ISTN): 359 5147
Unclassified (External DDI): (04) GCSB
E-mail: GCSB2@gcsb.govt.nz
From: OFCANZ POLICE [mailto:GCSB2@ofcanzintel.govt.nz]
Sent: Wednesday, 14 December 2011 1:50 p.m.
To: GCSB2
Cc: OFCANZ3, OFCANZ3
Subject: [CONFIDENTIAL COMINT] RE Task Force Debut Briefing documents - Attn GCSB1

Classification: CONFIDENTIAL COMINT

From Det Insp Grant WORMALD.
Please pass to GCSB1
Draft (incomplete) Search Warrant to follow.

OFCANZ1

Security Manager, OFCANZ and NIC
Police National Headquarters
Wellington

Ph 04-OFCANZ (not secure)

Task Force DEBUT, First briefing.pdf
This email was classified by OFCANZ OFCANZ1 on Wednesday, 14 December 2011 1:50:14 p.m..

Scanned by MailMarshal - Marshal's comprehensive email content security solution. Download a free evaluation of MailMarshal at www.marshalsec.com

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OFCANZ
ORGANISED & FINANCIAL
CRIME AGENCY NEW ZEALAND
Kia Mau Pumanu Ki te Ture



ORGANISED AND FINANCIAL CRIME AGENCY NEW ZEALAND

16 December 2011

Director
GCSB
WELLINGTON

Attention: [REDACTED] GCSB4

TF DEBUT: Request for GCSB support with regards to NZ Police enforcement of international warrants against Mega Media Group

1. OFCANZ requests GCSB's assistance pursuant to section 8(1)(e) of the GCSB Act 2003, which permits GCSB to assist OFCANZ with the provision of foreign intelligence on the understanding that this request contributes to a function of OFCANZ and supports of the prevention or detection of serious crime.

2. OFCANZ holds an interest in a group of persons known as the Mega Media Group, due to them being the subjects of international arrest warrants issued by the United States Federal Bureau of Investigation (FBI) in regards to large-scale copyright infringement and money laundering offences. FBI has requested NZ Police assistance in executing the arrest warrants against Mega Media's officers and seizing assets understood to be the proceeds of the organised criminal activity.

3. OFCANZ requests GCSB's assistance in gathering intelligence on Mega Media Group's executives' intentions to travel to New Zealand in mid to late January 2012. If New Zealand Police undertake operations to execute the arrest and seizure warrants, intelligence on the group's plans may assist NZ Police in conducting the operations in a safer and more efficient manner.

4. OFCANZ therefore requests that GCSB conduct SIGINT analysis against persons associated with Mega Media Group - in particular its executive officers: Kim Schmitz (also known as Kim Dolcom and Kim Tim Jim Vestor), Finn Batato, Julius Bencko, Sven Echernach, Mathias Ortmann, Andrus Nomm, and Bram van der Kolk, in order to better inform OFCANZ and NZ Police operational planners as to the group's intentions.

4. The precedence of this request is PRIORITY.

5. Thank you for your assistance. If you would like to discuss this further, please contact Detective Sergeant Nigel McMorran (04) [REDACTED] OFCANZ phone: [REDACTED]

for Grant Wormald
Detective Inspector

POLICE QID

16/12/11

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GCSB7

From: GCSB2
Sent: Monday, 19 December 2011 3:30 p.m.
To: DL-RSS-ICT
Cc: OFCANZ1 (OFCANZ1 [redacted].govt.nz)
Subject: FW: [RESTRICTED] DEBUT Target details Update
Attachments: ALL KNOWN TARGET DETAILS.doc

Classification: ~~RESTRICTED~~

INCORRECTLY CLASSIFIED.
SHOULD BE
TS//SI//NZEO DUE TO ASW GCSB
& SENSITIVE SUBJECT MATTER.

Thanks OFCANZ1

Team FYI some additional selectors...

Regards

GCSB1

Team Leader Transnational Issues (ICT)

Classified (ISTN): 359 5147
Unclassified (External DDI): (04) GCSB1
E-mail: GCSB1 [redacted]@gcsb.govt.nz
From: OFCANZ1 (OFCANZ1 [redacted] [mailto:OFCANZ1 [redacted].govt.nz])
Sent: Monday, 19 December 2011 2:53 p.m.
To: GCSB1
Cc: OFCANZ3
Subject: [RESTRICTED] DEBUT Target details Update

Classification: RESTRICTED

GCSB1

Attached is the latest from Nigel McMorran.

Cheers

OFCANZ1
OFCANZ1
Police National Headquarters
Wellington

Ph 04 OFCANZ Phone (not secure)

ALL KNOWN TARGET DETAILS.doc
This email was classified by OFCANZ OFCANZ1 on Monday, 19 December 2011 2:52:40 p.m..

38a

Look for Classification Marking in Message Body

GCSB7

From: GCSB2
Sent: Monday, 19 December 2011 9:57 a.m.
To: DL-RSS-ICT
Cc: GCSB1 GCSB
Subject: PRIORITY OFCANZ OP DEBUT RFI
Attachments: OP DEBUT RFI.pdf

Classification: SECRET//COMINT//REL TO NZL, AUS, CAN, GBR, USA

Team

Please enter into GCSB and action as PRIORITY.

Regards

GCSB2

Team Leader Transnational Issues (ICT)

Classified (ISTN): 359 5147
Unclassified (External DDI): (04) GCSB2
E-mail: GCSB2

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Look for Classification Marking in Message Body

GCSB3

From: [redacted]
Sent: Friday, 17 February 2012 12:50 p.m.
To: GCSB3, GCSB1
Cc: GCSB7, GCSB12, GCSB14
Subject: DEBUT selectors

Classification: TOP SECRET//COMINT//REL TO NZL, FVEY

GCSB1 GCSB2

See the lists and notes below on the selectors belonging to NZ-based persons that were entered into [redacted] during TF DEBUT.

