



Question of privilege regarding use of intrusive powers within the parliamentary precinct

Interim report of the Privileges Committee

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Chairperson)
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Recommendation

The Privileges Committee recommends that the House take note of its interim report on the Question of privilege regarding use of intrusive powers within the parliamentary precinct.

Introduction

On 11 July 2013 the Speaker ruled that a question of privilege arose from issues raised in a letter to him from Dr Russel Norman. The issues related to the exercise of intrusive powers against members, and the release of information from parliamentary information and security systems. The question consequently stood referred to this committee. The ruling is appended to this report (Appendix B).

Because of the intense public interest in the incident that led to the referral, we have decided to make this interim report, setting out our findings of fact regarding the circumstances of the incident.

What we were asked to do

We were tasked with examining the particular incident involving the release of information from parliamentary information and security systems that led to the question of privilege being referred, and the more general issue of appropriate principles for access to and release of information from parliamentary information and security systems.

The particular incident involved the release of information held on parliamentary information systems to the author of *Inquiry into the unauthorised release of information relating to the GCSB compliance review report: The leak of the Kitteridge report*.

We decided to begin our consideration by establishing the facts of this incident. To help us do so, we invited evidence from the principal organisations and individuals concerned: those who requested information, those who responded to the requests and could discuss pertinent policy and procedure, and those who were the subject of the information requests.

The transcripts of our hearings of evidence are contained in Appendices E to I of this report, and the written evidence we received has been published on www.parliament.nz.

What we were not asked to do

The Speaker did not ask us to investigate this release as a contempt. Nor did he ask us to determine who was responsible for the release.

Interim report

This is an interim report. While this report records our findings in relation to the incident, our consideration of the wider matters of principle is continuing. We will report to the House on these matters in due course.

Structure of our report

In this report, we first set out a brief background about the matters leading up to the establishment of the Inquiry into the unauthorised release of information relating to the GCSB compliance review report. The status of this inquiry, and its function and nature, is pivotal to our consideration.

We then set out the detailed facts of the incident itself, based on the evidence we have heard. In general, there has been no dissent as to the evidence. There is no suggestion that the information releases in question did not occur, and little disparity in accounts of the facts of their occurrence. A summary of the effect of the incident and our concerns about the operation of key parties is included in that chapter. We also comment here on “the three agreements”: rules about the collection and review of information, which operate only in respect of particular elements of the Executive who are party to the agreements.

In our final section, we set out the key issues highlighted by the incident. The information we have gathered has helped to clarify for us where the main issues lie. We expect the next stage of our consideration to focus on these issues. We intend to examine the approaches taken in other jurisdictions to comparable matters, and consider carefully how these issues interact, before we make our final report setting out the principles we consider should guide access to and the release of information.

Some contextual information about the service arrangements within the Parliamentary Service is set out in Appendix C. The service is a large organisation which supports a number of different bodies, and we think these service arrangements have contributed to the issue that has arisen. We also set out in Appendix C information on the role and responsibilities of the Department of the Prime Minister and Cabinet, the Office of the Prime Minister, and the Government Communications Security Bureau, all of which have had a part to play in the events leading up to the referral of this question of privilege.

1 Incident concerning the release of information

This chapter sets out a summary of the incident. It provides contextual information about the establishment of the inquiry, then outlines in detail the facts of each set of information released to the inquiry. Our key concerns about the information releases are summarised at the end of this chapter.

Background and establishment of the inquiry

In 2012, concern was raised about legal compliance by the Government Communications Security Bureau (GCSB), as a result of events involving Kim Dotcom. Rebecca Kitteridge, the Cabinet Secretary, was seconded to carry out a review of the GCSB's compliance systems and processes, commencing on 2 October 2012. A final report was prepared, dated 22 March 2013. The report was classified as "sensitive".

Members of the Intelligence and Security Committee, which at the time was examining the Government Communications Security Bureau Bill, received an embargoed copy of the report. On 9 April 2013 the Dominion Post newspaper published an article by Andrea Vance disclosing content from the report. At that time the report had not been released publicly; it was released publicly, by the Prime Minister, soon after.

On 15 April 2013, at the request of the Prime Minister, David Henry (a former Commissioner of Inland Revenue and Chief Electoral Officer) was commissioned by the chief executives of the Department of the Prime Minister and Cabinet (DPMC) and the GCSB to carry out an inquiry into the unauthorised leak of the Kitteridge report. The inquiry was asked to

- investigate and report the facts about the unauthorised disclosure of information
- report any appropriate findings on how this information was released and by whom
- make recommendations (if applicable) on improving the internal information management process, on the basis of any lessons to be drawn from the inquirer's investigations.

As the DPMC and GCSB staff were possible sources of the Kitteridge report leak, the inquiry was established to be independent from the two agencies. A DPMC staff member was seconded to assist Mr Henry in the administration of his inquiry, but was accountable only to Mr Henry for the duration of the inquiry, and considered independent of the DPMC in relation to his work on the Henry inquiry. GCSB staff members provided administrative support in the early stages of the inquiry, but not during the period relevant to our consideration.

The inquiry was expected to have two stages, the first consisting of reviewing communications and copying equipment and records, log books, and any other relevant material from the people (or their offices) who had or were likely to have had access to the compliance review report. Stage 2 would include formal interviews, if the inquirer believed they were warranted by the facts and would help him meet the objectives of the inquiry.

Notably, the inquiry had no formal powers to compel the provision of information. In his report, Mr Henry noted that had compulsion been necessary to obtain information in relation to public servants he “would have asked for an appropriate delegation from the State Services Commissioner under the State Sector Act 1988”. We note Ministers and members are not public servants. However the provisions of the Official Information Act 1982 apply to Ministers and their offices, and were not invoked by Mr Henry.

The second stage of the inquiry was never reached. On 7 June 2013, the inquiry report (dated 5 June 2013) was released by the Prime Minister. The report concluded that extensive checks of the relevant government agencies and ministerial offices, including emails sent and received by public servants and ministers, had identified three people who had access to and possession of the report before the leak, and had contact with Ms Vance. The inquirer said he was satisfied that the contacts of two of the three people were entirely commensurate with their official duties, but said that he was unable to obtain all the information he required from the third person, the Hon Peter Dunne, although Mr Dunne had advised him he did not provide the reporter with access to the Kitteridge report.

In his report, Mr Henry made it clear that Mr Dunne had declined to allow him access to some emails between him and Ms Vance. Mr Henry concluded that he needed access to all emails, and without it he “[could] not take the matter any further”. The committee is not convinced by this.

Information released to the Henry inquiry

The incident we are examining is about information which was released to Mr Henry during the course of his inquiry. In order to compile his report, Mr Henry was provided with a large amount of data from parliamentary information and security systems. The information provided included

- records of email traffic between Ms Vance and relevant Ministers and staff (email metadata)
- the content of some of the emails indicated by the metadata records, logs of phone calls made and received on certain landlines in the precinct, and on mobile phones belonging to Ministers and their staff
- security records relating to the use of swipe cards within the parliamentary precinct.

For the purposes of our inquiry, the significant information releases are those that relate to the Hon Peter Dunne and Ms Vance. While information relating to other Ministers (and ministerial staff) was sought and provided, and we expect our eventual findings on the principles applying to releases of information will cover the requesting of information relating to any Minister or staff member, the releases relating to Mr Dunne and Ms Vance have initiated the question now before us.

For much of the information relating to Mr Dunne and Ms Vance, the consent of the particular individuals involved was not sought. In other cases, consent was sought but not given, but the information was provided to the inquiry regardless. In addition, one set of data was given twice to the inquiry, even though it had not been requested. The interactions between the inquiry and the Parliamentary Service regarding the instances of release which are relevant to our examination are described in detail below.

Email metadata

On 29 April 2013, the inquiry administrator contacted the manager of Parliamentary Service ICT (PS ICT) and requested print, copy, and scan records for a number of specified Ministers and ministerial staff, for the period 22 March to 9 April 2013. After a series of emails between the two, an email described as a “formal request for the required information” was sent to PS ICT on 30 April 2013.

The request was put to the General Manager of the Parliamentary Service, Geoff Thorn. Mr Thorn decided there was no authority for the service to release the requested information to anyone other than the account holders themselves, and the agreement of each account holder would be necessary before the requested metadata could be handed over to the inquiry. Mr Thorn considered that the Department of Internal Affairs (DIA) could ask the service for information relating to ministerial staff in its capacity as their employer. However, he considered that Ministers’ information could be released only upon the authority of the relevant Minister.

The inquiry administrator then approached the Ministerial and Secretariat Services unit in the Department of Internal Affairs, which is responsible for providing office support and staffing to the Prime Minister and Ministers of the Crown, to discuss its request. On 8 May, the General Manager of the unit, Janice Calvert, emailed PS ICT staff asking them to supply the inquiry with the requested information, which the Parliamentary Service “holds on Ministerial Services’ behalf”. The inquiry sent a further email, confirming its request, and referring to Ms Calvert’s authorisation. This subsequent email included a request from the inquiry for logs showing all emails to and from the addresses of the specified Ministers and ministerial staff over the specified date range.

Again, the request was taken to Mr Thorn. He considered the position unchanged, and stressed that written confirmation would be required from each Minister that they were willing for the service to make this information available to the inquiry before it could be released. Mr Thorn did not agree that the Parliamentary Service was holding information relating to members or Ministers on behalf of Ministerial and Secretariat Services. In his view, that material was being held on behalf of the particular Ministers and members. However, Mr Thorn agreed that equivalent information pertaining to ministerial staff could be released on Ms Calvert’s authority.

Mr Thorn’s decision was relayed to Ms Calvert, who contacted Mr Thorn to discuss the issue. Mr Thorn remained unpersuaded from his view that authorisation would be required from each Minister to release their information, and Ms Calvert eventually agreed to arrange this authorisation.

Ms Calvert then contacted the Prime Minister’s Chief of Staff, Wayne Eagleson, to discuss the necessary authorisation. Mr Eagleson indicated that the Prime Minister’s wish was for a speedy and efficient inquiry, and that—in Mr Eagleson’s view—individual authorisation from each Minister was not necessary for information to be released to the inquiry, given its terms of reference and a comment by the Prime Minister to the effect that he expected all Ministers to comply with the inquiry.

On 9 May 2013, Mr Eagleson called Mr Thorn. He subsequently emailed Mr Thorn, advising that at the outset of the inquiry he had written to the senior private secretary in each ministerial office noting that the Prime Minister expected the Ministers (and their offices) to cooperate fully with the Henry inquiry, and authorising the release of information relating to Ministers and their staff.

Mr Eagleson acknowledged that he did not seek express consent from individual Ministers for access to information by the inquiry. In Mr Eagleson's view, he had sufficient authority to authorise release of the information requested because all Ministers involved had been made aware of the terms of reference for the inquiry (which had made clear the type of information that would be sought). In addition, the Prime Minister had stated, both publicly and to Mr Eagleson personally, that he expected Ministers to cooperate fully with the inquiry. This indication, together with the fact that Ministers are accountable to the Prime Minister for their behaviour, was considered by Mr Eagleson sufficient for him to authorise release on behalf of the Prime Minister. Mr Eagleson accepted that a more sensible approach in future might be to go to each Minister with a piece of paper and say "Please sign it", and one would expect they would all do so.

In response to Mr Eagleson's contact, Mr Thorn agreed to release the information relating to Ministers. He was satisfied that Ministers had agreed to the release. Mr Thorn told us that his usual process would have been to seek express agreement from each Minister involved, but from his conversation with Mr Eagleson, he understood Mr Eagleson to be conveying each Minister's consent. He did not question Mr Eagleson's authority to provide that authorisation; he told us that he did not second-guess where Mr Eagleson was getting his authority from, and that it was not unusual for him to deal with chiefs of staff over such matters. He understood that Mr Eagleson was not directing him, but was conveying that Ministers had given consent. He relied on Mr Eagleson's authority as chief of staff.

Email content

On 20 May 2013, PS ICT received a further request from the inquiry. It sought the full content of certain emails between Mr Dunne and Ms Vance, along with that of emails between Ms Vance and a number of ministerial staff members.

PS ICT initially indicated it thought it could provide the information. However, the matter again reached the attention of Mr Thorn. Mr Thorn seemed comfortable to supply the requested staff emails, considering the previous authority given by Mr Eagleson and Ms Calvert sufficient to allow their release; but he expressed concern about the release of a Minister's email content without the account holder's knowledge or agreement.

Mr Thorn contacted Mr Eagleson, and advised him that he did not consider the previous authorisation sufficient to allow the release of a Minister's email content, particularly where the Minister was a support party member rather than a member of the New Zealand National Party. Mr Eagleson agreed, and asked for time to consider the matter. He subsequently rang his counterpart in Mr Dunne's office, Rob Eaddy, about the request, and Mr Eaddy undertook to put the request to Mr Dunne directly.

We explored with Mr Thorn and Mr Eagleson whether they considered that the specific consent required for release of email content should be different from the consent required for release of email metadata. When we asked Mr Thorn about this, he said he considered that metadata does disclose some information, and he was not prepared to release anything until it had been approved or agreed by specific Ministers. Mr Eagleson considered that the Minister's consent was implicit from the Prime Minister's direction to Ministers, and was able to satisfy Mr Thorn that he had authority to say each Minister's consent had been provided. Mr Thorn noted he had not had a high level of comfort with the release of metadata on this basis, even though he agreed to it.

On 22 May, Mr Eaddy informed Mr Eagleson that Mr Dunne was not prepared to approve the release of the emails, but would be happy to meet Mr Henry to discuss the emails. According to Mr Eagleson, this information was subsequently relayed to the Acting General Manager of the Parliamentary Service.

In the intervening period, Mr Dunne's emails were given to the inquiry in error. As the timeframe for the request was expected to be tight, PS ICT began to collate the requested information the day after receiving the request. While it was clear Mr Dunne's authority was still to be sought, it seems that staff had an impression that it was likely to be forthcoming. They decided to extract the requested emails, including Mr Dunne's, with the intention of filtering out Mr Dunne's emails if his approval was not secured.

When all the requested files were ready, the compiler forwarded them to the PS ICT manager attached to a single email. The PS ICT manager forwarded this email straight to the inquiry administrator at 3.23pm on 22 May 2013, having forgotten that Mr Dunne's emails might need to be removed. When he realised this mistake, an attempt was made to recall the email (at 5.18pm). A call was also made to the inquiry administrator, who undertook to delete the attachment relating to Mr Dunne, and not to use it for the purposes of the inquiry. As it turns out, the attachments had been provided in a form that could not be opened by the inquiry administrator. The files subsequently supplied to the inquiry in a format that they could read did not include emails relating to Mr Dunne.

We were told by the Parliamentary Service that the file containing Mr Dunne's emails was not accessed by any Parliamentary Service staff or contractors, or anyone else during the time it was on the Parliamentary Service server.

Phone logs

Cellphone and landline logs for calls to a particular cellphone number by each specified Minister and their staff were requested in the email sent from the inquiry administrator to PS ICT on 8 May 2013. As with the requests for email metadata in the same email, the authorisation of Ms Calvert was considered sufficient to release this information regarding ministerial staff, and the authorisation of Mr Eagleson sufficient to rely on for releasing this information regarding Ministers.

Subsequently, in discussions between the inquiry administrator and PS ICT, the request for phone logs was modified. On 10 May 2013, the inquiry administrator emailed PS ICT with "two numbers, as discussed". One of these numbers was for a Fairfax Media telephone extension in the precinct, used by Ms Vance. On 14 May, PS ICT began making arrangements for a record to be compiled of all calls to and from these two numbers. Between 14 and 20 May, the inquiry administrator and PS ICT continued conversations about the request. Eventually, the inquiry administrator advised PS ICT that the inquiry no longer wanted such a list, and the arrangements being made to obtain it were cancelled.

On 20 and 30 May, the inquiry administrator sent through two new requests for phone logs; one request was sent directly to the PS ICT manager, and the other to the Chief Information Officer. The first request was for all phone logs that displayed contact between certain specified extensions within the parliamentary precinct (contact between extensions for Ministers and ministerial staff, and the two previously supplied numbers), or all calls from the ministerial and staff extensions—which ever might be easier to compile. In this request, the administrator noted that the inquiry no longer wanted all call logs from the two numbers, as this was "outside the parameters of the inquiry". The second request,

made 10 days later, was for call logs between ten named Ministers' personal landlines, and the two numbers of interest.

These requests were dealt with separately, the day after receipt. However, they were both dealt with in the same way. For each request, reports of the call logs requested was compiled. In each case, these reports were empty. Because of this, in both cases, in order to demonstrate that the reporting function used to compile the reports was working, the staff member compiling the reports ran additional reports showing all calls to and from the two numbers of interest. These reports captured a call log over a three-month period, as the compiler was not sure of the required timeframe.

In respect of the first request, once the reports were received by the PS ICT manager (on 21 May 2013), the manager called the inquiry administrator, and informed him of the nil result for the requested report, and told him the additional report had been run. The inquiry administrator advised that the inquiry was not interested in the additional report. No reports were therefore supplied to the inquiry in response to the first request.

However, in response to the second request, both reports (one with no content, the other showing all calls to and from the numbers of interest) were supplied to the inquiry twice. In response to the first supply (by Datacom staff), the inquiry administrator noted "we did not request the second report you've attached here—i.e. the one showing all calls to and from the numbers of interest. We're not interested in looking at that." The same day, the same email containing these reports was sent again to the inquiry, by the Chief Information Officer.

In his evidence to us, Mr Dunne suggested that Mr Henry had asked him for consent to access his office landline data at a meeting on 31 May 2013. Mr Dunne had agreed to this request. However, we note that, if the meeting where this request was put was indeed held on 31 May 2013, this information had already been requested by the inquiry, and possibly already supplied.

Swipe card records

On 27 May 2013, the inquiry requested swipe card information showing the movements of Mr Dunne and Ms Vance within the precinct over three days, including 8 May 2013. The request was put to Mr Thorn. He considered the position regarding Mr Dunne clear; the information related to his role as a member or as a Minister, and should not be released to the inquiry without his authorisation. Mr Thorn sought authorisation from Mr Eaddy to provide swipe card records, and the requested swipe card record relating to Mr Dunne was provided to the inquiry with the agreement of Mr Dunne. However we note that, in his evidence to us, Mr Dunne told us his agreement was for his records to be provided for one day only (7 April 2013), and that this was the request put to him at a meeting with Mr Henry on 31 May 2013.

Because Ms Vance is not a member of Parliament, the request for her information was dealt with differently. Mr Thorn decided to apply the principles of the Security Policy for the Parliamentary Precincts. According to Mr Thorn, this policy requires the general manager to manage access to the precincts so as to ensure a balance between access and the protection of people, property, and information. On the basis of the request by the inquiry, Mr Thorn judged that access to the Kitteridge report may have resulted from a security breach within the precinct. He considered that he should not second-guess the security implications and, on this basis, decided to release the swipe card information

relating to Ms Vance to the inquiry. We note, however, that the inquiry asked for the records but never alleged a security breach.

This decision by Mr Thorn was made without any reference to the Speaker.

Ms Vance has confirmed to us that her consent to release this information was never sought and, had it been, she would not have agreed.

Storage of the material

The electronic records and papers of the inquiry were stored on the DPMC system. Mr Kibblewhite told us they were segregated from other departmental files and access to those records and papers was restricted to Mr Henry and the staff member assisting Mr Henry during the conduct of the inquiry.

The DPMC has confirmed that none of its staff viewed the files released to the inquiry. In addition, we have been assured that steps were taken to ensure that the DPMC ICT system did not hold any of the information received in error, and to destroy any copies found on the system.

We were informed that no information accessed by the inquiry was made available to, or held by, the GCSB.

The Parliamentary Service confirmed to us that the file containing Mr Dunne's emails was not accessed by any Parliamentary Service staff, contractors, or any other person while it was on the Parliamentary Service server.

