



**David
SHEARER**

Leader of the Labour Party
MP for Mt Albert



4 April 2013

Lyn Provost
Controller and Auditor-General
Office of the Auditor-General
PO Box 3928
Wellington 6140

Dear Ms Provost,

I am writing to request that you conduct an inquiry into the propriety of the appointment process for the position of Chief Executive and Director of the Government Communications Security Bureau in 2011 and Rt Hon John Key's involvement in this process.

Over the last few days, significant questions have been raised over the appointment process led by the State Services Commissioner Iain Rennie and the nature of Mr Key's involvement and intervention in Ian Fletcher's appointment. It is essential that these serious concerns are investigated and that any issues with the appointment process are identified.

It would appear that the Commission's appointment process was not followed. While I do not have the benefit of the exact knowledge of the process followed, I have identified three key issues that require further investigation.

1. Rt Hon John Key's intervention in the appointment process of Ian Fletcher as Director of the Government Communications Security Bureau, in particular, in personally contacting Mr Fletcher. This seems to contradict the process outlined in the Guide for Applicants.
2. Conflict of interest. I question whether Mr Key has fulfilled his responsibilities under section 2.57 of the Cabinet Manual.
3. Whether due process was followed by the State Services Commissioner and the interview panel.

In the attached document, I provide background information on these three issues.

This appointment process is a matter of significant public interest. It has caused reflection of a negative nature on Mr Rennie, Mr Fletcher and Mr Key. It is therefore vital for New Zealand's reputation as having an open, transparent and non-corrupt appointment process that a thorough and transparent inquiry be carried out.

This issue should be of utmost concern to the Auditor-General. It is critical that public confidence in this appointment process be restored. New Zealanders must be confident that officials in positions such as the Director of the Government Communications Security Bureau are the right people for the job.

Mt Albert Electorate Office: Level 1, 901 New North Rd, Mt Albert, Auckland 1025

P +64 9 845 1919 | F +64 9 846 4354

Parliament Office: Parliament Buildings, Wellington | Freepost Parliament, Private Bag 18-888, Wellington 6160

P +64 4 817 9370 | F +64 4 495 8444 | E david.shearer@parliament.govt.nz

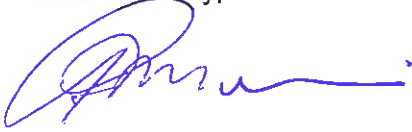
Authorised by David Shearer MP, Parliament Buildings, Wellington



I have attached copies of relevant documents relating to this issue for your information.

Thank you very much for your consideration of this request. Please do not hesitate to contact me if you require any further comment or clarification on this issue.

Yours sincerely,



p.p. David Shearer
Leader of the Opposition
MP for Mt Albert

Background

Mr Key announced the appointment of Mr Fletcher as the new Director of the Government Communications Security Bureau on 8 September 2011.

The vacancy was advertised on the State Services Commission website on 10 May 2011. According to the State Services Commission's 'Guide for Applicants' for the position (attached), the State Services Commissioner would manage this appointment on behalf of the Prime Minister.

The Guide for Applicants outlined the timeline that the appointment process would follow:

- Applications close, 30 May 2011.
- Candidates are assessed and a long list of candidates is developed
- Unsuccessful candidates are advised by 13 June 2011.
- Long listed candidates are interviewed by the search consultant.
- A short list of candidates to be interviewed by panel is agreed upon.
- Long listed candidates, who were interviewed by the consultant, are advised and given feedback by 11 July 2011.
- Short listed candidates undertake an assessment centre in early July - the dates are to be confirmed.
- Short listed candidates interviewed by a panel led by the State Services Commissioner on 14 July 2011.
They will also be expected to do a short presentation, the topic for which will be provided two to three days prior to interview.
- Preferred candidate advised and his/her references are checked.
In most instances, unsuccessful candidates will be informed at this stage.
- The Prime Minister forwards his recommendation for appointment to Cabinet, for referral to the Governor-General.
This process takes approximately four weeks from the date of the panel interview.
- Successful candidate announced in August 2011.
- Unsuccessful candidates are given feedback.

It would appear, however, that the Commission's appointment process was not followed. While I do not have the benefit of the exact knowledge of the process followed, I have identified three key issues that require further investigation.