Kim Dotcom selectors – all tasked

GCSB [redacted]
GCSB [redacted]
GCSB [redacted]

Note on traffic volume from these selectors. We intercepted [redacted] from the first two selectors on the list. Obviously only a small fraction of them were used in the reports that were generated. We had no [redacted] collection on Dotcom, and I'm advised we saw a little [redacted] none of which was used in reporting).

Monica Dotcom (spouse) – all tasked

GCSB [redacted]

We saw dozens of [redacted]. None of these were used in reporting. No [redacted] intercept.

Bram Van Der Koik selectors – see note below

GCSB [redacted]

GCSB

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* I only attempted to task these selectors on 22/12/2011 after

My point is, the fact that these selectors appear in [redacted] in draft format and do not appear in a list indicating that their tasking was approved means that these selectors were never actually tasked for collection [redacted] has also confirmed this).

However, we did report Bram as being the user of [redacted] in [redacted] 20-12 after it was seen in contact with Sven Echternach, whose selectors were tasked. The series of about 10 [redacted] between Echternach and Bram on that particular day were the only time we saw content on Bram's selectors. No [redacted] intercept.

GCSB5

ICT7

(unclass) ext: 8560

(secure) ext: 5291

email [redacted]@gcsb.govt.nz

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Look for Classification Marking in Message Body

GCSB3

From: GCSB1
Sent: Monday, 20 February 2012 5:39 p.m.
To: GCSB3
Subject: Residency status of DEBUT
Expires: Friday, 20 April 2012 12:00 a.m.

Classification: SECRET//NEW ZEALAND EYES ONLY

GCSB3

Can you contact OFCANZ and ask them to tell us the exact residency status of DOTCOM, Monica DOTCOM and Bram van der KOLK – what type of residency were they granted.

Thanks

GCSB1

GCSB1

Manager | Global Issues Production (IC)
5.L.3 | ISTN 359-5239 | Unclass DDI: +64 (0)4

GCSB1

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GCSB1

From: GCSB3
Sent: Wednesday, 22 February 2012 2:02 p.m.
To: GCSB1
Subject: FW: [SECRET COMINT] TF DEBUT

Classification: SECRET COMINT

Hi GCSB1

It looks like OFCANZ are taking things seriously wrt the recent compliance omissions. Did you want to contact OFCANZ about this, as I'm not sure if GCSB want/need this to be discussed at the Deputy Director level?

GCSB3

From: OFCANZ: OFCANZ3 [mailto:OFCANZ3@govt.nz]
Sent: Wednesday, 22 February 2012 12:11 p.m.
To: GCSB3
Subject: [SECRET COMINT] TF DEBUT

Classification: SECRET COMINT

NZEO

GCSB1

With respect to Op DEBUT, it is becoming apparent that there are some serious issues that might need to be addressed.

We have some checks under way with Immigration to satisfy your request regarding residency status and dates for the DEBUT targets. The likelihood is that these checks will show that all three have NZ residency status.

There are some important (but subsequently incorrect) assumptions and apprehensions from our end that I wish to spell out.

1. Some OFCANZ staff (including myself) assumed that citizenship/nationality rather than residency is the test/defining criteria for targeting/exemption, and/or made incorrect assumptions as to what actual status of particular individuals was based on intelligence received.
2. Some OFCANZ staff assumed that certain persons were indeed not being targeted and that the intelligence received was derived from external, non-resident targets.
3. With several points of contact at both ends, and not everyone viewing the written reports, these two misapprehensions were able to continue.

The bottom line is that we accept that some errors of process and judgement may have occurred and where they have, we take responsibility for our part in those. I can assure you that our request for assistance was submitted in nothing other than good faith.

We remain keen and available to assist in any way we can to manage potential issues or consequences and Deputy Director Ray Van Beynen has offered to come down and discuss the matter this afternoon or at your convenience.

Regards,

Look for Classification Marking in Message Body

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OFCANZ3

OFCANZ3

Original Message
From: [REDACTED]
To: [REDACTED]

This email was classified by OFCANZ [REDACTED] on Wednesday, 22 February 2012 12:10:40 p.m..

4

Look for Classification Marking in Message Body

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2

Privileged documents

Date	Description	Privilege
19/12/11	Internal GCSB email (part privileged)	Legal Advice
19/12/11	Compliance advice	Legal Advice
20/02/12	Internal GCSB email • Draft file note re Op DEBUT attached	Legal Advice
21/02/12	Internal GCSB email • Amended draft file note re Op DEBUT attached	Legal Advice
22/02/12	Internal GCSB email • Further amended draft file note re Op DEBUT attached	Legal Advice
22/02/12	Internal GCSB email • Further amended draft file note re Op DEBUT attached	Legal Advice
22/02/12	Internal GCSB email Internal GCSB email	Legal Advice
22/02/12	Internal GCSB email	Legal Advice
24/02/12	Internal GCSB email • Final file note re OP DEBUT	Legal Advice
27/02/12	Internal GCSB email	Legal Advice
27/09/12	File note of discussion between OFCANZ and GCSB	Litigation
From 14/08/12	Communications with Crown Law	Legal advice and litigation
From 17/09/12	Documents prepared in response to the Inspector-General's investigation	Ss 19(7), 19(9) & 24(3), Inspector-General of Intelligence and Security Act 1996