2 Effect of the incident and summary of our key concerns

The effect of the incident has been considerable. The incident has raised some important questions about protecting the privileges and immunities of the House, including the freedom of speech of members, and the ability of Parliament to maintain control within its precincts. The conduct of the agencies and certain individuals involved in the incident, and the seeming lack of regard for the separation of the Executive from Parliament, the need for confidentiality of sensitive information, or the freedom of the press, are of grave concern.

Role of the Speaker

On each occasion, the decision whether or not to comply with requests from the inquiry was made by the general manager of the service, without reference to the Speaker of the House. Nor was there any attempt by Mr Henry to contact the Speaker about the inquiry, and how it might operate appropriately within the parliamentary precinct, at any stage.

We are disappointed that there seems to have been no consideration of whether the inquiry, or its requests, should have been brought to the attention of the Speaker. The Speaker is the Parliament's representative; he speaks for the House to the Crown and others. He personifies the voice and views of the House of Representatives on matters related to Parliament.

In our view, the Speaker should have been involved from an early stage and informed about the inquiry, and consulted about the requests and releases, as his involvement could have helped to ensure that relevant safeguards for parliamentary information were enforced.

Conduct of the Parliamentary Service

The releases have resulted in Mr Thorn resigning as General Manager of the Parliamentary Service, and the credibility of the service being called into question. We were told that inadvertent misinformation to the Speaker about the releases and the Parliamentary Service's interaction with the inquiry was a key factor in Mr Thorn's decision to resign. However, Mr Thorn also accepted that there had been operational issues for PS ICT in implementing his decisions, and that in hindsight or with better information some of his decisions might have been different.

Managing the conflict created by service arrangements

That operational issues arose in the incident is evident, and we consider that to a large extent the facts speak for themselves in this regard. However, we also consider that the incident highlights serious issues regarding service arrangements, that is, the relationships Parliamentary Service maintains with those for whom it provides support (members, Ministers, staff, and organisations within the complex), and the various—and sometimes confusing—obligations these relationships create. In our view, the complexity of the relationships, and in particular the servicing of the Executive as well as parliamentary needs, has contributed to the unfortunate circumstances the service now finds itself in.

Prior to 2009, IT support for Ministers was provided through DIA, and for other members of Parliament through the Parliamentary Service. This arrangement ensured a clear delineation between the Executive and Parliament as two, very distinct, constitutional branches. However, these separate IT arrangements posed some practical problems; for example, there were difficulties in ensuring that the respective IT systems aligned in a way which supported the ability of members and Ministers to carry out their roles effectively, and when members became Ministers (or members who are Ministers lose their ministerial status), the process for changing systems was time-consuming and cumbersome. In 2009, a transition to IT support for all members (including Ministers) through the Parliamentary Service was made. While we accept this transition has had practical benefit, in our view ease of service provision must be a secondary consideration to security of parliamentary proceedings, and appropriate service delivery to Parliament and parliamentarians. Those who provide services to both the Parliament and the Executive must remain cognisant of the constitutional differences between the two, and what this means for their service delivery on any particular occasion.

We are very concerned that little thought seems to have gone into how such relationships should affect requests for information, and where ownership (and therefore authority) over such information rests. The Parliamentary Service holds a large amount of data and information relating to individuals on the precincts, and little analysis seems to have been done on the general policy question of when this data should be accessible, and by whom.

Nor does it seem that there is any clear escalation process for issues that arise. While Mr Thorn was asked for direction on a number of occasions, at least one request changed after his engagement without further direction being sought. We understand that the Speaker (who, on behalf of the House, exercises control over the parliamentary precinct so that the House can function properly in its role as a legislature) was not informed of, or asked for direction on, any of the requests, nor was legal or procedural advice sought on the matter.

Security policy does not provide sufficient guidance

The general rule applied by Mr Thorn was that members' information should not be disclosed to anyone except the member concerned or with the member's consent, unless there was a lawful and binding request by a third party such as the Police acting under a search warrant or an authority such as the Auditor-General or a commission of inquiry. This approach does not seem to be articulated in any documentation that we have viewed. In addition, this principle does not seem to us to cover all the necessary considerations; and even in these limited circumstances, the principle was applied inconsistently. We consider the security policy that was applied to the request of one set of information (swipe card records) patchy, to say the least. Provisions pertaining to the release of CCTV footage were applied as the policy does not refer explicitly to swipe card logs. The security policy is also silent on the threshold at which it can be invoked, and where the onus to establish that a security breach has occurred might lie. We are not confident that this policy was appropriately applied in the circumstances, particularly given that there was never any allegation made of a security breach.

The three agreements

In recent years Speakers have entered into agreements with enforcement and intelligence agencies, which have implications for the House and its members. In 2004, a memorandum of understanding was signed with the Commissioner of the New Zealand Police on policing functions within the precinct; in 2006 an interim procedure relating to the exercise

of search warrants was agreed between the Speaker and the Commissioner of the New Zealand Police; and in 2010 the Speaker entered into a memorandum of understanding with the New Zealand Security Intelligence Service and the Minister in charge of the New Zealand Security Intelligence Service about the collection and retention of information relating to members of Parliament. Each of these documents involves the Speaker of the House of Representatives being informed and involved in high-level decision-making. These agreements apply to the exercise of powers regarding members of Parliament and activities within the parliamentary precinct.

While the three agreements apply to the signatories in particular circumstances, the principle that underlies them is the general principle of exclusive cognisance: the House should have control of its own operations. This principle does not appear to have been considered in either the requests for information or its release. There does not appear to have been any recognition that if formal agreements exist regarding the exercise of certain powers within the precinct and in relation to members, either a formal agreement, or the application of similar principles, would be relevant in respect of the current inquiry.

Conduct of the Henry Inquiry

We have concerns about the way this inquiry operated in respect of its requests for information from the Parliamentary Service. In his evidence to us, Mr Henry made it clear that he considered it the duty of others to ensure that they were authorised to supply the information he requested. A number of the requests made were discussed only between staff of the inquiry and PS ICT, no direct contact was initiated by the inquirer to the General Manager of the Parliamentary Service before these requests were made, and no formal notification of the terms of reference of the inquiry was ever made nor the rationale for its particular requests put to the Parliamentary Service.

Mr Henry never chose to seek information under the Official Information Act, even though that Act contains provisions, applying to Ministers and their offices, intended to ensure an appropriate balance is struck between transparency of Executive information on one hand, and protection of sensitive information on the other.

Interactions with the Parliamentary Service

It is clear, from the evidence we heard, that the inquiry's persistent pressure on the Parliamentary Service, and approaches to third-tier and more junior staff, had a part to play in the releases which resulted. On at least one occasion, direction given by Mr Thorn seems to have been subverted by subsequent approaches from the inquiry to lower-level service staff. In his evidence to us, Mr Thorn noted a particular occasion where he had clearly instructed that email content would not be released without the Minister's specific authorisation, yet he received a phone call from the PS ICT manager, who had the inquiry administrator in his office seeking clarification and further information. We acknowledge Mr Thorn's surprise that such an approach was made after his clear direction on this matter had been articulated to the inquiry. We agree with Mr Thorn's view that the implementation of his decisions was undermined because of the continual, extensive interaction between the inquiry team and his staff over a lengthy period, and the resultant erosion of some of the formality that could reasonably be expected regarding such an inquiry.

We consider Mr Henry should have been in direct contact with the Speaker about the inquiry, from its outset. In addition, he should have been in contact with Mr Thorn

directly, rather than allowing communications and requests to be made by the inquiry administrator; a junior DPMC staff member.

However, we are also of the view that Mr Thorn should have had in place clear processes and protocols for dealing with such communications and requests within the Parliamentary Service. Had these been in place, much of the failure caused by the inquiry's pressure on junior staff would not have been allowed to occur. We also consider Mr Thorn erred by not engaging the Speaker when faced with the inquiry and its requests.

The incident was caused, in large part, by a complete failure of communication at all levels.

Oversight of the inquiry

The inquiry was commissioned by the Department of the Prime Minister and Cabinet and the Government Security Communications Bureau at the request of the Prime Minister. The terms of reference were prepared by the two agencies. The inquiry was, however, established to operate independently as those who commissioned the inquiry were also subject to it, leaving the inquiry to operate with very little oversight. The inquiry administrator was seconded from the DPMC, but was considered independent of the DPMC for the purposes of the inquiry.

The inquiry was into a sensitive matter, and Ministers and members of Parliament were centrally involved. It was also expected to look into matters that might have occurred within the parliamentary precinct. Because of these highly unusual and sensitive factors, an experienced senior public servant was sought to undertake the inquiry. It is not unreasonable to expect the inquirer to pay particular attention to the particular circumstances and the complexity of the environment in which the inquiry was operating when determining the limits of the information they might request, and in tailoring their approach to making the necessary requests. It is clear that, in relation to at least one of the pieces of information requested (Ms Vance's swipe card data), the Parliamentary Service's confidence in the prudence of the requestors was not warranted in the circumstances.

Operation of inquiries

Our main purpose is not to investigate the outcome of the inquiry. We do expect, however, to look in general at the way government inquiries might be expected to interact with Parliament in the next stage of consideration of this matter. We are particularly interested in this, given the recent passage of the Inquiries Bill through the House. This legislation will give inquiries powers exceeding those of the Henry inquiry, and some thought will be needed as to how these powers should operate in a parliamentary context.

3 Key issues highlighted by the incident

The incident has drawn attention to significant gaps in the policies and principles guiding the Parliamentary Service in relation to the information it holds, including a lack of clarity about the authority under which information should be released, or who should be ultimately responsible for establishing justification for release.

While the three agreements (between the Speaker and the Commissioner of the New Zealand Police, the New Zealand Intelligence Service, and the Minister in charge of the New Zealand Security Intelligence Service) provide clear guidance on the processes and practices that should be employed regarding specific operations of the New Zealand Police or the NZSIS within the parliamentary precinct or in relation to members of Parliament, there is an absence of clear, accessible guidance on dealing with other information requests relating to the collection and review of information—from the Executive, or from others. We expect the considerations that guided the development of the three agreements to inform our thinking in the next stage of our examination.

The next step for our examination is to define the principles which should govern the release of information from parliamentary information and security systems. This chapter sets out briefly the issues the incident has helped to bring to light, which we now expect to spend more time reflecting on as we devise our guiding principles.

Role of the Speaker of the House and members of Parliament

One of the most mystifying factors of the circumstances leading to this referral is why the Speaker of the House was not consulted, or at least informed, about the requests and information releases. The Speaker is the Minister responsible for the Parliamentary Service, where the information requested was held; and, given the significance of the requests, and the nature and persistence of the requestors, it would seem appropriate for the Minister responsible to be informed. Also, and more importantly, the Speaker is the representative of members, and as such could have been expected to offer an informed and considered view on whether the requests and releases were appropriate. Indeed, under the three agreements, the Speaker is clearly designated an appropriate authority to make decisions about the release of parliamentary material to specified Executive bodies. The views of members must be paramount in decisions relating to release of parliamentary information.

We acknowledge Mr Thorn's view that the consent of particular members is necessary for any release of material relating to them. We find the lack of engagement with the Speaker on these releases very troubling. We expect to consider the role of the Speaker, and the consent of members, further in the next stage of our consideration, and certainly expect that the guidelines we determine will signal a need for engagement with the Speaker on future matters such as those which have triggered this referral.

Status of information

We note that dealing with information held within the parliamentary precinct and by members of Parliament is inherently highly complex. There are different categories of information, some of which have special protection. Information may be held by people in different capacities: as Ministers, as members of Parliament, or as staff working in

organisations in the parliamentary precinct. “Parliamentary proceedings” (such as the proceedings of the House and committees and other activities related to those proceedings) are protected by parliamentary privilege and may not be questioned or examined by any external body. While the Parliamentary Service provides support to Parliament, only some of the information it holds is proceedings in Parliament. Much of the information will relate to the Executive, some to members acting in their constituency or party roles, and some will be organisational information for the entities within the precinct.

On most occasions in this incident, the General Manager applied a basic rule: that the service holds members’ and Ministers’ information as their agent, and so will not use that information in any way or give it to anyone except the member concerned without their express authority.

While perhaps this basic rule was conceived in an effort to protect parliamentary proceedings, it fails to recognise the extent and limits of what might constitute parliamentary proceedings, and what protection is afforded by parliamentary privilege. It does not acknowledge the different capacities that members may act in in the course of their work, or the roles of staff or others in the precinct in relation to Parliament (and the possibility that this work might also involve proceedings protected by privilege).

When faced with requests regarding information it holds, the service needs to consider the nature of the information being sought—particularly if the requests come from the Executive branch. Importantly, we expect that the principles we will set out in our next report will help the service to determine whether a request raises issues of privilege that need to be taken into account.

Types of information held

The Parliamentary Service holds a vast amount of information. In the incident, different sets of information were treated differently; for example, for members, metadata was released on the authority of someone judged to be able to speak on their behalf, whereas for email content, the direct authority of the member was required.

The rationale for this difference in treatment is not clear. We note that, while on the face of it, metadata can seem less informative than substantive content, in practice a large amount of information can be gleaned from these bare bones. In this case, a significant amount of knowledge of interactions was gained solely from the metadata logs provided, and it was this information—together with the eventual refusal of Mr Dunne to provide the substantive comment of some emails—that led directly to the key findings of Mr Henry.

In addition, we note that the amount of knowledge that may be gained is perhaps not the most fundamental question to be asked. We are not convinced that a distinction should be drawn between metadata and substantive content. We consider that any decision to release should be made on the basis of sound principle rather than the probability that significant knowledge could be gained as a result.

We expect that the principles we develop will help clarify the core considerations to be taken into account in any request for information to be released, regardless of the type of information requested. Should our consideration lead us to believe that different types of information should be treated differently, we expect to provide guidance accordingly.

Legislative principles which might interact with privilege when developing security policies

The principles underlying legislation relating to release of information do not seem to have been considered in this incident. For example, there is no evidence that the principles behind the Official Information Act were considered, that the Privacy Act's explicit privacy principles were factored in when determining the appropriateness of release of information relating to individuals, or that the Evidence Act 2006, which allows the protection of journalistic sources, was reflected on in relation to the requests regarding Ms Vance.

While we acknowledge that these pieces of legislation do not necessarily apply to Parliament, we consider the principles on which they are based are likely to be pertinent to any consideration of the appropriateness of a proposed information release. We intend to consider these principles carefully, and examine how they might best interact with the principles underpinning parliamentary privilege when developing overarching guidance on releasing information from parliamentary security and information systems.

Role of members, staff, journalists, and other key groups in the precinct

The basic rule applied by Mr Thorn in this incident meant, by its silence on the matter, that information relating to people other than members could be released without the service turning its mind to whether individual consent might be desirable. For staff, information was released on the authority of the organisation they were employed by, and for Ms Vance, it was judged that information could be released if it were requested in the context of a possible security breach.

In the decisions made, consideration of the particular roles played by individuals within the precinct—members, staff, and journalists alike—and the capacities in which they act, does not seem to have featured. In particular, the unique role of the press in New Zealand's democracy does not seem to have been considered at all. We have concerns about this. The role of the press, as the fourth estate, is an important one. Without the relaying of informed comment on parliamentary and government matters to the public, the transparency and accountability of these constitutional branches is diminished, and democracy suffers as a result.

It is possible that different security considerations will need to apply to specific groups operating within the precinct, apart from members. The principles we develop will take account of the distinct roles and functions of all the key groups within the precinct, including members, staff, and journalists.

4 Conclusion

In coming to our conclusions we acknowledge that, to the best of our knowledge, the circumstances giving rise to this question were unprecedented. That these are uncharted waters has, for example, necessitated us making inquiries of other jurisdictions to assist us with the second part of our examination of this matter. We accept that the unique circumstances of the situation had a part to play in the events leading to this referral.

The right of the House to control its own operations is a key strand of parliamentary privilege. It ensures that the Parliament operates free of external interference, so that the House, its committees, and its members can carry out its proper functions, including scrutiny of the Executive. Any investigation involving access to information held in the parliamentary precinct and involving members of Parliament, and others who interact with them, must as a first step involve an assessment of whether parliamentary proceedings are being called into question by an outside authority. Proceedings of Parliament are subject to absolute privilege. Select committee or House documents which have not been made available publicly must remain completely confidential to the House or relevant committee, and their release entirely under the House or relevant committee's control. The content, or status, of these documents cannot be impugned elsewhere. Much of this material is kept on systems maintained and serviced by the Parliamentary Service, from which material was released to the Henry inquiry. The fact that no consideration was given to this issue at the outset of the Henry inquiry is of considerable concern to us.

In addition to this, members have a great deal of information on the Parliamentary Service information systems that extends beyond this narrow category of parliamentary proceedings. Members may also have control of and access to constituents' information, party information, and their own personal information which needs to remain private so that members can carry out their function as elected representatives. It is particularly important that the service has sound processes and guidance to ensure this information is treated sensitively and appropriately, and not inappropriately disclosed.

While we have not investigated this referral as a contempt, we cannot ignore the evidence that failures on many levels have led to the matter that now stands referred to us. We find it unacceptable that an inquiry, lacking formal powers to control the production of information, into an Executive information leak, was so readily given parliamentary information, including information about a journalist, without the direct involvement of members or the Speaker. We believe that the Speaker should have been involved by the participants, and that members should have been consulted. That such an intrusion has been allowed to occur does not reflect well on the agencies responsible.

Although they remain unsatisfactory, we note that some of the specific failures in this matter can be explained by history or circumstance: for example, the blurred understanding of accountabilities within the Parliamentary Service, probably caused by the advent of IT service provision by the Parliamentary Service to both Parliament and the Executive; and similarly, the lack of formal communication about the inquiry, a lack of interaction at a senior level between Mr Henry and Mr Thorn, and a lack of communication of either with the Speaker, led directly to wrong decisions being made by Mr Thorn, and to decisions

being poorly implemented (as a result of persistent approaches by the Henry inquiry to third-tier and more junior staff).

However, factors underlying these events cannot be ignored. The failure to consider the complex role of members of Parliament in a representative democracy, where all members, including Cabinet ministers, have distinct roles in relation to the House, their constituents, and their parties, is concerning. In particular, our inquiry has highlighted a lack of understanding by key participants of the distinction between Parliament and the Executive. The necessary separation between Parliament and the Executive is clearly acknowledged in many forums and contexts; legislation such as the Official Information Act 1982 or the Privacy Act 1993 does not apply to Parliament; the Speaker is in charge of the precinct, and special arrangements have been made through the Speaker to clarify when formal investigations by the Executive may access material related to Parliament. That this separation was not considered in relation to these requests confounds us.

In addition, the lack of thought about the rights attached to the important role particular groups such as journalists might play in our democracy is similarly worrying. The media has a key role in ensuring Parliament remains transparent and accountable; their reports to the public on matters of public interest help to maintain the integrity of all our key constitutional branches. The specific protections found within the Evidence Act for journalists, and their sources, are a legislative acknowledgment of this vital role.

In our view, the absence of appropriate policy guidance on what information can be released and when, or when issues should be escalated and to whom, and indeed the disappointing actions taken, result primarily from these underlying deficiencies.

The next part of our inquiry will focus on ensuring that proper systems and processes are established to guide access to and the release of parliamentary information. We expect the guidance we provide will address these fundamental underlying flaws. We consider that the current situation, if left unchecked, would have the effect of weakening our representative democracy and our constitutional arrangements.

Appendix A

Committee procedure

We have been meeting on this matter since July 2013. The evidence received by the committee has been published on www.parliament.nz.

We received advice from Debra Angus, Deputy Clerk of the House of Representatives.