1. Rt Hon John Key's role in the appointment of Ian Fletcher as Director of the Government Communications Security Bureau

I am aware from comments made by Mr Key and State Services Commissioner Iain Rennie that they discussed a shortlist of candidates for the position of Director of the GCSB. They have said that they agreed that none of the candidates were suitable for the position.¹

They have further acknowledged that Mr Key called Mr Fletcher to assess his interest in the position and advised him to call Mr Maarten Wevers, the Chief Executive of the Department of Prime Minister and Cabinet to discuss the position. Mr Fletcher was subsequently interviewed for the position by a panel that included Mr Wevers, and eventually appointed to

¹ <http://www.stuff.co.nz/national/politics/8507250/State-Services-chief-surprised-by-PMs-call>;
<http://www.radionz.co.nz/news/political/131875/pm-defends-role-in-gcsb-appointment>

the position. Mr Rennie has acknowledged that Mr Fletcher was the only person interviewed for the position.²

The role of Mr Key in this process, and in particular his intervention in calling Mr Fletcher, do not appear to be consistent with the application process. Mr Rennie has said he was "surprised" that Mr Key called Mr Fletcher.³

Further, former Director of the GCSB, Sir Bruce Fergusson has publicly commented that an applicant for the job he has spoken to had been told that he was to be interviewed, but that interview never took place.⁴

The exact nature of Mr Key's involvement in the process is unclear as he has given contradictory statements and downplayed his role in the appointment of Mr Fletcher as Director of the Government Communications Security Bureau.

For example, Grant Robertson MP questioned Mr Key in Parliament on his role in the appointment process during oral question no. 12 on Wednesday 27 March 2013. He asked Mr Key in his capacity as Minister Responsible for the Government Communications Security Bureau:

What role, if any, did he play in recommending the appointment of Ian Fletcher as Director of the Government Communications Security Bureau?

To which Mr Key replied:

His appointment was made by the State Services Commissioner, but if the member is trying to make some other allegation, then yes, I knew Ian Fletcher. I went to school with his brother. His brother was way brighter than Grant Robertson—

Mr Key was further questioned on his relationship by the media on 3 April 2013. He stated:⁵

Key: *Basically, the State Services Commissioner came to me, said I've got four recommendations on a list from a head hunter, none of those I would recommend to you. We need to think and try and find another name. I had a conversation with a couple of people. One of them was Ian Fletcher. They then went through a full process, they were recommended by that board and we accepted it. That's quite a normal process. [...]*

Key: *I rang him [Fletcher], and said, look, I think, you know, you might be interested. If you are interested in finding out about the job you should go to, speak to Maarten Wevers, who's the head of DPMC, and see [unintelligible].*

Media: *Did you tell Maarten Wevers to expect a call?*

Key: *I would have, yeah. Yeah, absolutely. [...]*

Media: *But clearly by intervening in that way you did actually have a role though?*

Key: *Uh, I wouldn't say so.*

Given Mr Key's contradictory and confusing statements it is possible that the full extent of his intervention in the process for the appointment of Director of the Government Communications Security Bureau is yet to be revealed. It is vital that Mr Key's role in the appointment be thoroughly investigated.

² <http://www.stuff.co.nz/national/politics/8507250/OK-for-PM-to-intervene-in-hiring-process-Rennie>

³ <http://www.stuff.co.nz/national/politics/8507250/OK-for-PM-to-intervene-in-hiring-process-Rennie>

⁴ <http://www.3news.co.nz/Former-GCSB-head-Sir-Bruce-Ferguson-speaks-out/tabid/817/articleID/292879/Default.aspx>

⁵ Excerpt from footage available on <http://www.3news.co.nz/Former-GCSB-head-Sir-Bruce-Ferguson-speaks-out/tabid/367/articleID/292879/Default.aspx>

2. Conflict of interest

I question whether Mr Key has fulfilled his responsibilities under section 2.57 of the Cabinet Manual which begins,

Ministers are responsible for ensuring that no conflict exists or appears to exist between their personal interests and their public duty. Ministers must conduct themselves at all times in the knowledge that their role is a public one; appearances and propriety can be as important as an actual conflict of interest.

The nature of Mr Key's relationship with Mr Fletcher remains unclear, therefore the public cannot be assured that this responsibility has been fulfilled.

For example, during oral question no. 12 on 27 March 2013, Deputy Leader of the Labour Party Grant Robertson asked Mr Key:

In light of the Prime Minister's answer to the last supplementary question, when he introduced the nature of his relationship with Ian Fletcher, can he enlighten the House as to whether he has had further contact with Mr Fletcher since their school days, perhaps in London?

To which Mr Key replied:

Well, I cannot recall particular occasions; I am sure I may well have done so. What I can say, if the member wants to know, is that my mother was best friends with Ian Fletcher's mother. If that makes a conspiracy, fair enough.