Committee members

Hon Christopher Finlayson QC (Chairperson)

Hon John Banks

Hon Gerry Brownlee

Hon Lianne Dalziel (until 25 September 2013)

Dr Kennedy Graham

Chris Hipkins

Hon Murray McCully

Hon David Parker

Rt Hon Winston Peters

Grant Robertson (from 25 September 2013)

Hon Anne Tolley

Hon Tariana Turia

Appendix B

Speaker's ruling

I have received a letter from Dr Russel Norman raising as a matter of privilege statements made by Rt Hon John Key, Prime Minister, in the House in reply to supplementary questions to question 4 on 2 July 2013, concerning the release of information from parliamentary information and security systems.

Standing Order 400 requires an allegation of contempt to be formulated as precisely as possible so as to give the member or person against whom it is made full opportunity to respond. An allegation of contempt against the Rt Hon John Key in regard to the statements made is not clearly made out.

However, the member's letter raises serious issues. The exercise of intrusive powers against members threatens members' freedom to carry out their functions as elected representatives and the House's power to control its own proceedings and precincts, without outside interference.

The release of information from parliamentary information and security systems relating to the movements of journalists within the parliamentary precincts has also been questioned. Although the media do not necessarily participate directly in parliamentary proceedings, they are critical to informing the public about what Parliament is doing and public confidence in Parliament. Actions that may put at risk journalists' ability to report freely are a significant concern.

The parliamentary precincts are also a workplace for both parliamentary employees and the employees of government departments. Access to parliamentary information and security systems data of any sort must, therefore, also have regard to the respective rights of employers and employees, and the role of the Speaker as a responsible Minister, and the Prime Minister and his ministers.

I believe some sort of common understanding is required to ensure on the one hand that the functioning of the House and the discharge of members' duties is not obstructed or impeded, but on the other that the maintenance of law and order and the ability to investigate and prosecute offences committed within the parliamentary precincts is preserved.

The concerns raised are ones that should be looked at by the Privileges Committee. It is the body the House has established to investigate such matters. It has the power to hear evidence and formulate recommendations for the House that will provide guidance for the future.

Consequently I have determined that a general question of privilege does arise. The question therefore stands referred to the Privileges Committee.

Appendix C

Role of agencies involved in the inquiry

The Parliamentary Service

The Parliamentary Service delivers administrative and support services to the House and its members. It was established by the Parliamentary Service Act 1985 and continues under the provisions of the Parliamentary Service Act 2000. The service is headed by the General Manager, who is accountable to the Speaker for the running of the service. The Speaker is the responsible Vote Minister and determines the services that the Parliamentary Service will provide to members and to the House. The Parliamentary Service is not part of the executive government, but is a “department” for the purposes of the Public Finance Act 1989.

The Parliamentary Service is the largest of the agencies housed in the parliamentary complex. The service employs approximately 460 staff as well as another 260 people employed as out-of-Parliament staff in the regions. The staff on the parliamentary complex include those employed in security, the Parliamentary Library, facilities management, accounting/finance roles, tour guides, travel officers, ICT, and human resources/payroll. The Parliamentary Service also employs the staff who work as executive assistants, researchers, media and other advisors, for members of Parliament and for the political party leaders.

Assistance with support for other organisations

While its primary duty is to deliver services to the House and its members, under its legislation the service is also able, with the approval of the Speaker, to provide administrative and support services to other institutions, including officers of Parliament, offices of Parliament, officers of the House, or any department or other instrument of the Crown.

The service delivers services currently to a range of organisations that cohabit within the parliamentary precinct. These include the Office of the Clerk, Parliamentary Counsel Office, Department of the Prime Minister and Cabinet, and Ministerial and Secretariat Services. The support provided by the service to each of these organisations varies, but for all it includes provision of security cards for access to the precinct, and for most it includes a significant amount of ICT support. For Ministerial and Secretariat Services (the part of the Department of Internal Affairs responsible for providing support services to Ministers of the Crown), support by the service includes provision of all ICT support for Ministers.

For much of its day-to-day ICT operational support, the service contracts a private organisation (Datacom) to provide assistance. Datacom manages and services the ICT information systems related to members and staff, and Datacom contractors deal directly with members and staff where ICT queries or issues arise.

While there are fundamental differences between those who benefit from service support (for example, a difference between members and Ministers, and between each of the organisations), all core ICT systems through which the service provides support are shared; in the ICT system treatment, no distinction is drawn between organisations, or between

individuals with particular roles. Nor do the systems identify in what capacity a member—or any other individual—might have been acting at any point in time. This means that a member who has a ministerial portfolio will use their same ICT system (i.e. email address, network log-in, and telephone number) regardless of which capacity they are behaving in at the time.

Department of the Prime Minister and Cabinet and Office of the Prime Minister

The Department of the Prime Minister and Cabinet, and the Office of the Prime Minister both provide support services directly to the Prime Minister, the former in his role as the leader of the Government and the latter in his role as political leader.

The two have existed since 1990, the result of a report which recommended establishing structures to provide two separate streams of advice to the Prime Minister; one, a government department to supply impartial, high quality advice and support to the Prime Minister and Cabinet (DPMC), and another, a Prime Minister's private office (which is not part of DPMC), to provide personal support and media services, and advice of a party political nature.

Department of the Prime Minister and Cabinet

The DPMC is headed by the Chief Executive, Andrew Kibblewhite. It provides advice and assistance to the Prime Minister on matters relating to the conduct of executive government and issues associated with the operation of the Cabinet system, advice on major and daily issues, and oversight of wider government activity. It works directly with Ministers on specific issues, and works with central agencies to draw departments together in support of the Government's priorities. It also provides administrative support to the Prime Minister and to Cabinet committees.

The DPMC is comprised of seven business units (and an office to support the Chief Executive):

- Cabinet Office (provides secretariat services to the Executive Council, Cabinet, and Cabinet committees; advice to the Governor-General, Prime Minister, and other Ministers; assists in coordinating the Government's legislative programme; administers the New Zealand Royal Honours System; facilitates communication between the Governor-General and the Government; and oversees the policy and administration of Government House)
- Government House (provides administrative and support services for the Governor-General and maintains Government House)
- Policy Advisory Group (provides advice on issues of the day to the Prime Minister, and sometimes other Ministers)
- National Assessments Bureau (makes objective assessments of events and developments to inform government decision-making, and leads coordinating assessment reporting to Government on matters concerning national security)
- Security and Risk Group (deals with national security threats that affect New Zealand and its interests, advises the Prime Minister on intelligence and security matters, and coordinates activities relating to security crises, emergencies, and national disasters)

- Intelligence Coordination Group (provides support in respect of New Zealand intelligence security governance, and provides leadership and coordination for New Zealand intelligence agencies)
- National Cyber Policy Office (leads the development of cyber security policy advice for Government).

Office of the Prime Minister

The overall function of the office is to provide support and advice to the Prime Minister relating to political and administrative issues that are outside the purview of the politically neutral Department of the Prime Minister and Cabinet. Specific functions undertaken by the office include media relations, liaison with the political party organisation of the Government in office, correspondence to the Prime Minister, liaison with other Ministers' offices, and advising on parliamentary issues of concern to the Prime Minister.

The office is headed by the Chief of Staff, Wayne Eagleson, together with the Chief Press Secretary in charge of the press office. It has a staff establishment of approximately 25. At present there are 17 staff including private secretaries, press officers, administration officers, secretary typists, and records clerks.

The Ministerial and Secretariat Services unit in the Department of Internal Affairs provides routine administrative and financial support services for the office.

Government Communications Security Bureau

The Government Communications Security Bureau, established under the Government Communications Security Bureau Act 2003, is an instrument of the Executive Government.

It is responsible primarily for matters relating to the protection, security, and integrity of government information. It also investigates and analyses cyber incidents against New Zealand's critical infrastructure, collects and analyses foreign intelligence which may have a bearing on New Zealand's interests, and assists other New Zealand government agencies to discharge their legislatively mandated functions.

The Minister responsible for the GCSB is the Prime Minister. Under its establishing legislation, its Director has all the powers necessary or desirable for the purposes of the GCSB performing its functions. However, the Prime Minister retains ultimate control of the GCSB. The Director is appointed by the Governor-General, on the recommendation of the Prime Minister, and can also be removed on the Prime Minister's recommendation. The performance of the GCSB's functions and relative priorities are determined by the Director, subject to the control of the Prime Minister (or another Minister authorised by the Prime Minister to be in control of the bureau), and the GCSB reports, and provides any intelligence collected, to the Prime Minister (or another Minister, as authorised by the Prime Minister).

The GCSB maintains its own information systems.

Appendix D

Timeline

Date	Time	Type	From	To	Event	Source	(E)mail(P)hones/(S)prining/(S)wipe (Cards)
9/04/2013					Media report on the Kitteridge report	DPMC submission	
Between 9/4/2013 and 15/4/2013					Prime Minister agrees that DPMC and GCSE should commission an independent inquiry into the leak. DPMC leads development of terms of reference, including consultation with the State Services Commission. Mr Henry appointed to lead inquiry.	DPMC submission	
About 15/4/2013					Mr Kibblewhite writes to all those who had received the Kitteridge report (Ministers, their staff, and departmental staff) informing them the inquiry had been established and asking them to meet with Mr Henry.	DPMC submission	
19/04/2013		Email	Prime Minister's Chief of Staff	Senior Private Secretaries	Prime Minister's chief of staff emails relevant Ministers' senior private secretaries re the inquiry.	Office of the Prime Minister's submission	
30/04/2013	5:07 pm	Email	Inquiry Administrator	PS	Inquiry Administrator emails the Service requesting all printing, copy, and scan records for the 12 Ministers who had access to the Kitteridge report, the senior staff (including SPSs and Press Secretaries) of those Ministers, and for three staff members in the Prime Minister's office.	DPMC submission	S
30/04/2013					Prime Minister's Chief of Staff meets with Mr Henry, and tells him the Prime Minister expects Ministers and staff to comply with the inquiry.	Office of the Prime Minister's submission	
6/05/2013	8:45 am	Email	Inquiry Administrator	Ministerial Services	Inquiry Administrator emails Ministerial Services to advise that the Parliamentary Service requires authorisation for the release of the printing, copying, and scanning records.	DPMC submission	S
8/05/2013	10:29 a.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator emails the ICT Manager and provides a formal request for information (this acts as an update of the earlier request). This request includes a request for phone metadata (cellphone and landline logs) showing billable calls to a particular number.	PS submission	P
8/05/2013	10:29am	Email	Inquiry Administrator	PS	Inquiry Administrator emails revised request, asking for email logs for external emails for the 12 Ministers and their staff for the date range 22 March to 9 April. It advises that Ministerial Services has authorised that request to be processed.	DPMC submission	E
8/05/2013	2:51 pm		Inquiry Administrator	Ministerial Services	Inquiry Administrator requests cellphone billing records from Ministerial Services for the 12 Ministers and their staff, and staff from the Prime Minister's office, for 25 March to 9 April.	DPMC submission	P
8/05/2013		Phone call	Ministerial Services	Prime Minister's Chief of Staff	General Manager, Ministerial and Secretariat Services calls the Chief of Staff for approvals for release of relevant Ministers' and staff records. Agreed no issue with staff records. Chief of Staff indicated no need for Ministers to give individual consent given the Prime Minister's expectation that Ministers comply.	Office of the Prime Minister's submission	
Date of call uncertain	unknown	Phone call	Inquiry Administrator	ICT Manager	ICT Manager has a phone conversation with Inquiry Administrator about the request. ICT Manager states that the request asks for details in relation to Ministers' and their senior staff. ICT Manager asks Inquiry Administrator to provide a full list of Ministers and their senior staff who should be the subject of the request.	PS submission	P
8/05/2013	unknown	Meeting	ICT Manager	Datacom Operations Manager, Datacom employees	ICT Manager calls a meeting to make Datacom aware of the requests that will be coming from the inquiry and that they are to be treated confidentially. They discuss print/copy/scan records as some of the information being requested and ICT Manager states he will send an email through with the details.	PS submission	P
8/05/2013	4:41 p.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator emails ICT Manager and clarifies his earlier request by adding the full list of Ministers and their senior staff who should be the subject of the request.	PS submission	P
8/05/2013	4:41 pm	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS to request printing and copy records for 12 Ministers and their staff, and staff from the Prime Minister's office.	DPMC submission	S

Date	Time	Type	From	To	Event	Source	(E)mail(P)hones(S)pa rking/Swipe (Cards)
8/05/2013	4.45pm	Email	PS	Ministerial Services	PS emails Ministerial Services to ask for written confirmation from each Minister that they are happy to make available information relating to staff as it believes Ministers are the employer.	DPMC submission	
8/05/2013	5.15pm	Email	Ministerial Services	PS	Ministerial Services confirm the Department of Internal Affairs is the employer of all Ministerial staff, and all staff had signed a Code of Conduct so the inquiry does not need written authorisations. With respect to Ministers, hold cellphone records for each Minister while Ministerial Services deals with the request from PS to get authorisation from each Minister individually.	DPMC submission	
Date of call uncertain	unknown	Phone call	ICT Manager	Inquiry Administrator	ICT Manager phones Inquiry Administrator and asks him to clarify the cellphone/landline logs component of the request.	PS submission	P
9/05/2013	2:59 p.m.	Email	ICT Manager	Datacom Operations Manager	ICT Manager forwards (by email) Inquiry Administrator's request to Datacom for actioning.	PS submission	P
9/05/2013		Phone call	Prime Minister's Chief of Staff	General Manager	Chief of Staff phones General Manager, with follow-up email, authorising release of material relating to Ministers and their staff. No discussion relating to Ms Vance's phone records.	Office of the Prime Minister's submission	
10/05/2013	9.40 am		Ministerial Services	Inquiry Administrator	Ministerial Services now has the Ministers' cellphone records ready.	DPMC submission	P
10/05/2013	2.17 p.m.	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS with Andrea Vance's landline and cellphone numbers.	DPMC submission	P
10/05/2013	2.21 p.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator emails ICT Manager describing two telephone numbers (a landline and a cellphone). In the context of previous discussions between Inquiry Administrator and ICT Manager, this is to be used in respect of call log requests.	PS submission	P
14 May to 20 May	unknown	Phone call	ICT Manager	Inquiry Administrator	Between 14 May 2013 (after the above email is sent) and 20 May 2013, ICT Manager and Inquiry Administrator have a phone conversation. Inquiry Administrator states he has new information and has changed his mind about how phone checks are to be conducted. He states he no longer wants all calls to/from the "numbers of interest" (the two numbers identified above). After this phone conversation, ICT Manager verbally relays this message to the Datacom Operations Manager and instructs him not to action his request provided on 14 May 2013 and accordingly this request is not actioned. Datacom Operations Manager verbally instructs Datacom employee who runs phone call requests that Inquiry Administrator does not want any reports from the perspective of the numbers of interest themselves.	PS submission	
14/05/2013	11.30am		Inquiry Administrator	PS	Inquiry administrator requests cellphone call logs for Ministers and staff. He believes all individual Ministers have given written approval (because of message from Ministerial Services on 10 May).	DPMC submission	P
16/05/2013	3.24pm	Email	PS	Inquiry Administrator	PS emails Inquiry Administrator with metadata for Ministers' emails sent externally, including Mr Dunne's.	DPMC submission	E
17/05/2013	10.22am				More attachments with Ministers' metadata regarding scans from photocopyers to 12 ministers' email addresses.	DPMC submission	S
17/05/2013	10.37am	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS to advise only thing now missing is mobile phone call logs for people on the list	DPMC submission	P
17/05/2013	3.39pm	Email	PS	Inquiry Administrator	PS emails Inquiry Administrator with cellphone call records files for Ministers and staff. Includes Ministerial car phones.	DPMC submission	P
20/05/2013	5:53 p.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator emails ICT Manager and requests call logs between certain named extensions of Ministers/Ministerial staff and two "numbers of interest". Inquiry Administrator emphasises he is not interested in call logs for the two "numbers of interest" as that is outside the parameters of the inquiry.	PS submission	P

Date	Time	Type	From	To	Event	Source	(E)mail(P)hones/(S)kanning/(S)wipe (C)ards
20/05/2013	11:41 a.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator emails ICT Manager and enquires about how much effort (how long) would be involved in extracting full text of selected emails if requested. He also queries whether, if the emails were from Ministers, that presented any issues?	FS submission	E
20/05/2013	11:41 am	Email	Inquiry Administrator	PS	Inquiry Administrator inquires whether remaining 10 phone records have been located. Also asks how long it would take to retrieve content of emails, if requested, and whether it would be an issue if those emails were for Ministers.	DFMC submission	E / P
20/05/2013	1:32 p.m.	Email	ICT Manager	Inquiry Administrator	ICT Manager emails Inquiry Administrator and confirms that it would be a matter of hours work and a quick turnaround should be possible. He states he believes the Service has the required permission to do so from Ministers.	FS submission	E
20/05/2013	1:32pm	Email	PS	Inquiry Administrator	PS confirm the emails could be provided the same day if the number were small, and that they believe they have the necessary approval to do this for Ministers.	DFMC submission	E
20/05/2013	2:25 p.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator sends an email to ICT Manager requesting emails between Andrea Vance (a Fairfax journalist) and Hon Peter Durnee between 22 March and 9 April. The request listed 93 emails by date identified within the specified timeframe from the metadata review. The request also sought email between Andrea Vance and four named DIA staff.	FS submission	E
20/05/2013	2:25pm		Inquiry Administrator	PS	Inquiry Administrator requests all emails between Andrea Vance and Mr Durnee between 22 March and 9 April, and between Andrea Vance and one staff member from each of the Prime Minister's and Minister Adams, Finlayson's, and Tolley's offices.	DFMC submission	E
20/05/2013	5:53pm	Email	Inquiry Administrator	PS	Inquiry Administrator requests phone records for Ministers' and staff extensions for contact to and from Andrea Vance's landline and mobile numbers. Specifies that not requesting the phone logs of Ms Vance's phones.	DFMC submission	P
21/05/2013	unknown	Meeting	ICT Manager	CIO	ICT Manager meets with CIO and asks if it is 'ok' to send the emails to the inquiry. CIO looks back at the 20 May request for emails and notices that Mr Durnee (a non-Cabinet Minister) is on the list. He instructs that the information is not forwarded until he can clarify with General Manager whether provision of emails from Mr Durnee is authorised.	FS submission	E
21/05/2013	9:55 a.m.	Email	ICT Manager	Datacom Operations Manager	ICT Manager emails Datacom Operations Manager seeking a timeframe for the provision of selected email and attaches the inquiry's request.	FS submission	E
21/05/2013	9:55 am	Email	PS	ICT Manager	PS forwards email record request to contractor, following up by asking for estimate of effort and likely delivery time.	DFMC submission	E
21/05/2013	10:21 a.m.	Email	Datacom Operations Manager	ICT Manager	Datacom Operations Manager emails ICT Manager saying it would not be a lot of effort that he would try and get to this today. In his email, Datacom Operations Manager asks if he should proceed?	FS submission	E
21/05/2013	10:26 a.m.	Email	ICT Manager	Datacom Operations Manager	ICT Manager emails Datacom Operations Manager and asks him to wait until he confirms he has obtained authority to provide Mr Durnee's emails and ends the email with "the rest is fine".	FS submission	E
21/05/2013	unknown	Meeting	CIO	GM	CIO meets with General Manager to discuss the authority to provide emails to the inquiry. They determine that it would be inappropriate to provide Mr Durnee's emails without his consent.	FS submission	E
21/05/2013	unknown	Meeting	CIO	ICT Manager	CIO instructs ICT Manager to provide the inquiry emails for the named DIA staff listed in the request. He informs him that the Service will need Mr Durnee's approval to provide his emails. After some discussion between them they conclude that Mr Durnee's consent is likely to be forthcoming so for expediency decide to instruct Datacom to obtain emails for all individuals listed in the request. Their intention was for the ICT Manager to exclude Mr Durnee's emails prior to sending the request to the inquiry if consent was not provided.	FS submission	E

Date	Time	Type	From	To	Event	Source	(E)mail(P)hones/(S)paoning/(S)wipe(C)ards
21/05/2013	11:56 a.m.	Phone call	General Manager	Prime Minister's Chief of Staff	General Manager and Prime Minister's Chief of Staff have a telephone discussion around the inquiry's request for Mr Dunne's emails. Both were of the view that Mr Dunne's consent was required prior to release.	PS submission	E
21/05/2013		Phone call	General Manager	Prime Minister's Chief of Staff	General Manager advised that Mr Henry had asked to see content of Mr Dunne's emails. Chief of Staff approved access to staff emails, but asked to reflect about Mr Dunne's emails as he was not a National Party MP. An email received from the General Manager setting out the request.	Office of the Prime Minister's submission	E
21/05/2013	12:29 p.m.	Email	ICT Manager	Datacom Operations Manager	ICT Manager emails Datacom Operations Manager and tells him to go ahead with all of the extracts and that he will filter out email content if he needs to.	PS submission	E
21/05/2013	1:10 p.m.	Email	General Manager	Prime Minister's Chief of Staff	General Manager emails Prime Minister's Chief of Staff and summarizes the issue they just discussed regarding the request for email content.	PS submission	E
21/05/2013	2:44 p.m.	Email	Datacom employee	ICT Manager	Datacom employee emails ICT Manager and states that the requested report for calls from the named extensions from the numbers of interest is empty (i.e. there are no results). He states an additional report was run for all calls from any number within the Parliamentary Precinct to/from the "numbers of interest".	PS submission	P
21/05/2013 or 22/05/2013	unknown	Phone call	ICT Manager	Inquiry Administrator	ICT Manager rings Inquiry Administrator and tells him that there are no results for phone contact between the named Ministers in the Inquiry Administrator's request and the "numbers of interest". ICT Manager states an additional report is run to check the system is reporting correctly which contains all calls from the Parliamentary Precinct to the "numbers of interest". Inquiry Administrator states he is not interested in this report.	PS submission	P
21/05/2013 and 22/05/2013		Phone call	Prime Minister's Chief of Staff	Hon Peter Dunne's Office	Prime Minister's Chief of Staff rings Mr Dunne's Chief of Staff to outline the request for Mr Dunne's email. Mr Dunne's response received on 22 May that Mr Dunne would not approve the release. Prime Minister's Chief of Staff advised Parliamentary Service that it could not release the emails without Mr Dunne's approval, and that it was likely a meeting would occur between Mr Henry and Mr Dunne. Parliamentary Service subsequently emailed Prime Minister's Chief of Staff advising they had been in contact with Mr Dunne's Chief of Staff.	Office of the Prime Minister's submission	E
22/05/2013	10:50 a.m.	Email	Datacom employee	ICT Manager	Datacom employee obtains and then sends the emails requested by the inquiry to the ICT Manager stating the emails are in separate PST files for each mailbox. This transmission includes Hon Peter Dunne's emails.	PS submission	E
22/05/2013	10:50am	Email	Contractor	PS	Email sent with attachment of emails records for Mr Dunne/Ms Vance and email records between four Ministerial staff and Ms Vance.	PS submission	E
22/05/2013	12:30 p.m. - 2:00 p.m.	Phone call	Prime Minister's Chief of Staff	Hon Peter Dunne's Office	Wayne Eagleson's timeline released on 3 August 2013 states: Calls Mr Dunne's office and outlines the issue querying whether PS he is prepared to authorise the release of his emails to the inquiry. His office responds they will put the request to Mr Dunne. His office rings back to say that for privacy reasons Mr Dunne is not prepared to give approval for the release of his emails but is happy to meet with Mr Henry to discuss the emails and related matters.	PS submission	E
22/05/2013	12:30 p.m. - 2:00 p.m.	Phone call	Prime Minister's Chief of Staff	Acting General Manager	Wayne Eagleson's timeline released states: Calls the acting GM of Parliamentary Service and tells him that Parliamentary Service cannot release the emails without Mr Dunne's permission, and that a likely alternative is Mr Dunne meeting with Mr Henry. The acting GM of Parliamentary Service says he will discuss with Mr Dunne's office.	PS submission	E
22/05/2013	3:23 p.m.	Email	ICT Manager	Inquiry Administrator	ICT Manager forwards the email files in PST form at provided by Datacom to the Inquiry Administrator. The files relating to Mr Dunne are not removed due to an oversight.	PS submission	E

Date	Time	Type	From	To	Event	Source	(E)mail(P)hones/(S)paoning/(S)wipe (C)ards
22/05/2013	3:25 p.m.	Email	Postmaster	ICT Manager	ICT Manager receives DPMC Postmaster Out of Office notification on behalf of Inquiry Administrator stating "Thanks for your message. I will be out of the office all day on 22 May, back on Thurs 23 May".	PS submission	E
22/05/2013	3:25pm	Email	PS	Inquiry Administrator	Email records file for Mr Duunne/Ms Vance's emails and email records between four Ministerial staff and Ms Vance sent to Inquiry Administrator.	DPMC submission	E
22/05/2013	unknown	Meeting	ICT Manager	CIO	ICT Manager and CIO meet and have a discussion around the inquiry. During the discussion CIO queries whether Hon Peter Duunne's emails were removed prior to transmission. ICT Manager realising the error takes immediate steps to remediate the issue.	PS submission	E
22/05/2013	5:12 p.m.	Email	ICT Manager	Inquiry Administrator	ICT Manager sends the Inquiry Administrator an email with the subject "call me urgently please", providing his mobile phone number. This email was sent as efforts to call the Inquiry Administrator were unsuccessful.	PS submission	E
22/05/2013	5:12pm	Email	PS	Inquiry Administrator	PS emails asking Inquiry Administrator to call urgently re email sent at 3:25pm.	DPMC submission	E
22/05/2013	5:16 p.m.	Email	ICT Manager	Inquiry Administrator	ICT Manager sends the email files in PST format to the Inquiry Administrator after removing those relating to Hon Peter Duunne.	PS submission	E
22/05/2013	5:16pm	Email	PS	Inquiry Administrator	PS sends to the Inquiry Administrator a revised file with only email records between the four Ministerial staff and Ms Vance.	DPMC submission	E
22/05/2013	5:18 p.m.	Email	ICT Manager	Inquiry Administrator	ICT Manager attempts to recall the email sent to the inquiry at 3:23 p.m. containing the emails.	PS submission	E
22/05/2013	5:18pm	Email	PS	Inquiry Administrator	Recall notice for 3:25pm email sent.	DPMC submission	E
22/05/2013	5:43 p.m.	Phone call	ICT Manager	Inquiry Administrator	ICT Manager phones the Inquiry Administrator and informs him that Mr Duunne's emails were supplied accidentally when no authority has been granted for their use by the Inquiry. The Inquiry Administrator confirms he will delete them and they won't be used. He states he was out of the office and had not seen the email referred to.	PS submission	E
23/05/2013			Inquiry Administrator		Inquiry Administrator deletes email with Mr Duunne/Ms Vance records, without opening it.	DPMC submission	E
23/05/2013	8:34 a.m.	Email	Inquiry Administrator	ICT Manager	The Inquiry Administrator emails ICT Manager stating as discussed, "we can't open .pst documents because our email programme is GroupWise, rather than Outlook".	PS submission	E
23/05/2013	8:34am	Email	Inquiry Administrator	PS	Inquiry Administrator responds to 5:16pm email of 22/5 by noting he cannot open .pst files	DPMC submission	E
23/05/2013	9:07 a.m.	Email	ICT Manager	Datacom employee	ICT manager emails Datacom employee informing him that DPMC is on Groupwise and can't open PSTs and asks what other options they have.	PS submission	E
23/05/2013	9:19 a.m.	Email	Datacom employee	ICT Manager	Datacom employee emails ICT Manager providing options on how they could access the PST file. Alternatively he suggests Datacom could extract the emails and save them as HTML files saving the attachments separately.	PS submission	E
23/05/2013	9:30 a.m.	Email	Inquiry Administrator	ICT Manager	Inquiry Administrator sends an email to update the ICT Manager on the work underway to seek Hon Peter Duunne's permission. He states "I'm unsure of what the result of that will be". The Inquiry Administrator requested that the service continue working around the .pst issue, on the assumption that they would eventually get the authorisation to view the emails.	PS submission	E
23/05/2013	9:30am	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS saying Mr Henry had discussed an issue with Ministerial Services and the Prime Minister's Chief of Staff but not the Acting General Manager. The Acting General Manager would be talking with Mr Duunne's office with the aim of getting permission for the emails to be viewed.	DPMC submission	E
23/05/2013	10:46 a.m.	Phone call	Acting General Manager	Hon Peter Duunne's Office	Acting General Manager calls Mr Duunne's office to discuss Hon Peter Duunne meeting David Henry to discuss the issue of email provision.	PS submission	E

Date	Time	Type	From	To	Event	Source	(E)mail(P)ones(S)wipe(C)Cards
23/05/2013	12.17 p.m.	Email	Datacom employee	ICT Manager	Datacom employee sends the emails requested to the ICT Manager in HTML Form at cc Datacom Operations Manager. This includes Hon Peter Dunne's emails.	PS submission	E
23/05/2013		Meeting			Mr Henry meets with Hon Peter Dunne, indicates interested in period 27 March to 9 April. Mr Dunne declines a request to access content of emails.	Hon Peter Dunne's submission	
26/05/2013	9:49pm	Email	PS	Inquiry Administrator	PS emails Inquiry Administrator saying files can be sent if authorisation has been acquired	DPMC submission	E
26/05/2013	10.12 p.m.	Email	ICT Manager	Datacom Operations Manager	ICT Manager requests that the Datacom Operations Manager sends the HTML form at emails to the Inquiry Administrator. He makes clear the need for encryption and stresses the need to exclude the emails of Hon Peter Dunne.	PS submission	E
27/05/2013	8:18 am	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS to confirm that authorisation has been given only for "non-Minister" email.	DPMC submission	E
27/05/2013	9:28 a.m.	Email	Datacom Operations Manager	Inquiry Administrator	Datacom Operations Manager attempts to email the zip file through to the Inquiry Administrator stating in the email that it does not include emails for Hon Peter Dunne as they do not have authorisation. The email delivery fails because of the way the email address is entered.	PS submission	E
27/05/2013	10:45am	Email	Inquiry Administrator	PS	Inquiry Administrator asks who to contact to access swipe card records within the precincts.	DPMC submission	C
27/05/2013	2:47pm	Email	Inquiry Administrator	PS	Inquiry Administrator requests building access logs for two people for 6-8 April. Asks whether this can be retrieved, and what authorisation is required.	DPMC submission	C
28/05/2013	5:30pm	Email	PS	Inquiry Administrator	PS emails Inquiry Administrator with two activity reports, authorised by the General Manager.	DPMC submission	C
29/05/2013	12.35pm	Email	PS	Inquiry Administrator	PS emails Inquiry Administrator the security policy for the Parliamentary precincts.	DPMC submission	C
30/05/2013	8:37 a.m.	Email	Datacom Operations Manager	Inquiry Administrator	Datacom Operations Manager sends the requested email files in HTML format to Inquiry Administrator. This excludes Hon Peter Dunne's emails.	PS submission	E
30/05/2013	8:37 am	Email	PS	Inquiry Administrator	PS sends to the Inquiry Administrator email records between the four Ministerial staff and Ms Vance in a readable format.	DPMC submission	E
30/05/2013	5:27pm	Email	PS contractor	Inquiry Administrator	PS contractor emails Inquiry Administrator saying PS has approved provision of phone information, and asking for the request to be forwarded by email.	DPMC submission	P
30/05/2013	5:37 p.m.	Email	Inquiry Administrator	CIO	Inquiry Administrator emails CIO requesting call logs of named Ministers' landlines showing any contact between the Ministers' personal landlines and three telephone numbers. The list includes Ministers, but not Ministers outside of cabinet. No date range was specified for the request.	PS submission	P
30/05/2013	5:37pm	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS requesting landline call logs for 10 Ministers and for Ms Vance's extension, landline, and cellphone.	DPMC submission	P
30/05/2013	7:22 p.m.	Email	CIO	General Manager	CIO emails General Manager and states he has verbally confirmed to Inquiry Administrator that Parliamentary Service is able to supply the requested information. CIO subsequently has a conversation with the General Manager to further inform them they are actioning the request. CIO verbally instructs Datacom to action the request.	PS submission	P
31/05/2013	9:02 am	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS noting that permission not yet received for non-Parliamentary Ministers, but this was expected later in the day.	PS submission	P

Date	Time	Type	From	To	Event	Source	(E)mail/(P)hones/(S)wiping/(S)wipe/(C)ards
31/05/2013	9:44 a.m.	Email	Datacom employee	Inquiry Administrator Operations Manager	Datacom employee emails Inquiry Administrator and attaches two reports run over a three month period. The requested report relating to all calls to and from the Ministers' personal landlines is empty and the Datacom employee states he has run an additional report showing calls from any number within the Parliamentary Precinct to/from the "numbers of interest". When the Datacom employee actions this request, he does not actually use the Ministers' personal landlines as the numbers themselves were not identified in the request and he did not know how personal/private landlines were different from a Minister's normal extension number. Accordingly, to action this request, the Datacom employee looked up the Ministers' extensions on the staff directory, and used these numbers to run his report.	PS submission	P
31/05/2013	9:44am	Email	PS contractor	Inquiry Administrator	PS contractor sends call logs for 10 National Ministers and for Andrea Vance.	DPMC submission	P
31/05/2013	9:48 a.m.	Email	Datacom Operations Manager	CIO	Datacom Operations Manager forwards the email that the Datacom employee sent to Inquiry Administrator to CIO as an FYI.	PS submission	P
31/05/2013	11:19 a.m.	Email	Inquiry Administrator	Datacom Operations Manager, Datacom employee	Inquiry Administrator emails Datacom and clarifies that the supplied information was more than had been asked for and that they did not request the additional information.	PS submission	P
31/05/2013	11:19am	Email	Inquiry Administrator	PS	Inquiry Administrator clarifies that the inquiry does not want to see all calls to and from Ms Vance's numbers.	DPMC submission	P
31/05/2013	3:53pm	Email	PS	Inquiry Administrator	Email sent at 9:44am resent by a PS staff member.	DPMC submission	P
31/05/2013	3:54 p.m.	Email	CIO	Inquiry Administrator	CIO forwards the email Datacom Operations Manager sent him to Inquiry Administrator (this forwarded email has both the requested report and the additional report).	PS submission	P
31/05/2013	4:00pm	Email	Inquiry Administrator	Chief of Staff of Hon Peter Dunne	Inquiry Administrator emails Chief of Staff noting Mr Henry said Mr Dunne had approved release of information, and advising what information would be requested.	DPMC submission	
31/05/2013	5:15pm	Email	Inquiry Administrator	PS	Acknowledges receipt of earlier email.	DPMC submission	
31/05/2013					Mr Henry requests access to Mr Dunne's office landline data with respect of calls made to Ms Vance's office landline, office extension, and mobile number for the period 27 March to 9 April, and Mr Dunne's swipe card records for 7 April. Mr Dunne agrees to both requests.	Hon Peter Dunne's submission	P / C
04/06/2013	8:59am		Chief of Staff of Hon Peter Dunne	Inquiry Administrator	C confirms Mr Dunne agrees to request to access phone logs of his landline.	DPMC submission	P
04/06/2013	10:46am	Email	PS	Inquiry Administrator	PS advises Inquiry Administrator that Ministers' private lines potentially not logged, to be confirmed.	DPMC submission	P
04/06/2013	1:39pm	Email	PS	Inquiry Administrator	PS sends report of Mr Dunne's landline calls.	DPMC submission	P
05/06/2013	10:59am	Email	Inquiry Administrator	PS	Inquiry Administrator emails PS noting a tight deadline, and requesting answer by 2pm.	DPMC submission	
05/06/2013					Henry inquiry report delivered to the Prime Minister.	DPMC submission	
07/06/2013					Henry inquiry report released by the Prime Minister.	DPMC submission	

Appendix E

Corrected transcript of evidence 21 August 2013

Members

Hon Christopher Finlayson (Chairperson)
Hon David Parker (Deputy Chairperson)
Hon John Banks
Hon Gerry Brownlee
Hon Judith Collins
Dr Kennedy Graham
Chris Hipkins
Rt Hon Winston Peters
Grant Robertson
Hon Anne Tolley
Hon Tariana Turia

Witnesses

David Henry
Isaac Holliss, Department of the Prime Minister and Cabinet
Wayne Eagleson, Chief of Staff, Office of the Prime Minister
Andrew Kibblewhite, Chief Executive, Department of the Prime Minister and Cabinet
John Subritzky, Director, Office of the Chief Executive, Department of the Prime Minister and Cabinet
Geoff Thorn, former General Manager, Parliamentary Service
David Stevenson, Acting General Manager, Parliamentary Service
Robert Buchanan, Counsel

Finlayson Well, good morning everyone. I thought I would start by making a brief preliminary statement under Standing Order 221. I think it is worth just reminding members of the committee, the media, and the public who may be present that we are dealing with some specific issues, and the examination will be limited by the matters that we have been asked to look into. The committee has been tasked with examining the particular incident involving the release of information from parliamentary information and security systems which led to the question of privilege being referred, and a more general issue about developing principles for the access to, and release of, information from parliamentary information and security systems.

In this hearing we are going to be focusing particularly on gathering information concerning the circumstances which led to the release of information from parliamentary information and security systems to the authors of the inquiry into the unauthorised release of information relating to the GCSB compliance review report.

Today we are going to be speaking to some of the key entities and individuals involved in this release, those who were involved in the request for information, and those who have responded to that request and are also able to discuss current policy and procedure.

We have also received some information from those to whom the information request applied, but will not be hearing evidence from them today.

We have not been asked to investigate this release as a contempt. The overall aim is not, therefore, to establish personal culpability or hold individuals to account. We are looking at this matter in detail only in so far as it is a practical example of how any policies and procedures that govern the access and release of information from parliamentary information and security systems are to be applied.

We expect the information we are going to gather here today will help inform us about where the main issues in this area lie, whether there are problems with the policies and procedures themselves, and, if so, where the gaps are or whether the problem has arisen due to their application. We expect it will assist us with our primary aim of developing principles for the access to, and release of, information from parliamentary information and security systems. In short, we need to have an understanding of what went wrong only to guide us about what we need to do to put it right.

These are the only relevant matters to this committee today, and I take the opportunity to remind members of the committee and those appearing that under Standing Order 222 the chair is the sole determiner of relevancy—and, Mr Robertson, note that.

So we are going to begin with hearing evidence from David Henry. Good morning. The way we are going to do it is we will take the material as read and invite you or your counsel, or whatever, if you have got some preliminary comments you wish to make and then I will begin by inviting Mr Parker, the deputy chair of the committee, to ask questions.

Henry

Thank you, Mr Chairman, and good morning to you and to members of the committee. I am the author of the report of 5 June into the leak of the Kitteridge report. I have with me Mr Isaac Holliss, who assisted me in the inquiry. Mr Holliss is from the DPMC and was seconded to help me. I don't have any counsel with me, Mr Chairman. I should say that Mr Holliss' position—he carried out any of the activities of the inquiry under my supervision, so I am the person responsible for the conduct of the inquiry, solely.

I welcome the opportunity to help in any way that I can. I have given you a submission. I'm sorry it was late, but I have given you a submission, and I would like to speak to that. The time should take about 6 or 7 minutes, if that is appropriate.

First, some background to the inquiry, some context, and then some specific comments on things which I think are of specific interest to you.

[Interruption to adjust sound system]

The inquiry was commissioned by the chief executives of the DPMC and GCSB, and I reported to those chief executives at the end of the inquiry, and I gave them, of course, some interim briefings as I went along.