Mr Key was further questioned on his relationship by the media on 3 April 2013:⁶

Media: *Would you agree that you may have downplayed your relationship with Mr Fletcher?*

Key: *No.*

Media: *So if you had to describe your relationship with Mr Fletcher as you've had many chances to do, how would you describe it now that you've had a chance to go back?*

Key: *I wouldn't change anything I've said.*

Media: *So you're friends?*

Key: *No, as I've said to you before, we're not friends, I haven't seen the guy since I was 18 years of age to the best of my memory when I'm 48 [sic]. I was friends with his brother.*

Mr Key has been reported as saying that he and Mr Fletcher met a "couple of times" when Mr Fletcher was in Queensland and on no more than a "handful" of occasions between the mid-2000s and his appointment to Director of the Government Communications Security Bureau. Mr Key is 51 years old. It is contradictory for him to state that he hadn't seen Mr Fletcher from aged 18 until approximately 2010 (aged 48) and yet state he has met him "handful" of occasions from the mid-2000s.

It has now been revealed that Mr Key and Mr Fletcher had also shared breakfasts together when Fletcher was chief executive of the Queensland State's Department of Employment, Economic Development and Innovation.

⁶ Excerpt from footage available on <http://www.3news.co.nz/Former-GCSB-head-Sir-Bruce-Ferguson-speaks-out/tabid/367/articleID/292879/Default.aspx>

Further, Mr Key had such a close relationship with Mr Fletcher that he knew his phone number⁷ and was able to phone him and discuss the available position.

Mr Key has said that he disclosed that he knew Mr Fletcher to State Services Commissioner Mr Rennie. It is not clear, however, whether Mr Key disclosed the full nature of his relationship with Mr Fletcher to the State Services Commissioner, the interview panel, the Cabinet Office and the Department of Prime Minister and Cabinet. A full investigation as to the nature of his disclosures must be carried out.

3. Due process by the State Services Commissioner and interview panel

The State Services Commission had set out a very clear timeline for the key steps in the appointments process. It is now apparent that this process was not followed for Mr Fletcher's appointment. Due to the lack of transparency in this process, it is unclear whether Mr Fletcher was required to undertake a number of obligations required of candidates under the appointment process timeline.

As it appears there was a relatively small timeframe between Mr Fletcher being approached by Mr Key and the Prime Minister appointing him, I question whether Mr Fletcher was required to do the following:

- Be interviewed by the search consultant,
- Undertake a "half day assessment centre",
- Give a presentation at the interview panel,
- Have his references checked.

Further Mr Key has said that Mr Fletcher was appointed because he was the "best person" for the job.⁸ However, Mr Rennie when asked if the appointment panel had recommended Mr Fletcher only said that they found him "suitable" for appointment.

In light of this, and the process outlined in the Guide for Applicants, I would ask that you investigate whether interviewing only Mr Fletcher for the position fulfilled the requirements that would be expected for a position of this nature.

Role of Director of the Government Communications Security Bureau

The role of Director of the Government Communications Security Bureau is of significant national importance. As outlined in the position description, the Director:

- contributes to national security by providing foreign signals intelligence the Government requires to protect and advance New Zealand's security or defence, its international relations or its international well-being or economic well-being
- provides advice and assistance to government agencies and the private sector to secure communications and computer systems and protect environments from electronic or technical surveillance
- contributes to the protection of New Zealand's critical infrastructure against cyber threats
- leads and manages the GCSB to be a trusted, effective and efficient provider of intelligence and security services in support of Government's security and intelligence objectives

⁷ Excerpt from footage available on <http://www.3news.co.nz/Former-GCSB-head-Sir-Bruce-Ferguson-speaks-gutitabid/367/articleID/292879/Default.aspx>

⁸ Excerpt from footage available on <http://www.3news.co.nz/Key-had-forgotten-call-to-Fletcher/tabid/1607/articleID/292859/Default.aspx>

- supports the Officials Committee for Domestic and External Security Coordination (ODESC).

This appointment process is a matter of significant public interest. It has caused reflection of a negative nature on Mr Rennie, Mr Fletcher and Mr Key. It is therefore vital for New Zealand's reputation as having an open, transparent and non-corrupt appointment process that a thorough and transparent inquiry be carried out.

This issue should be of utmost concern to the Auditor-General. It is critical that public confidence in this appointment process be restored. New Zealanders must be confident that officials in positions such as the Director of the Government Communications Security Bureau are the right people for the job.