It is important to note that although it was not an inquiry that was legally independent of those commissioners, I did conduct it independently throughout. The significance of that is that the chief executives themselves and their staff were potential suspects under the inquiry. So there were many people who could possibly have leaked the Kitteridge report, including the chief executives, theoretically at least, and their staff. So I was very careful in that regard to operate independently. So, the first point is it was an independent inquiry in practice.

Secondly, the information that I sought under the inquiry was the information that I considered was necessary for the purpose of the inquiry.

The inquiry itself, third point, was informal, as I think you know. I could request information that I considered necessary but I couldn't compel the production of that information.

The next point is that in seeking information that I considered necessary, I sought information from, amongst others, Parliamentary Service and Ministerial Services. It was a matter for them as to whether that information could be produced and whether, if authorisations of some kind were necessary, whether those authorisations were held. I had the expectation—and I think it was a reasonable one—I had reasonable grounds to think that any information supplied to me that I had requested that was necessary for my purposes would be appropriately supplied according to whatever rules they were operating.

Now, dealing directly with the swipe card records of the parliamentary complex, I asked for limited information regarding the entry and exit security records of two people in regard to the parliamentary complex. One was Mr Dunne, the Hon Peter Dunne, and the other was the journalist concerned. I realise this is a sensitive issue, but I considered it was necessary for the purpose of the inquiry to seek limited information, not for the purpose of inquiring into the journalist, per se, but for the purpose of inquiring into the activities of Mr Dunne. The information I requested was limited to the crucial period when I believed this leak had occurred.

I conducted the inquiry as fairly as I could, and I applied natural justice principles, including providing to anyone who the report was going to mention in a way that might have drawn adverse criticisms from others I gave copies of my drafts and I took into account their comments that they made when finalising my report.

The question of permission being granted by Mr Dunne, I'm not sure how relevant that is to your inquiry, but I could perhaps briefly say that until 23 May I was working on the expectation and on the grounds that Mr Dunne was in the same position as any other Minister who was subject to the inquiry. There were 13 Ministers subject to the inquiry potentially at the

- beginning, of which one was Mr Dunne, and prior to 23 May they were all being treated exactly the same.
- Thank you, Mr Chairman.
- Finlayson Thank you, Mr Henry. I said I would start with you, Mr Parker.
- Parker You've said that you had responsibility for the conduct of the inquiry, and all of the inquiries that were made on behalf of the inquiry were therefore your inquiries and your responsibility. In terms of the authorisations that were sought for the release of data it appears that some of them were made by Mr Holliss, and the authorisations that were requested by Parliamentary Service to authorise the release of the information you requested of Parliamentary Service, on my reading of the evidence that we've been given, were coming from a variety of sources, which included Ms Calvert and Wayne Eagleson. Were there any others that you were aware who were involved in authorising Parliamentary Service's releasing information, other than Ms Calvert and Mr Eagleson?
- Henry The inquiry was not involved in obtaining any authorisations. Mr Holliss mentioned sometimes the question of authorisation, but that question was not one for the inquiry. Now, in answer to your question about other people, who was involved in authorisation—
- Parker Did you have discussions with Mr Eagleson about the release of information?
- Henry No.
- Parker Did Mr Holliss have discussions with Mr Eagleson about the release of information?
- Henry No.
- Parker So all of the discussions between Mr Eagleson and others were other than with the inquiry?
- Henry I don't know what discussions Mr Eagleson had. What I can tell you is the only discussion I had with Mr Eagleson was to question him about his handling of the report as he was one of the subjects of the inquiry.
- Parker Can I ask you what led—I have an email here, which is between Parliamentary Service and their Datacom contractor. It is asking for phone logs for extensions and phone logs to and from a number.
- Finlayson There were a lot of emails. Which one are you referring to in particular?
- Parker Email dated 14 May at 9.34am.
- Finlayson Just give Mr Henry a minute to look it up.
- Henry Could you just tell me who it is from and who to?
- Parker Yes, it is from Parliamentary Service's IT manager to one of their contractors, the Datacom operations manager, and it is copied to a Datacom employee. It says "We need to get email logs from the Gateways for in and out bound emails for all names on the list previously provided.

- Note: [somebody] already did this but only for Ministers' primary mailboxes."
- Finlayson Now, wait one moment because several members are having difficulty finding the particular email. There are quite a number.
- Parker If I can help. It is the eighth page in.
- Henry Of the last bundle.
- Parker Of the bundle of emails that we have been supplied.
- Robertson I think Mr Henry has it, Mr Chair.
- Henry No, I'm afraid I don't have it. I don't think it would have been an email which the inquiry was privy to.
- Parker My question is that there was reference already being made to Ministers' primary mailboxes, as if there is a difference between—and I think there is—their primary mailboxes and their other mailboxes.
- Collins There is.
- Parker I agree. That's where I'm going. Did your inquiry see a difference between information that was in Ministers' primary emails, which they have as their ministerial emails compared with non-ministerial emails?
- Henry My understanding, from what I saw, was that there was one email system which for a Minister included both correspondence in their capacity as an MP and correspondence in their capacity as a Minister.
- Parker The reason I ask is that I am still intrigued by why some of these emails, if they were from Ministers' offices and they might have shown Ministers corresponding with other people about the details of the inquiry, why they weren't matters of public record under the Official Information Act?
- Finlayson That is almost a legal question for Mr Henry. Mr Henry was tasked with investigating something, not to interpret the Official Information Act.
- Member But we're not saying it's not a good point.
- Parker Well, there has been a lot of dancing on the head of a pin. I wonder whether the obvious was missed here. Some of these emails would have been properly disclosable under the Official Information Act because they were official correspondence between Ministers and somebody else.
- Henry Perhaps to just step back a moment. The inquiry is operating on the basis of obtaining cooperation and is not compelling anybody. It is not using any powers to get anything. Now, when we started off, we had various records that we wanted, and those included—let's talk about Ministers—those included Ministers' landlines, Ministers' mobile phone records, Ministers' email logs, and we examined those when—we asked for them and they were supplied. We examined those with the aim of seeing whether any Minister—and Ministers were a subset of the total number of people subject to the inquiry—to see whether they had any contact with the reporter. So, the questions about the Official Information Act and so on never raised their heads.

- Brownlee I am a little bit concerned about a couple of things. Firstly, we are here for this inquiry to look at the issues that relate to the rights, if you like, of journalists to have communications with MPs effectively, Ministers or otherwise, to keep some confidences, particularly if they are constituency matters, and Parliamentary Service know that that is a preserve that they cannot break. Were you ever given any advice about what would and would not be appropriate for you to ask for?
- Henry No, I simply asked for what I thought was necessary, and I left it to—I am not trying to dump on Parliamentary Service, but I left it to those people to determine what could be supplied and what could not.
- Brownlee So the question then would simply be: when you wrote your report were you quite confident that it was reasonable to say that you were denied access on almost a belligerent point by Mr Dunne, as opposed to, perhaps, mentioning that there could have been some legitimate reasons why they weren't being release?
- Henry Mr Dunne was being treated the same, as I mentioned, as all Ministers up to 23 May. Therefore, I didn't have any particular concerns about that matter until on 23 May I was told he did not want the content of his email logs—being logs which we had already received in respect of all Ministers—to be read. I went to see him, as I put in my, I think, report, to discuss that with him, whether he would allow me to read the content of his email correspondence, not generally but with the journalist concerned, and I was unable to persuade him to change his mind on that.
- Robertson Mr Henry, I want to read you some evidence that the committee has been provided by Geoff Thorn, a particular quote (page 4) where he says “I am in no doubt that the implementation of my decisions was undermined because of the extensive and ongoing interaction that occurred between the Inquiry team and my staff over a lengthy period, which removed some of the formality that I would have expected in the process.” What is your response to that, and what obligations do you think you had to have a formal process for this inquiry?
- Henry The process that we set up was that we dealt with—and particularly my administrator, analyst—the people in Parliamentary Service that were appropriate, but, as far as I was concerned, Mr Thorn and the senior people in Parliamentary Service were aware of what was going on and, indeed, it was a matter for them as to how they organised. We had one person dealing with Parliamentary Service. Now, that was an ongoing thing. How they organised themselves to deal with this was entirely a matter for them.
- Robertson Well, to follow up on that, Mr Thorn also says in his evidence, on page 3, that “... it is important to say that at no time was I, as General Manager, approached formally or informally by either Mr Henry or any member of his Inquiry team.” Don't you think you had a responsibility to do that?
- Henry My understanding was that Parliamentary Service, and the General Manager, were au fait with the terms of reference—the terms of reference

- had been published on 15 April, when the inquiry was announced—and that they would organise themselves to deal with the requests that we made.
- Robertson But, you see, you don't take any responsibility for having to talk to the general manager of the organisation from whom you were extracting a large amount of information.
- Henry No, I don't think so. I think it was a matter for him to organise himself and his people to meet our request. We had one person dealing with that, and it was a straightforward process as far as we were concerned.
- Robertson Just one further follow-up, Mr Chair, on that. When, through Mr Holliss, you requested phone records to and from Ministers and the journalist concerned, did you at any point consider that if you were getting records from a journalist's phone you should be seeking consent from that journalist?
- Henry We did not seek any information from the journalist's phone.
- Robertson I'm sorry to interrupt you, Mr Henry. At 5.53pm on 20 May Mr Holliss asked for phone records to and from—
- Henry No, just hold on a moment, please. Mr Holliss, when he first discussed with Parliamentary Service the question of phone logs, made it quite clear, and it is on the record, those phone logs were not the phone logs of the journalist. Secondly, the email that you are talking about, when the information was supplied, Mr Holliss immediately went back and said "We don't want that information.". Yes.
- Collins Mr Henry, having read your submission and your evidence and also the email printouts that you provided, I have to say I felt it was quite a chilling experience to realise that Ministers' and staff's emails and their right to privacy was treated with what I would say is, frankly, a contemptuous attitude. I am picking up from what Minister Brownlee has already said, why did you not think that you should check as to what are the constitutional issues that might in fact be affected by members of Parliament, their staff, and journalists having emails logged, read. I particularly note a comment from Ms Calvert, from Ministerial Services, regarding the phone records of Ministers that she keeps. Did it not occur to you, Mr Henry, with all your vast experience in government, that this actually might be an issue where you needed to get clarification on before requesting this information?
- Henry I was given a job to do, to do this inquiry. I decided to ask for information that I considered was necessary. I expected the recipients of those requests to gain any authorisations needed. In the email correspondence you will see that the question of authorisations by Ministers complying with those requests is dealt with, not by me but by Ministerial Services and Parliamentary Service. So from my point of view that was a matter for them to sort out. Now, I understand the sensitive issues that you are talking about, but I did take note that they were in the course of, as I understood it, operating on the authorisations of Ministers for us to carry out this inquiry.
- Collins From Mr Thorn's evidence that Mr Robertson has already read out, he has made some attempt to say that there needs to be authorisation, did you get

- any such response from Ministerial Services, which is different from Parliamentary Service. Ministerial Services, did they at any stage say you need to get authorisation from the Ministers, from those who have been the recipients of emails from those Ministers such as Ms Vance, or phone records, before you can access those? Did they alert you to this issue?
- Henry My recollection, and there were a lot of emails, is that we were copied in on some of the things that were going on between Ministerial Services, Parliamentary Service, and so on. My recollection is that Mr Thorn advised Ministerial Services that authorisation of individual Ministers would be required, and my recollection is that Ministerial Services appeared to be in the course of obtaining that. Now, I thought they had obtained it, because they held up giving us certain information that we had requested until they had obtained the necessary authorisation. And then that information started to flow to us. So, from my perspective I thought it had been cleared.
- Collins So, Mr Henry, why would you have thought that when Mr Dunne clearly did not give his permission, yet you knew, from information provided to you, that he had been in email contact and telephone contact with Ms Vance?
- Henry I think part of the problem here might be the sequence of events. Mr Dunne, up until 23 May, was as far as I was concerned, from what I had seen, on the same basis as all the other Ministers. My understanding was, my belief was, that he had given the same permissions and had the same authorisations applied to him as applied to the other Ministers concerned. It was only on 23 May that I was alerted to the fact that he was not taking the same line as other Ministers, and it was then that I went to see him and found that he did not—
- Collins So, Mr Henry, how did you know other Ministers had agreed to this?
- Henry That was my assumption based on the correspondence, including the copying-in of certain emails to us, that Ministerial Services were in the course of gaining authorisation and would hold the material until they had it.
- Collins There is a comment here from the other side on this, but ultimately it is your responsibility, not the responsibility of others I would have thought. And how did you know that there were, what, 86 emails? How did you know that?
- Henry Prior to 23 May the information that we had requested and which was supplied included email logs, the email logs of a number of people including Ministers. Those email logs were—we were looking for emails between Ministers and the reporter. Those email logs were supplied. Mr Dunne's 86 emails to and from the reporter were on the email log. So, prior to meeting with Mr Dunne we had obtained under the situation I have explained his email.
- Collins Who from? Who gave this to you?
- Henry They were requested from Parliamentary Service and Ministerial Services.

- Graham I've got three questions. The first one is, just picking up on the line of questioning from Judith Collins, the appropriateness of who is responsible for determining any constraints on seeking information, whether it is Mr Henry as author and the requester of information or Parliamentary Service as the recipient of that request. Can I refer you, first, to your own report here, paragraph 29, where you say "My position is that I asked for what I considered I needed for the purpose of my inquiry and it was over to Parliamentary Service to decide whether the information could be supplied." So, essentially, you are saying there that you are free to roam pretty much without constraint, asking for information under your terms of reference, and it is for the recipient to determine whether it is appropriate to give it to you or not. I then read Mr Thorn's report to the committee, paragraph 42, "... I was by this time aware that Mr Henry had been asked by the Prime Minister to inquire into access to a sensitive classified report by a person not authorised to receive it, and it appeared that the access might have resulted from a security breach within the precincts. I decided that I should not second-guess those security implications, and on this basis I decided to release the information to the Inquiry." The implication of Mr Thorn's statement there is that he felt under some pressure because of "security implications" coming from the genesis of the inquiry. When you were undertaking the inquiry, did you at any stage consider whether you should be operating under constraints as to what information you requested from anybody, and did you seek, at any stage, legal advice to assist you in making that determination?
- Henry The constraint that I saw myself operating under was whether the information was necessary. I think you mentioned roaming far and wide. I did not roam far and wide. I was very specific. The inquiry, of course, as it reduced in width, increased in depth, as I have mentioned. So, in fact, the constraint I was concerned about all the time was, was it necessary.
- Graham May I ask a question of you—
- Henry Sorry, if I could just answer the second point. I'm not sure what Mr Thorn felt about that.
- Graham So, in response, may I ask, is it conceivable that within the totality of what is necessary there may be something that is not appropriate?
- Henry It is conceivable, yes, and—
- Graham But you did not act on that predetermination?
- Henry My position was I would ask for what I think is necessary. The recipient of the information, since it is not a compellability issue, will make a decision on whether that information can be supplied. You know, we've had a lot of comment about the journalist's phone logs. Despite the questions I was given earlier, we did not ask for the journalist's phone logs, and the email record makes that crystal clear, if anybody reads all of them.
- Graham If I could refer to your paras 7 and 8 pertaining to stage 1 and stage 2 of the inquiry—
- Henry Sorry.

- Graham Your report, paras 7 and 8, pertaining to stages 1 and 2 of your inquiry, and particularly para. 8 where you say “Stage 2 of the inquiry was to be a formal process, which would require powers to compel the production of information. Given the results of the informal inquiry I did not consider it appropriate for me to seek formal powers under the State Sector Act and therefore did not move to Stage 2.” Could I ask you to elaborate on why you made that decision, because you were in the situation where one of the Ministers was not prepared to release information under your informal powers, and you concluded in your report that you could take the issue no further because of that fact, why did you then not move to Stage 2 so that you could elicit that information?
- Henry The problem was that the delegation under the State Sector Act deals with the conduct of public servants, essentially.
- Graham Then you didn’t state in the report that that Stage 2 would not be relevant to Ministers? It would have helped.
- Henry Well, you know, one resists the temptation to rewrite the whole thing, but, yeah.
- Tolley Just to go back a bit. In your appendix 3 you talked about the processes. Can I just clarify—I am trying to follow your process—when you asked for the information about the persons of interest, and you list them there, in appendix 3 on page 16, under paragraph 4, and you finish with “... and landline calls to specific numbers of interest.” Those were the numbers of particular journalists.
- Henry Of one journalist, yes.
- Tolley But further on in the emails there are three numbers that are blanked out. Those were the three numbers of one particular journalist. Is that correct?
- Henry That’s correct.
- Tolley Then over on phase 3 you are talking about two of the three individuals who had granted access to view the content of the emails.
- Henry Yes.
- Tolley And you were telling us that that was granted to you by Parliamentary Service?
- Henry If I can just elaborate a little. What we were faced with was we had a handful of people left to eliminate. One of those was Mr Dunne. The others were—
- Tolley I was one of them, as you can see from the papers, yes.
- Henry You were one of those yet to be eliminated?
- Tolley Yes.
- Henry Oh, OK. No, I don’t think so. I think you were eliminated earlier.
- Tolley Earlier on. OK.

- Henry The others were public servants. And the question of reading them—it was an employer issue and a code of conduct issue. Those emails were supplied and by reading them we were able to say, well, those people—it was completely commensurate with their official duties, yeah.
- Tolley So, at the core of this is the authorisation, really, of access to records and, in some cases, contents. You’ve worked in parliamentary services for a long time. You understand this place particularly well. Did it never occur to you that this is a different place from the outside world and that you should perhaps seek some guidance from the Speaker, who is, after all, the ultimate Minister responsible for what happens—
- Peters You have to be joking.
- Tolley —and get some guidance around—excuse me, I’ve got the floor—some of these more delicate issues that impinge on the privacy of Ministers of the Crown and their staff and members of Parliament? I am surprised that you didn’t do that, I have to say.
- Henry I can understand your point. I would just say that Mr Thorn reports to the Speaker.
- Tolley But you didn’t talk to Mr Thorn, either.
- Henry No, and we talked to whoever Parliamentary Service put up to do with us. We had one—
- Tolley I understand your saying that.
- Henry I won’t repeat it.
- Tolley I’m just questioning—given your knowledge of things like parliamentary privilege—you are not someone from the private sector who perhaps doesn’t understand that this place operates under some slightly different rules. Did it never occur to you at any stage, early on in your inquiry, knowing what sort of information you were going to be asking for, that you should perhaps contact the Speaker directly about parliamentary privilege?
- Henry With hindsight, 20-20 hindsight, it might have been a wise thing to do, I agree. But, as I said, I had a reasonable ground to believe that Parliamentary Service, reporting direct to the Speaker, knew what they were doing.
- Peters Arising from the last question, when you took this job on did you think you had the forensic ability to do the job?
- Henry The?
- Peters When you took this inquiry on did you personally think that you yourself had the forensic ability to do this job?
- Henry Yes.
- Peters Well, it’s not when you are measured up against your track record, is it? You can recall the inquiries in form over substance and what you did about that?
- Finlayson Relevance.
- Peters Well, the relevance is I want to know—

- Finlayson We are not going back 20 years to some jihad you may have conducted.
- Peters Well, no, but I want to know why someone will take a job on and botch it up a second time. I think that is relevant, Mr Chairman.
- Finlayson Ask questions and make them relevant.
- Peters That's why I'm asking the question because I want to know why he took the job given that we are now having an investigation into what happened when he did the job—for the umpteenth time. That's the relevance.
- Henry Am I allowed to answer it, or not?
- Peters Yes.
- Finlayson Well, I hope you are, yes, please.
- Henry Well, Mr Peters, you've been going on about this for 20 years, haven't you?
- Peters Yes.
- Henry For anyone who is interested in the commission of inquiry which finished in 1997, there is a public record of the commission of inquiry, there is a public record of the subsequent court case on avoidance evasion, and there is a public record of my evidence and there is a public record of your evidence. So, anybody who is interested can look at it.
- Peters You've made out my point, actually.
- Finlayson Mr Hipkins.
- Peters No, next question.
- Finlayson Oh, have you got another one?
- Peters Yes, I've got another question, and a few more, actually, if you don't mind. If you go to your mission on not taking a more formal process with respect to your inquiry—page 2.8—and if you go to your report, strange enough it's also on page 2.8, you seem to be distinguishing between Ministers. Why would that be the case?
- Henry Please point me to the reference again.
- Peters Right. What you say here: "Ministers are not public servants but with the support of the Prime Minister any information I require relating to the Cabinet Ministers was provided to me." There you've got a blanket assurance, virtually, that you were able to get ministerial cooperation. Except he had a man called Mr Dunne, bullet point 9 of your report, is identified not as a Minister but as a leader of a political party. Why would that be the case?
- Henry Mr Dunne as a Minister, wearing his ministerial hat, wanted to distinguish between these things, I'm not sure, but anyway, wearing his ministerial hat, up until the 23 May, as I explained, as far as I was concerned he was on the same basis as the rest of the Ministers. When on 23 May I was contacted—and I think from memory it was by Parliamentary Service—to say that Mr Dunne did not want the content of his emails read, then I went to see him. At that stage there were a couple of things. One was that it became clear to

me that whatever the Prime Minister had asked other Ministers to do, Mr Dunne was in a different position or saw himself in a different position than the others. I was aware, of course, that he was not in the Cabinet. So, at that stage I had to treat him differently. In regard to your point about being the Leader of the Opposition, in the course of the drafting of the report I gave him a draft of the report, and part of it was regarding the briefing that he was given on the Kitteridge report on 27 March, he considered that he was given that briefing in his capacity as the leader of United Future, and that's the way I wrote it. I took into account his comment and altered it from "Minister being briefed" to the leader of a small party being briefed.

Peters Can we get this very clear. Because he was reluctant to give over information that hitherto, up until that time, you thought other Ministers would happily hand over, and because he on the 23rd—or his office made it clear he wasn't prepared to do that—you regarded that he had now got a changed status. Why would that be the case?

Henry Well, he changed that status for himself.

Peters But he's still a Minister was he not?

Henry Well, absolutely true.

Peters And you said you had the Prime Minister's backing to ensure that Ministers will comply.

Henry That's right. Absolutely right.

Peters So why did you change his status then?

Henry I didn't change his status. He changed it himself.

Peters Well, you can't do that in this job, with respect, Mr Henry. You have got a designation. It's a public office. You're sworn in. You are either a Minister or not a Minister. So why would you take the view that he could change his status?

Henry Mr Dunne distinguished himself from other Ministers by saying that the content of his emails I was not allowed to read. I had no power to compel him to produce that content, and I attempted to persuade him to let me read it.

Peters You never considered adding those powers. Going back to the Prime Minister to seek those powers.

Henry It was my job—well, let me deal with that. I have already mentioned that the powers of delegation under the State Services Act, which were what was contemplated, I think, in the terms of reference in the two-stage terms of reference, would have been of no consequence with regard to a non public servant, Mr Dunne being a Minister and an MP. So, therefore, if I was to gain powers to compel evidence from a Minister or an MP, it would have had to have been, I assume, a commission of inquiry. Now, I reported to where I had got to on 5 June. I did not report to the Prime Minister; I reported to the people who had commissioned my report. If the

- Government wanted to have a commission of inquiry, that was a matter for the Government; not for me. I had taken it as far as I could.
- Peters So your point is then that you were at a stage where you couldn't get at the truth as you were, presumably, hired to do, but that you did not report to the Prime Minister this deficiency in the process or his need to establish a more formal inquiry using greater powers. At no point did you say that to the Prime Minister, did you?
- Henry I never spoke about this report to the Prime Minister. Let me tell you something: I have never met the Prime Minister. I have had no dealings with the Prime Minister.
- Peters I'm not suggesting that you've met him or not met him. I am saying that at no point did you write to him and say "I have not got the powers to get to the truth; therefore, I suggest that you consider another form of inquiry where maybe the truth can be got at."
- Henry I reported to the people who had commissioned the inquiry: the two chief executives. It's quite simple, really.
- Peters Did you think Mr Dunne had the same rights and liberties as, for example, Andrea Vance?
- Henry In what respect?
- Peters Well, did you think they had different obligations and different rights—one being a journalist with a right to maintain confidentiality of information; Mr Dunne being a Minister having foresworn to hold secret matters secret, a member of the Intelligence and Security Committee and leaking documents, not once but a number of times? Did you think they had different legal obligations and different liberties or freedoms between the two of them?
- Henry The journalist was entitled to the protection of section 68 of the Evidence Act. That protection applies to the right of a journalist to refuse to disclose sources in a civil or criminal proceeding. I was not engaged in a civil or criminal proceeding, but I took into account those principles when I was carrying out the investigation. That's why I never approached the journalist to ask anything of her. So, in that respect, secondly, the journalist was not the subject of this inquiry.
- Parker Did you ask for security access logs for Andrea Vance?
- Henry Yes.
- Parker Well, how do you reconcile that with the answer you just gave Mr Peters?
- Henry The journalist was not the subject of the inquiry. I asked for her access records for the purpose of the inquiry into the activities of Mr Dunne.
- Parker Well, didn't you ask for her security access logs so that you could see her movements?
- Henry For the purpose of inquiring—
- Parker So how do you reconcile your statement that you were alert to and protecting the interests of the media to go about their business?

- Henry I did not at any stage attempt to find from the journalist her sources. What I did do was ask Parliamentary Service for the movement, the swipe card records of Mr Dunne, and, as part of that, I asked for the swipe card records of the journalist for that limited time.
- Peters But the point is you were asked—
- Finlayson Let him finish.
- Parker Why did you need access to Andrea Vance’s access logs in order to look at Mr Dunne’s movements?
- Henry Because I wanted to be in a position of ascertaining Mr Dunne’s activities, particularly on the Monday—
- Parker No, you wanted to know Ms Vance’s movements.
- Henry Yes, but as part of that, in my examination, my questioning of Mr Dunne, I wanted to have information which would allow me—one of the problems I’ve got, Mr Chairman, is that in order to explain the necessity of looking at not just his swipe card records but the journalist’s for that limited time, it takes me into the detailed questioning of Mr Dunne. You know, if the committee wants me to do that, then I will, but it’s a question.
- Finlayson The point is made. I think we will move on to Mrs Turia.
- Peters Hang on. With respect, the question I was asking, and it related to the distinction, your treatment, between (a) a journalist and (b) a politician or a Minister. It seems to me that you now have accessed the movements of this person. There was no distinction in your mind then, though you tend to make it now. It goes to the point, at page 4, point 26 of your actual report. That’s how you got to that conclusion that “It is not possible to be definitive but it is likely that the report was provided directly to the reporter by the leaker. The report would have been copied by the leaker and a copy provided to the reporter, or it could have been lent to the reporter and returned later.” You knew how it happened, didn’t you?
- Henry No, I didn’t know.
- Peters You still don’t know how it happened?
- Henry No, not for certain, no.
- Finlayson Mrs Turia.
- Peters Don’t you want to find out? It’s a terrible rush, Mr Chairman.
- Finlayson No. Doing my job.
- Peters Well, you’re not, actually. I mean, I thought we were—
- Finlayson Well, they’re questions, not submissions. They are matters of submission which we can deal with later on.
- Peters Yes, I know. We’ve got the witness with us now—
- Finlayson Mrs Turia.

- Peters —on his report. And we won't be ridden over roughshod, Mr Chairman, when this is a serious investigation into fundamental constitutional issues.
- Finlayson Thank you for that, Mr Peters. Mrs Turia.
- Turia Mr Henry, you were the head of the inquiry and you claimed that Peter Dunne made a mistake in saying that you had not requested from him or Parliamentary Service for a comparison of the telephone records. How does that then relate to the fact that you wanted to compare the comings and goings of Andrea Vance into the building? How were you going to make a link between that and the leak, because you've said that the phone records wouldn't have given you that and that's why you didn't ask Mr Dunne, even though he says that you wanted to compare them. He isn't usually a person who would forget or make a mistake of that nature.
- Henry Yes, I think there is some confusion around this, which I would like to try not to add to. Mr Dunne did think that I had told him that I was going to, or had or was going to, ask for the phone logs of the journalist in order to compare them with his phone logs.
- Turia But you have already admitted just before that you wanted to compare her access with his record.
- Henry But they were two separate things.
- Turia Well, they might be two separate things but they are both relevant.
- Henry Well, OK.
- Turia Surely if you are saying you wouldn't have asked for the phone records because that wouldn't have proved anything, why then would the access records have proved anything?
- Henry Well, with the phone records we were able to obtain the information from the other end—that is, the people who were subject to the inquiry. So, when we asked for the phone logs of people who were subject to the inquiry, whether they were Ministers or public servants, we then were able to check whether those people had any telecom contact with the reporter. In regard to the access records, of course there wasn't another end to look at in regard to the movements.
- Turia You were heading the inquiry, yet you didn't think it was important for you yourself to seek the authorisations. You left that to just anybody who happened to be on deck that day? I am talking about Parliamentary Service now. You never got that from Geoff Thorn. Why not?
- Henry Well, I think I've answered that question already. I'll answer it again. I thought and I believed that I had reasonable grounds to expect Parliamentary Service to know what they were doing.
- Turia But surely it was your responsibility to get that authorisation. By not doing that, you've drawn in a whole lot of other people that wouldn't necessarily have to be drawn in.
- Henry I didn't think it was my responsibility to get that authorisation. I believed it was my responsibility to ask for the information I thought was necessary,

and I believed, and I had reasonable ground to believe, that Parliamentary Service were themselves organised and able to decide what could be released and what could not. Now, some of the email correspondence actually gave me comfort in that area, because they, at one stage at least, were taking legal advice on the requests that I was making. So, you know, as I say, maybe in hindsight I should have gone to see the Speaker, but the Speaker has the General Manager directly, and the General Manager is responsible for organising Parliamentary Service, so—

- Robertson But you never spoke to him.
- Turia You never spoke to him.
- Hipkins When you asked for the journalist's swipe access records, on whose authority do you believe you were acting?
- Henry I was acting, I believed, in accordance with the terms of reference.
- Hipkins But where in the terms of reference do you think you have got the authority to ask for that information?
- Henry The terms of reference pointed me to logs specifically, and inherent is anything that I was able to obtain, that I could ask for anything that was necessary for the purpose of my inquiry. So, as I mentioned before, if the recipient of the request wanted to take issue with that—if they had come back and said to me "Look, you can't have those." I would have had to accept it.
- Hipkins But do you think, in fact, the terms of reference you were given not only authorised you to ask for that information but in fact required you to ask for it?
- Henry No, I don't think they required me to ask for it in that sense; I think they left it effectively to me to determine what I thought was necessary. For the reasons I've mentioned, I thought it was necessary to ask for those swipe card records for that limited period only.
- Banks Mr Henry, today are you now very disappointed in the way in which you handled this inquiry?
- Henry No.
- Banks So you still believe, in answer to Mr Peters' question, that on day 1 you had the ability to do justice to this inquiry?
- Henry Well, I didn't know on day 1, but I think I did as much as I possibly could until I got to the stage that it was time to report. I think I conducted the inquiry fairly, professionally, and the result I would like, of course, to have been able to eliminate Mr Dunne. Nothing would have pleased me more, but I couldn't.
- Banks In your wildest dreams when you started this you never thought you would end up here and be held to account, did you?
- Henry I don't understand that question, I'm sorry.

- Banks Let me put it this way. Could I and the public, and in particular the media, be forgiven for seeing you as a modern-day sleuth that came through this place trawling for information and trampling on the rights and freedoms of members of this Parliament and, more particularly, the media, the Fourth Estate, in a very cavalier attitude, that you thought you would never be held to account?
- Henry Well, does that mean—let me try to make sense out of it. I carried out the inquiry as best I could. Whether I was going to be held to account or not didn't cross my mind.
- Banks Didn't matter.
- Henry Well, as I said at the beginning here, I am quite happy to be held to account. I have been held to account many times in many jobs. I am quite happy about it. It is part of the system. I don't have any problem with it.
- Banks Final question. If you knew what you now know, what would you have done differently in respect of trawling for the information of one of the journalists in this Parliament?
- Henry If I knew now I would have known that at the end of the day the information provided from the journalist's swipe card log was not particularly useful, but I didn't know that when I asked for it. Hindsight is a wonderful thing.
- Parker You said earlier in your evidence to us that you didn't think that your inquiry had been pressuring Parliamentary Service to release data. I just want to put to you what Mr Thorn has to us. He said that the initial approach came from Mr Holliss for a list of email-related what he calls metadata and that that was refused. Were you aware of that, or was your assistant aware of that?
- Henry Perhaps one simple way of helping the committee on this—in my submission at appendix D I have provided a time line for the—
- Parker Perhaps we can ask Mr Holliss then. Mr Holliss is with you and presumably he's here for a reason.
- Henry No.
- Finlayson No, if we need to get Mr Holliss back, we can.
- Parker Well, he's here at the table.
- Henry I can answer—
- Parker No, can I ask Mr Holliss, because according to Mr Thorn it was Mr Holliss who contacted the ICT manager by telephone on 29 April and then followed up with a series of emails, culminating with one on 30 April which was described as a formal request for the required information, and the response from Mr Thorn was no. Were you aware of that, Mr Holliss?
- Finlayson I think the best—
- Parker Well, can I ask—
- Finlayson You can't because Mr Henry is giving evidence.

- Parker What is he doing here? What is he doing here?
- Finlayson Mr Holliss can give evidence at a later date.
- Peters Excuse me. Excuse me. With respect, the witness said that he had Mr Holliss here also, at the start, at the opening of his submission. Now you are just changing the rules, having it read or not demurred when he made that statement. So please let someone ask the question whilst he's here and stop wasting everybody's time.
- Finlayson We are trying to deal with matters in an orderly fashion.
- Banks But he's turned up as a witness. He's—
- Finlayson He has not turned up as a witness.
- Banks What's he doing here?
- Peters What's he doing here then?
- Finlayson He was sitting with Mr Henry—
- Peters Holding his hand.
- Henry Mr Chairman, may I speak?
- Peters We're not going to have a cover-up here.
- Finlayson We're not having cover-ups. People need to give—Mr Holliss, I will ask it, are you in a position to address that question this morning?
- Holliss Yes, I am. Mr Parker, Geoff Thorn, through his chief information officer, who I was dealing with at the time, phoned me and said they first needed authorisation from Ministerial Services before they could process this request. So, in answer to your question, did they say no to us, well, no they didn't.
- Parker OK. Now, the second request was one week later, on 8 May according to Mr Thorn, when Janice Calvert, the General Manager of Ministerial Services, emailed and asked for information, and at that point the position was conveyed, according to Mr Thorn, back to Ms Calvert that, you know, didn't think the information was authorised to be released. Were you aware of that approach by Ms Calvert and the response from Mr Thorn?
- Holliss We were aware that Janice Calvert told Geoff Thorn through Mike Middlemiss, the chief information officer, that in relation to ministerial staff they had the required authorisations and they said to go ahead with those. And in relation to Ministers, Janice Calvert undertook or said that she understood that Ministerial Services needed to obtain the written authorisation from each Minister. Janice Calvert then said Ministerial Services will not hand over any Minister's data until they had those authorisations. A couple of days later we started receiving Ministers' information.
- Parker And where did that authority come from then?
- Holliss Well, we weren't sighted on that. The inquiry wasn't sighted on what authorisations were then sought afterwards.

- Parker Were you aware that Mr Eagleson was then drawn in to establish that there was the appropriate authorisation for Ministers' information to be handed over?
- Holliss No, we weren't aware of Mr Eagleson's involvement until after the inquiry was finished.
- Brownlee Do you accept that—
- Finlayson Who are you addressing this to?
- Brownlee Well, I'll try Mr Henry, but Mr Holliss clearly was quite involved in the aspect I am about to question on. Do you accept that Parliamentary Service and Ministerial Services are not constitutional bodies; they are functionary bodies designed to provide services to members of Parliament and to Ministers? If you do accept that, I am struggling to understand why you didn't think it was appropriate to approach Ministers or members about the access to communications. If it was conveyed to you the idea that that was not necessary, who was that conveyed from?
- Henry Well, that's quite a large question. The position, as I understood it, was that Ministerial Services was part of the Department of Internal Affairs and that Parliamentary Service was responsible for certain systems and information, including security for the parliamentary precinct. My understanding was that Parliamentary Service operated certain information systems as agents for Ministerial Services in respect of Ministers. As I have said, quite a few times now, my dealings, our dealings, were with those two organisations, and we relied on their expertise to obtain whatever authorisations were required. I have already said, you know, with the benefit of hindsight perhaps I should have gone and talk to the Speaker about it, but at the time it seemed completely reasonable to be dealing with the experts in that area, the people who held information, and if the Speaker needed to be consulted then I would have expected Mr Thorn to do that.
- Brownlee Given the conclusion in your submission today and indeed your report alongside that admission that if you had been perhaps more aware you might have done something else, it is difficult on a number of fronts to see that natural justice was served here in any way. We are not here to examine you, I might add; we are here to find out exactly where that line exists between the ability for any inquiry or any member of the public or journalist, for that matter, to access records of members of Parliament without those members knowing exactly what's being accessed. I think one of the difficulties here is that, as fine a point as you might like to put on the nature of your inquiry, Mr Dunne has not stepped outside what is effectively a right he has as a member of Parliament but has been pilloried for doing it.
- Henry Well, you won't find any criticism by me of Mr Dunne in regard to his decision not to allow that.
- Brownlee Innuendoes are a very powerful thing.
- Henry Pardon?

- Brownlee Innuendoes are a very—
- Henry Well, there is no innuendo in my report whatsoever.
- Brownlee Well, that's an interesting read of it.
- Finlayson Thank you very much, Mr Henry, Mr Holliss.
- Finlayson Good morning Mr Eagleson. I don't know whether you were here when I mentioned it to the previous witness, but we can take your statement as read. If you've got brief preliminary comments you'd like to make, fine, otherwise we'll just launch into questions.
- Eagleson Thank you, Mr Chairman. No, I am very happy to go straight into questions.
- Robertson Mr Eagleson, you would've heard the last exchange around the question of authorisation or access to Ministers. Can we confirm that you were aware of the sequence of events that led up to the discussion Geoff Thorn had with you—i.e. that Mr Holliss had initially asked for material about Ministers, and Mr Thorn had been reluctant to provide it. Ms Calvert asked Mr Thorn to provide material. He was reluctant to provide it about Ministers, and you intervened at that point to authorise the access to the ministerial information.
- Eagleson That is substantially correct. I would refer members to my submission on page 3, paragraphs 14 through to 19, or thereabouts. Essentially, I received a call from Janice Calvert, exactly as was outlined. She indicated that the inquiry had made a request for information. I think, as has been pointed out, it was never any issue about staff data, so we moved pretty quickly off that point and on to the question of Ministers. She indicated that Mr Thorn, I think, quite properly, had said that he required the necessary authorisations before he would release that material. I indicated that the Prime Minister had been pretty clear that he expected all Ministers to cooperate and that I would call Geoff Thorn to provide the necessary authorisation.
- Robertson And you then did that and wrote an email to that effect.
- Eagleson I did, Mr Robertson, yes.
- Robertson The basis on which you believe that you had the right to say that each Minister authorised the release of this material—what was the basis of that?
- Eagleson Well, there are essentially two things. One is the terms of reference had been released. They made very clear the type of information that would be sought. Secondly, the Prime Minister had made it clear, both publicly and to me personally, that he expected Ministers to fully cooperate. I think it is pretty clear if you look at the Cabinet Manual that Ministers are accountable to the Prime Minister for their behaviour. On that basis, I felt that was sufficient authority to give that authorisation.
- Robertson OK, so we can establish that the reason that ministerial data was released was because you said to Geoff Thorn it was OK to do so.
- Eagleson That's correct.

- Robertson Were you, at that point on 9 May, drawing any distinction between different types of Ministers—National Party Ministers or non - National Party Ministers?
- Eagleson I think it's a fair point. The context—there was actually quite a lot happening around that time in other matters.
- Robertson There always is.
- Eagleson There always is, as of course you would know from your time in the Prime Minister's office. The way I look at Mr Dunne, it was clear to me that he had been provided a copy of the report in his capacity as leader of United Future. That was clear to me. But nonetheless he is a Minister—he was a Minister—and once the inquiry was set up, it was my view that he should be treated like other Ministers.
- Robertson But it wasn't until 23 May that any distinction was drawn. In between times, that caused Mr Henry to become aware that there were 86 emails between Andrea Vance and Peter Dunne. That is correct, isn't it?
- Eagleson That is correct.
- Robertson So that was as a result of your decision to authorise the release of that information?
- Eagleson That is correct.
- Hipkins Did you have any contact with Parliamentary Service specifically on the issue of swipe access records?
- Eagleson No. In fact, what happened when Janice Calvert raised the issue of data generally, I wasn't party to any discussions with the inquiry about the types of information they were after. My role was simply to say, look, the Prime Minister was very clear that he expected cooperation. I think Mr Henry made it clear in his evidence to the committee before that he didn't have powers to compel, and so that was the kind of inquiry it was. I wasn't involved in the toing and froing, the backwards and forwards, about what type of information would be provided in specific terms.
- Hipkins So were you aware at any point that the swipe access of the journalist were being asked for as part of this investigation?
- Eagleson Not till much later. I think it came up in the context of being made aware about Mr Dunne giving his approval.
- Hipkins OK. Can I just take you page 2 of your submission, clause 10 there, where you say—you're talking about the establishment of the terms of reference—"I don't recall much of any discussion on the fact that Mr Henry would not have the power to compel witnesses or evidence under this form of inquiry." Was it your assumption, therefore, that he would have some power to require information?
- Eagleson No, it was my assumption, in fact, that he wouldn't, that it would be done on the basis of cooperation. I mean, perhaps—and I won't take much time, Mr Chair—but the context of this occurred some months after the leaked material from the Ministry of Foreign Affairs and Trade about a whole

- range of issues. The State Services Commissioner, as I recall, established the Rebstock inquiry. It took a lot of time, cost a lot of money, and there were all sorts of issues with powers. The Prime Minister was quite determined, as I recall, that this would be a much more efficient, shorter process, and so I don't recall there being discussion about that kind of power.
- Brownlee For the sake of clarity here, have you or any of your staff ever asked, in any other circumstance, for the meta-type data for Ministers to be made available to inquiries?
- Eagleson No. This is the first time in the 4½ years I've been the Prime Minister's chief of staff.
- Robertson Didn't you access—
- Eagleson I think Mr Brownlee's question was about Ministers and not about staff. Staff is a quite different point.
- Finlayson Mr Brownlee, have you got other questions, and then do you have a supplementary one, Mr Robertson?
- Brownlee Well, my question is: what was different, then, in this circumstance to the many other inquiries?
- Eagleson I think there were two or three differences. One was the very narrow range of people involved in this inquiry. So, in the time that I've served as the Prime Minister's chief of staff, there have obviously been a number of inquiries of a range of natures into leaked material, many involving a range of public servants and so on. What made this, I think, unique was the very small number of people who had received access to the report and the fact that the bulk of them were actually Ministers. In fact, I will clarify that. I can't quite recall the numbers, but certainly a significant number were Ministers or Ministerial Services staff, including myself. Excuse me, Mr Chair, would someone be able to provide me a glass of water? I'm happy to go and get it. Thank you.
- Robertson I hope that won't prevent you from answering. I just want to return to the question of the request that you effectively authorised for what we now know to be—I guess the best term to call it is—metadata. When you were considering that question, what did you think constituted metadata?
- Eagleson To be honest, I didn't give a huge range of thought to it. One of the initial aspects that I know Mr Henry was going to be looking at was things like photocopying records. So photocopying records, email logs, those kinds of things. But I didn't spend much time thinking about it.
- Robertson I guess one of the difficulties I have with this situation is that there has been an insistence from your boss and from others that there was no attempt to look at a journalist's records—
- Eagleson Absolutely.
- Robertson —but in considering that you are talking about communication between people—and that includes communication that comes from the journalist not just to the journalist—that at some point someone would have thought,

- gosh, we need to ask for consent here because it involves the communications written by Andrea Vance. Did you not think at any point that consent should be being asked for from a journalist?
- Eagleson I'm glad you've asked that question because it simply never occurred to me in providing that authorisation on 8 or 9 May, or whenever it was, that we were talking about any records that would have any relation to a journalist.
- Robertson How is that believable, Mr Eagleson? If you're trying to find out about contact between people, surely it has to involve the other person, the journalist?
- Eagleson Well, Mr Robertson, in the end, you can make your own judgment. I'm just telling you that it never occurred to me that would be the case.
- Peters But she was reporting it. That's a bit of pretty serious DNA, isn't it?
- Eagleson I wasn't running the inquiry, so that's not a matter for me to concern—
- Robertson But you authorised it?
- Eagleson No, no. What I authorised very clearly and very specifically was ministerial staff's records and for Ministers as well. That was it. There was never any discussion with Mr Thorn or, indeed, anybody else about me authorising or being involved in way, any kind of approval process, for a journalist's records. And frankly, you know, if you think of the politics of all this, it would be crazy.
- Robertson But you authorised, effectively, the release of records—phone records, emails—that were about contact between the journalist and the Minister. At that point, don't you have an obligation to think about the consent issues—which is what this whole inquiry is about—and about whether you should be asking a journalist about material that they write? Shouldn't they have been asked for their consent, just as you were asking Ministers for their consent?
- Eagleson Well, that's a question that perhaps arises in the context all that's flown, you know, all the water that's come under the bridge in that period of time. At the time I provided the authorisation to Mr Thorn, my mind was very clearly about Ministers and their staff on a very narrow matter.
- Robertson I find that hard to believe, Mr Eagleson.
- Collins I just wanted to come back to Mr Brownlee's question he asked you about accessing emails or metadata or whatever from Ministers for any other inquiry. There has been some concern raised, Mr Eagleson, about that. So have you—just to confirm you and your office—accessed or received any emails or data from Ministers or MPs in your time?
- Eagleson Absolutely not.
- Hipkins Did you or the Prime Minister have involvement in the drawing up of the terms of reference for the Henry inquiry and sign off on those effectively?
- Eagleson I refer to that in my submission on page 2(a). This all happened relatively quickly, as these things sometimes do. The Prime Minister was in China

- with Mr Kibblewhite. I was here. There was pretty quick agreement after phone calls that there needed to be an inquiry into this matter. My recollection is that Mr Kibblewhite, in particular, worked to pull together those terms of reference. We had a look at them. They looked fine.
- Robertson So you agreed to them?
- Eagleson Well, my recollection was certainly Mr Kibblewhite and Mr Fletcher were the decision makers, if you like. But of course, given a matter of this significance, you would expect them to run it past us, and we said yeah, they look fine.
- Robertson So you agreed to them.
- Eagleson I think you are putting words in my mouth. The word “agree” suggests somehow that I had a role in approving it. I gave some feedback, as I recall.
- Hipkins Did the Prime Minister see the terms of reference before they were released?
- Eagleson I’m sure he would have.
- Hipkins So he approved the terms of reference too?
- Eagleson Well, again, I think that’s perhaps a question you might want to ask Mr Kibblewhite, who is going to be appearing before you shortly, because he and Mr Fletcher were the chief executives driving the inquiry.
- Hipkins We will.
- Robertson I’m sure we will.
- Graham I have three questions. The first is with respect to the relationship between the executive and the legislature. You would agree that obviously you are acting as a member of the executive.
- Eagleson Yes.
- Graham Mr Thorn is obviously acting as a member of the legislature—an official staff member serving the legislature.
- Eagleson No, I understand the point you’re making, Dr Graham. I draw members’ attention to page 3, paragraph 15. What is clear—and I agree that it muddies the water somewhat—is that Parliamentary Service, in effect, acts as the agent for Ministerial Services.
- Graham I understand that.
- Eagleson You know, that wasn’t the case once upon a time, I accept, but for no doubt reasons of efficiency and others that I wasn’t involved in, there is one system. So when I ring Geoff Thorn, as I think Mr Robertson has pointed out I had done on a couple of previous occasions, about staff, I’m ringing him particularly about matters to do with ministerial emails. So I have absolutely no influence over broader parliamentary matters.
- Graham Well, I understand from what you’re saying and having read your report that, for operation reasons, they were technically merged to some extent. But you would also agree that that doesn’t in the slightest alter the

- constitutional separation between them. On that basis, when I read your report paragraph 2(d) where you say: “I advised Parliamentary Service that they could not release the emails.”, my inference from that is that you are telling Parliamentary Service something. So as a member of the executive, you are telling a staff member of the Parliament—the legislature—something. Then I look to paragraph 19: “On 9 May, I rang Geoff Thorn to discuss the matter. I subsequently emailed Mr Thorn to authorise the release of the material.” So you get my point. As a member of the executive, you are directly instructing the Parliamentary Service to do something.
- Eagleson To do with matters relating to the executive, yes.
- Graham Second question: Mr Henry, this morning, made the comment that the report was obviously commissioned by two CEOs, and that the CEOs and the staff were, themselves, potential suspects. Just in your own individual opinion, do you think that’s a desirable situation, for an inquiry to be initiated, commissioned, and managed by potential suspects?
- Eagleson I must admit, that thought had never occurred to me. Given that the report that had been the subject of the leak was a report prepared by Ms Kitteridge for the GCSB, I mean, it seemed entirely appropriate, those things. I think the other point is that my understanding—and again, you may wish to follow this up—was that both Mr Kibblewhite and Mr Fletcher would have been questioned, as I was, on our individual handling of that report. I mean, I was one of a number of people who received that report. My contact with David Henry was actually about where did I have it, what did I do with it and, what steps did I put in place to make sure that I kept it secure. So I don’t see anything particularly unusual.
- Collins Mr Chair, can I have a point of clarification. How can Mr Eagleson be a member of the executive? He is working on behalf of the executive.
- Graham He works on behalf. Well, thank you for that clarification. It leads me into my third question.
- Collins Good.
- Graham It’s all harmony and light around the table here. Mr Eagleson, acting, obviously, on behalf of the Prime Minister, discussed the terms of reference with the Prime Minister, and those terms of reference were endorsed and the inquiry proceeded. Would Mr Eagleson agree that, in acting on behalf of the Prime Minister, the Prime Minister is therefore—as he has indeed said in the House himself—responsible for the inquiry, or at least responsible for initiating the inquiry and receiving the report, independent of the precise operation in the middle?
- Eagleson Well, I think it’s clear that he has ministerial responsibility for what was set up to be an independent inquiry. I think Mr Henry made the point himself that actually he hadn’t met the Prime Minister and hadn’t spoken to the Prime Minister. In fact, I only had one discussion with him, and that was when he came in to interview me over my own handling of the matter.
- Graham Would you be good enough to advise the committee of your understanding of the beginning and end of ministerial responsibility in that respect?

- Eagleson I think I would prefer to leave that to people far more learned than me.
- Robertson So there was a point, wasn't there, at which you paused when Mr Thorn came back to you around the question of the release of ministerial information, and that was to do with the fact that Mr Dunne was not a National Party Minister. That was your concern?
- Eagleson Yes.
- Robertson At no point at that stage was your concern related to the fact that Andrea Vance's communications were caught up in all this?
- Eagleson The matter never arose. It was nothing to do with that. It was about Mr Dunne's role.
- Robertson But at that point you knew that this was a matter to do with communications to and from Andrea Vance.
- Eagleson Yes.
- Robertson But your concern wasn't about Andrea Vance; it was about whether you could compel Peter Dunne, as a United Future Minister. So it had nothing to do with Andrea Vance.
- Eagleson Correct.
- Collins Mr Eagleson, you've listened to the evidence this morning of Mr Henry.
- Eagleson I have.
- Collins One of the things that I took from it is that Mr Henry was communicating at not as senior a level as he should have been, perhaps, with Parliamentary Service. I think in hindsight he sees that. Is that something that you might have expected, that he would have talked to the Speaker, as Mrs Tolley asked?
- Eagleson It's a very fair question because some time after the fact of the inquiry, you look back and you look at all the things that could be perhaps described as process deficiencies and you'd say really there must be a better way. One of the things—and why I think it is useful from a staff perspective that this committee is looking at this matter—is that there was no template. There was no recent precedent that anybody could recall about this matter. I think the other thing is I had very little, if any—I spoke to Mr Henry about my handling of the document. After that, I wasn't involved. I think that was important because it was an independent inquiry, not something that was run in the office. So I didn't have any visibility on it until the issue around Mr Dunne came back.
- Peters You prepared the terms of reference?
- Eagleson No, I did not prepare the terms of reference, Mr Peters, but I was certainly shown a draft of them.
- Peters Did you have any say in who the person was to chair the inquiry?
- Eagleson I don't recall. I do recall it being raised, and I certainly didn't raise any objections. But in terms of Mr Henry's appointment, that would have been

- recommended by the chief executives involved, not the Office of the Prime Minister.
- Peters All right. In page 2 of your submission, point 6: "...my view was that its leaking was a serious matter and that an Inquiry was necessary."
- Eagleson Yes.
- Peters Were you aware of other leaks as well? For example—
- Finlayson Sorry, what was that?
- Peters Was he aware of other leaks as well, such as the leak on the morale report of the GCSB?
- Eagleson I wasn't aware of that particular one. In terms of other leaks, it's perhaps unfortunate to say, but that's a reality of working in this building, there are leaks from time to time.
- Peters So you were not aware that there was not just one leak, but a number of leaks that pointed to one Minister? You weren't aware of that?
- Eagleson No, and I certainly wouldn't have drawn that conclusion.
- Finlayson Well, hold on, where is that whole concept of relevance?
- Peters Really?
- Finlayson Yes.
- Peters So what are you here for, then? I want to find out what happened with respect to the length of the inquiry when it came to information sources.
- Finlayson Yes, well, ask questions. Get on with it.
- Peters Well, I'm getting on with it, if you don't mind. You've taken a whole lot of questions from others, and, frankly, I'm not going to be railroaded.
- Finlayson I'm not railroading you.
- Peters So you sit there and let me ask my questions properly.
- Finlayson I'm just trying to deal with this. I'm just trying to give everyone an opportunity to ask questions.
- Peters That's wasting everybody's time as well. Were you aware of any other persons' access cards information, as to toing and froing—
- Eagleson No.
- Peters You are not aware of that happening either? No other staff member was involved, of any Minister?
- Eagleson Staff members?
- Peters No staff member of any Minister was ever looked into in terms of their access cards?
- Eagleson No. Perhaps, just for the purposes of clarity, can I go back a step? Because I don't want to mislead the committee in any way. I think Mr Henry made the point that there were a number of ministerial staff, including one in the Office of the Prime Minister, who had had contact with the journalist in

- question. So I had given approval—in fact, Ministerial Services, frankly, had before I needed to—to have a look at their records. Now, as I understand it, they looked at their emails, which then, I think, Mr Henry, in his evidence to you earlier, demonstrated that it showed normal day-to-day contact with the journalist in question. I have no knowledge of anything to do with ministerial staff swipe card access.
- Peters But no one ever raised that with you.
- Eagleson No.
- Peters OK.
- Tolley I just wanted to follow up on Mr Robertson’s question. So when that pause came and you talked with Mr Thorn, I think the question was put to you about the release of emails to and from Andrea Vance. Were you aware, at that stage, or were you made aware at any stage, of emails from Andrea Vance, or were you talking about the emails from Mr Dunne? Because in your evidence, that’s what you’ve talked about.
- Eagleson Yeah, and that was my focus. But I also take Mr Robertson’s point that an email conversation is a two-way thing. That wasn’t what I was being asked about.
- Tolley Right. That didn’t form any part of your conversation?
- Eagleson It was about Mr Dunne’s. And I think the other thing is that my point about it was that the Prime Minister had clear expectations of all his Ministers, and so my role, and the reason why I was contacted, was that at that point—and it wasn’t clear, because this thing still had some time to run, that Mr Dunne was prepared to fully comply—my role was, via Mr Dunne’s chief of staff, to encourage him to do so. I had never seen these emails and still haven’t, and have no knowledge of the backwards and forwards. Frankly, I didn’t give any consideration to those issues.
- Tolley And it wasn’t raised with you that there were emails from Andrea Vance and from Mr Dunne?
- Eagleson I don’t recall.
- Parker I want to go back to one of your opening statements, which was the capacity in which Mr Dunne received the original draft Kitteridge report. Did he owe a duty of confidence in respect of that report like other Ministers who received it?
- Eagleson Yes.
- Parker So he received it—
- Eagleson Sorry, Mr Parker, can I just add one thing. Actually, in our confidence and supply agreement with United Future, it is also clear that information provided to him in that context needs to be kept confidential as well. So I understand your point, but whether it is in his capacity as a Minister or the leader of United Future—when the Prime Minister’s deputy chief of staff went to brief him, provide him with the material, and so on, of course it

- was assumed that he would keep it confidential, like any other Minister involved.
- Parker If a Minister is unwise enough to do something that is improper and it is on their ministerial computer, why isn't that an official document for the purpose of the Official Information Act?
- Eagleson Well, I think you're asking me for a legal opinion there, Mr Parker, which is perhaps best left for the Ombudsman.
- Finlayson That is something that the committee may well want to take a look at.
- Eagleson It is a fair point. As you would appreciate, the Office of the Prime Minister would receive more OIAs than about every other—
- Parker Similarly, whilst we have to protect journalists' sources, if journalists write a document to an official place, like if they write to a Government department or a Minister, it becomes an official document, in some occasions, when it is at the departmental end or at the ministerial end.
- Eagleson I acknowledge that.
- Parker Well, why is it, then, that no one has ever asked the question as to whether, rather than this convoluted route of going through Parliamentary Service, these emails or some of them are a matter of public record under the Official Information Act?
- Eagleson I think the first point is that Mr Dunne is very clear that they are not. In his view, he was clear that his emails were sent not in a ministerial capacity and are not subject to the Official Information Act.
- Parker Well, but if they're on a ministerial drive and they're in respect of confidential ministerial documents, how can that be right?
- Eagleson Can I correct you there? That would widen the scope hugely. We are a minority government, as, under MMP, you would expect, and the vast bulk of occasions things would be. So we rely on putting together a majority on any given bill by dealing—
- Member That's not what it's—
- Eagleson No, no, well, if you would let me finish, it is. What it is about is actually we deal with confidential information, whether it is with ACT, United Future, or the Māori Party on a range of things in that capacity. That does not make it official information.
- Collins Mr Chair.
- Finlayson Is this a point of order?
- Collins Yes, it is a point of order, actually. This is not actually what Mr Eagleson is here to give evidence about. In fact, the member is asking for an opinion from the Ombudsman, essentially, not from Mr Eagleson, and not only that, the member has forgotten about the Privacy Act implications. So of course it is nothing to do with the drive that it is on; it is all to do with the content of the email.

- Parker Could I speak to the point of order? In his evidence, he said that in his view it wasn't necessary for Ministers to get individual consent even because of the generality of the terms of reference of the Prime Minister's comments. I am just trying to elicit why it was that there was this convoluted route—
- Finlayson You've raised a number of points. As you said some weeks ago, with respect, absolutely correctly, the purpose of the first stage of this inquiry is to deal with primary fact issues. Questions of law and questions of policy are matters that we are going to certainly deal with. The question is whether we elicit those matters through whips—we'll have a discussion later on. Focus on, as you yourself said, primary factors.
- Parker Are you aware of whether there have been any requests made under the Official Information Act by journalists or other political parties or anyone else for copies of the emails sent and received on ministerial addresses in respect of this confidential Government document?
- Eagleson My understanding is that there have been some. They either were not made to the Office of the Prime Minister or they were transferred, so those would be matters between the relevant agency and the Ombudsman.
- Parker OK, I have another area of questioning, and that is that you said—and I am reading from your evidence—that it was not necessary for Ministers to give individual consent, given the terms of reference in the Prime Minister's comments that he expected any Minister to comply. I can understand why you might expect Ministers to agree to provide documents, but I don't know how you can assume consent. Can you explain that?
- Eagleson Well, I think I answered that question, Mr Parker, at the beginning with reference to both the terms of reference, the fact that the Prime Minister had made it very clear to both me, to Ministers as well, actually, and publicly that he expected their cooperation and the broader reference to the Cabinet Manual. But, look, what I would say is were such an event to happen again, and one would've thought that it's sort of highly unlikely, then the more sensible thing would simply be to go to each Minister with a piece of paper and say "Please sign it.", and one would expect they all would do so.
- Parker So you didn't get their express consent—
- Eagleson No.
- Parker —and you didn't use the Official Information Act?
- Eagleson Well, it would've seemed a bit strange to the Official Information Act on Ministers in the Prime Minister's Cabinet.
- Robertson Well, indeed, but the point is you didn't get the info, did you?
- Parker So, you didn't get their approval but you didn't—
- Eagleson Mr Robertson, the inquiry was an independent inquiry. The Prime Minister was not involved in the operation of that inquiry.
- Robertson But you were. Acting as the agent of the Prime Minister, you were involved.

- Eagleson I think I have been very clear in my evidence about the limited nature of my involvement.
- Robertson But you were involved.
- Eagleson I'm happy for members to make a judgement about whether or not I had the authority and then to do that, but I'm clear about that.
- Finlayson One at time. If you ask a question at least have the courtesy to let the witness answer it, and then we've just got to bear in mind this question of primary facts as opposed to law and policy. We can deal with law and policy later on, Mr Robertson, if we're still lucky enough to have you on the committee.
- Member You will be.
- Parker So you have just said that it was for inquiry to get to the bottom of what happened. Are you surprised that the inquiry didn't seek approval from individual Ministers for release of information or use the Official Information Act to obtain what would be legally obtainable under the Official Information Act?
- Eagleson If I can start with—
- Finlayson Hold on. You're asking him for an opinion. It is not primary fact.
- Eagleson I am happy to answer, Mr Chair.
- Finlayson Oh, well, answer it.
- Eagleson If I can start with the second part of your question, Mr Parker, I would've been staggered if any inquiry would use the Official Information Act to try and get something in that situation.
- Parker Why, when the information had been not voluntarily produced if it was a legal means of getting the information and you wanted to get to the bottom of what happened?
- Eagleson Well, I think that's a matter that I appreciate the committee has discussed with Mr Henry and may well discuss with Mr Kibblewhite, because it was always left open, as I recall, in the terms of reference to possibly go back and seek more powers, and that wasn't done.
- Parker OK. One final question and that is, were you aware at any time that records were being sought from Parliamentary Service that weren't ministerial records?
- Eagleson Can you repeat the question?
- Parker Were you aware at any time that records were being sought from Parliamentary Service that were not ministerial records?
- Eagleson At some stage late in the piece I was aware that a journalist's swipe card access had been sought, but that was after it had occurred.
- Parker After the inquiry had reported back or—
- Eagleson I can't recall whether it was either just prior to or just after, but after the records had been provided by Parliamentary Service,

- Robertson Which was after your authorisation for them to be provided.
- Eagleson I am very clear, Mr Robertson: my authorisation specifically related to Ministers and their staff.
- Robertson And their communications with journalists.
- Eagleson I don't see it that way.
- Robertson Well, that's what it was.
- Finlayson Thank you very much, Mr Eagleson. Most grateful to you for coming along.
- Finlayson Right, so we're dealing now with the statement of Mr Kibblewhite, who is here this morning—the Chief Executive of the Department of the Prime Minister and Cabinet—with Mr Subritzky, is that correct?
- Kibblewhite That's correct.
- Finlayson Right. Good morning. I don't know whether you've been here throughout, but the idea is that people do not need to read their statements, but if they can speak, feel free to speak briefly to various points. Everything you say is being recorded, and then I'll ask Mr Parker to start the questioning.
- Kibblewhite Thank you, Mr Chair, and thank you to the committee for the opportunity to provide evidence on this matter. My written submission does address many of the concerns raised about the inquiry and attaches a chronology of events. I won't, clearly, go through that, but I would like just to highlight some of the key facts to begin with.
- The first point I would make is that I regarded the leak of the Kitteridge report as a serious matter. I had a number of discussions with the Prime Minister both in China and on our return as to how we should respond to it. The PM agreed that DPMC and GCSB should commission an independent inquiry into the leak. Both our agencies were possible sources of the leak, so therefore the independence of the inquiry from the two commissioning departments was particularly important.
- DPMC took the lead in establishing the inquiry. I discussed the terms of reference and the form of inquiry with Mr Fletcher, Mr Eagleson, and with the State Services Commissioner. Mr Fletcher and I finalised the terms of reference in consultation with the Prime Minister. We decided to appoint Mr David Henry as the reviewer because of his previous experience as Commissioner of Inland Revenue, Chief Electoral Officer, and, most recently, commissioner on the Pike River royal commission.
- I'd like to emphasise at this point that the inquiry was into the source of the leak—that is, the actions of those who had access to the report—and I think that's clear in the terms of reference. The journalist Ms Andrea Vance was not the subject of the inquiry.
- I was the designated contact point for the Henry inquiry regarding any questions about the terms of reference and support requirements. In this role I met with Mr Henry on a regular basis. I was only briefed in a very general way about the day-to-day work of the inquiry. Administrative support for the inquiry included seconding a staff member to work with Mr

Henry, providing ICT support and office accommodation. The independence of the inquiry from DPMC and GCSB was particularly important to me, so the seconded staff member was clear he was acting independently of DPMC under the authorisation and direction of Mr Henry.

As the end of May approached, Mr Henry informed me that a Minister had not agreed to release certain information to the inquiry. Mr Henry advised me that his inability to access those emails meant he was unable to conclude his review of the contacts between the Minister and the journalist, and it subsequently became apparent that that Minister was Mr Dunne. I discussed Mr Dunne's failure to comply with Mr Henry's requests with Mr Eagleson on 28 May and the desirability of an approach being made to Mr Dunne to reconsider his decision. I do not have any direct knowledge of the requests made by the Henry inquiry for a range of information held by Parliamentary Service. As I said before, it was very important to me to ensure the inquiry was independent of DPMC as one possible source of the leak.

The remainder of my comments focus on the events that occurred once I was advised on 5 July that the following information was provided in error to the Henry inquiry: phone logs of Ms Andrea Vance—they clearly were not requested but provided to the Henry inquiry—and email correspondence between Mr Dunne and Miss Vance, provided to the Henry inquiry on 22 May but not viewed. Key points I was informed of in relation to this information were that the Henry inquiry did not request Miss Vance's phone logs, did not want them, and did not view them. The Henry inquiry did not attempt to view the email correspondence between Mr Dunne and Mr Vance. It complied with the recall message sent by Parliamentary Service and deleted the message and attachments.

My first action in response to being advised of this situation was to seek confirmation that no DPMC staff had viewed the files in question. I received that confirmation. I can assure the committee that no one in DPMC accessed those records. I took steps to ensure our ICT systems did not hold any of the information received in error, and ensured any copies found on the system, including the backup systems, were destroyed. I can confirm that all copies have been destroyed.

On that basis I'm satisfied that Mr Dunne's and Miss Vance's privacy was not breached by DPMC. I have sought advice and had this view confirmed for me by Crown Law. To this day, DPMC has not shared the detailed records of the Henry inquiry with the Prime Minister or his office, as they were not involved in the administration of the inquiry, and to respect the privacy of the individuals named in those records.

And, finally, in light of some of the public commentary about DPMC, I would like to state that I have every confidence in my staff, their integrity, and their professionalism. We take our responsibilities as public servants and adherence with the State sector code of conduct very seriously.

I'm happy to take any questions the committee may have.

- Graham Just a point of order. That statement broadly reflected the written statement, but departed at certain areas. I take it we can have it as a transcript?
- Finlayson Oh, yes, most definitely. If not, when could we have a transcript available for Dr Graham? A couple of days, Kennedy.
- Parker My first question is the commissioners of the report were you and Mr Fletcher, and you appointed Mr Henry to conduct the inquiry on your behalf. Were you surprised to find that he requested security access logs?
- Kibblewhite Yes, I was surprised that he requested the access logs for the journalist.
- Parker And with the benefit of hindsight, do you believe that was appropriate or inappropriate?
- Kibblewhite Well, even with the benefit of the hindsight, I'm conscious that I was not privy to the conversations that Mr Henry and the inquiry were having with Parliamentary Service, and I understand the sorts of considerations that Mr Henry outlined earlier, so I think it's an issue really to be addressed to him.
- Parker Well, we've got to make a decision here. We've got to make a decision around this committee as to whether we think it's appropriate. I'm a bit surprised that the head of DPMC hasn't thought with the benefit of hindsight. I'm not asking you to criticise Mr Henry. Do you think it's appropriate that security logs in respect of journalists that effectively are used to track their movement should be made available?
- Kibblewhite I did not anticipate that they would be accessing journalists' logs.
- Parker That wasn't my question. We've been asked to look at whether this should be done in the future. What's your opinion?
- Kibblewhite Well, I think, in hindsight, it would certainly have been clear that Mr Henry could have looked with Parliamentary Service to make sure that all those who were having their access records accessed were happy with that.
- Parker I'll put it another way, then. Do you think in the future it should be permissible for Parliamentary Service to give over access records relating to journalists for the purposes of inquiries like this, as opposed to looking at whether there's a terrorist attack involving a journalist upon Parliament?
- Kibblewhite I think the details of any inquiry will obviously determine that, but I would say that I think there would have to be a very high threshold for the access records of a journalist to be handed over to an inquiry.
- Parker Well, unless there was a security issue involving threats to Parliament, do you think that access codes of journalists should be made available by Parliamentary Service in respect of journalists?
- Kibblewhite Look, I think I've said in relation to this terms of reference that it certainly wasn't anticipated in the terms of reference that a journalist's access records would be requested, and I've said I think there would need to be a very high threshold for an inquiry to look at a journalist's access records.

- Parker Well, again, that wasn't my question. My question was relating to our terms of reference. We've got to report back to Parliament as to whether we think things like access codes in respect of journalists should be handed over that enable journalists' movements to be tracked. And I'm asking you if there isn't a security—as in a sort of a physical threat to members of Parliament, so we're excluding that circumstance, because I see why it might be possible to argue for it in that circumstance. In any other circumstance, shouldn't the answer be no?
- Kibblewhite Well, I think, actually, the clarification of the committee will be very helpful on that point.
- Parker I'm asking your opinion.
- Finlayson Yes, but ultimately he is the head of a department of the executive. The question you ask is actually a very fair one. It's a question of whether this particular witness—and we're going to have to answer it—the question is whether what this witness has to say, with the greatest respect to this witness, matters a great deal in terms of what we're doing.
- Parker Well, I would have thought, speaking to that point of order, I would have thought that if anyone could argue on behalf of the executive that there could be a circumstance that the executive thinks could apply, that he would be able to tell us. So can I ask him, Mr Chairman, whether there is a circumstance that he could envisage that it would be appropriate for them to be handed over, other than relating to physical security.
- Kibblewhite I think if there are material matters of security, then you could envisage circumstances where it would be appropriate.
- Parker Physical security?
- Kibblewhite We could end up in a quite convoluted discussion of what security constitutes. You know, there is security of property, there is security of person. I think that's actually a reasonably complicated discussion. I will say I did not envisage, in setting the terms of reference, that the access records of a journalist would be sought, certainly not without permission of the journalist.
- Robertson It's on that point—I don't know if you were here for Mr Henry, but he made very clear to the committee that he believed the terms of reference did authorise him to do that.
- Kibblewhite Well, I think when I look at the terms of reference, stage one does involve reviewing communications, copying equipment and records, log books, and other material considered relevant of the persons who had or who were likely to have had access to the compliance review report. Certainly, in the first part of that phrase, I can imagine access logs being included in that. And the second part of that phrase—Miss Vance was not the subject of the inquiry. I suppose to—
- Robertson I'm sorry, but she had access to the report. That's obvious, isn't it?

- Kibblewhite I think it was very clearly understood that this report was about looking at the unauthorised disclosure, which is from those individuals such as myself, such as the Ministers who had access to the report.
- Robertson Did Mr Henry ever discuss the terms of reference with you or Mr Fletcher?
- Kibblewhite Yes, before they were finalised—I think on the Monday. This all moved very quickly. We did send him a copy of the draft terms of reference, and he may have made one or two minor suggestions to it at that point.
- Robertson What do you think, then, gave rise to his view that accessing Andrea Vance’s access records was appropriate under these terms of reference?
- Kibblewhite Well, I think he can read the terms of reference, and I did hear at least part of his testimony earlier. He thought it was a relevant fact concerning the unauthorised disclosure.
- Brownlee What did you expect the inquiry to achieve, given that it was informal, had no authority to require information? So what was your starting point? Did you have a view that, in fact, the information held by Ministers was different to that held by members, that there was no separation between Ministers and members, and that any communications therefore by a Minister who is also a member were fair game for the inquiry? I think one of the difficulties here—and I’m just trying to get to the bottom of it—is Mr Henry, from his testimony today, clearly believed he had quite widespread inquiry powers. He’s said to us that now he knows that perhaps wasn’t quite the same way. But there’s a little bit of an uncomfortable element here that we are going to have to deal with from the point of view of the long-term protection that members of Parliament believe they have now and want to have reaffirmed. So what did you expect from the inquiry? How did you expect it to progress, given that it was informal and there were no particular powers granted to the inquisitor to inquire?
- Kibblewhite Well, the first thing I would say is that I regarded the leak as a very serious matter, and that whenever a leak occurs, it shakes one’s confidence in the people who have had access to that information. In my case that included both public servants, and clearly I was worried about leaks that might have emanated from Ministers’ offices as well. So what I hoped to get from the inquiry was assurance that would effectively give me more confidence that people who had had access to the report had dealt with it appropriately, and if there was a culprit for the unauthorised disclosure, that that person would be identified.
- So the inquiry, as you note, did not have any formal powers, and there’s been some discussion already this morning as to whether they were necessary. My view at the time was that they probably would not be necessary but that if we needed them—particularly in relation to public servants—we could then get them. I spoke with the State Services Commissioner, and we were clear that if the inquiry felt a need to compel public servants to appear under oath, he would be prepared to make, effectively, his powers available, and that’s what we have anticipated in stage two of the inquiry.

- In relation to Ministers, I think it goes to the conduct expected of Ministers as set out in the Cabinet Manual, to the fact that Ministers are accountable to the Prime Minister, and we anticipated that that would provide sufficient cover for any ministerial information either to be made available or, effectively, for it not to be made available, which, indeed, happened and prompted the resignation of Mr Dunne.
- Brownlee Isn't the small problem here, though, that Mr Henry knew that the information existed, so someone had told him that and they had presumably accessed that in order to be able to tell him that without going through what would be—without recognising, I suppose you'd say—the normal privileged position that MPs think they've got in their communications?
- Kibblewhite Well, I don't think anyone—you'd really have to address the question to Mr Henry about the analysis he did to identify, effectively, to eliminate his suspects. But my understanding was that he progressively eliminated by looking at who had contact with the journalist, and, where possible, making sure that that—
- Brownlee That is exactly the point. He had information about who had contacts. He was able to say there were 86 emails. He was able to actually put that into the public arena.
- Kibblewhite That's correct.
- Brownlee There is a fine line here between doing the job that was required and a high degree of contempt for the privilege of Parliament. I think that's the danger that we are trying to sort out here at this inquiry. So I'm just interested in your views about how you think the progress of Mr Henry's inquiry was reasonable, given what you understand to be the protections that both members and Ministers have.
- Kibblewhite Well, clearly, getting clarity, as the committee is undertaking, will be very helpful around those matters. My view was that, as I've said, I did not get involved in the detailed work of the inquiry, and it was quite important that I did not. But certainly from the email record that I think members have all seen, there was quite a lot of discussion around appropriate authorisations that occurred between the inquiry and Parliamentary Service. The point that that fell down was effectively when Mr Dunne—entirely reasonably—said: "I'm not prepared to give access to the content of my emails." That then swung into a different sort of conversation relating to his accountability to the Prime Minister.
- Graham I've got three questions of Mr Kibblewhite. The first is to do with the ministerial responsibility of Mr Key and your relationship with him in that respect. On page 2 of your report you do say here that the Prime Minister "agreed that DPMC and GCSB should commission an independent inquiry". I'd like to get you to comment on whether that is agreement or a decision on the part of the Prime Minister, and I guess the best way of framing that is to say would you have proceeded with the inquiry if he had not agreed or indicated agreement to you? In other words, were you totally

- independent in your decision, or was it subject to a decision by the Prime Minister?
- Kibblewhite Certainly, I took the lead in preparing the terms of reference for the inquiry and finalised them. If the Prime Minister had not wanted us to have an inquiry, then we wouldn't have. So, no, we did that in consultation with the PM.
- Graham You would not have proceeded?
- Kibblewhite That's correct.
- Graham So it was essentially a decision by the Prime Minister in that respect?
- Kibblewhite To have an inquiry, yes.
- Graham Would you be prepared to provide the committee with any relevant emails between yourself and the Prime Minister discussing that point?
- Kibblewhite Look, I'd be very prepared to describe quite fully the nature of the conversations that we had, and that would be actually much more revealing than any emails, because we began the conversation when we were both in China. We talked about the appropriate response. I know the PM was concerned because he was getting accused of leaking it himself. I was concerned because I thought this was a really quite serious matter. The report was a really very serious report, and it was very unhelpful and basically undermined my confidence that it had been leaked. So we had a number of conversations—not in email—around forming an inquiry.
- Graham Thank you. So, in principle, you don't have a problem with supplying the committee with any of that information that you think is relevant?
- Kibblewhite Well, I don't think there are any emails. We had a lot of conversations. I put some—
- Graham Well, I was just thinking—I understood you to say not much email but that there were many conversations. There could be a précis, perhaps, done by you, of those conversations—dates and nature of discussion.
- Kibblewhite Well, I've largely provided it to you now, I think. I can be a little fuller. Whilst I was still overseas with the PM, my acting chief executive had some discussions with the State Services Commissioner about the appropriate form of an inquiry. They pulled together a first draft of the terms of reference. We returned to New Zealand, I think, on the Saturday, and I reviewed those terms of reference over the weekend. I would have had a conversation and shown them to the Prime Minister on Monday morning. I probably had conversations over the course of the day on Monday, I expect, with Mr Henry, just to finally confirm the terms of reference and make sure he was comfortable with them, and we had made sure the Prime Minister was happy with them before we then—I think the PM announced them, I think, on the Monday afternoon at his press conference, from memory.
- Graham Thank you for that. The second question pertains to the independence of the inquiry with Mr Henry responsible for day-to-day operation of it. I just

- put it to you that there may be some difficulties in terms of the independence in reality with the inquiry. The first point that Mr Henry made this morning, one of the early points—I am not sure if you were here—was that you as CEO of the DPMC, and other senior staff, ought to have—were, in fact—seen as potential “suspects”.
- Kibblewhite Indeed.
- Graham So you have what I have to think is a slightly bizarre situation where a potential suspect in a leak is generating the inquiry, setting the terms of reference, identifying the author of the inquiry, seconding staff as well, and interacting with both the inquiry itself and with PMO in the broad sense, in the context of the inquiry. Would you agree that this is faintly weird?
- Kibblewhite I certainly wouldn’t call it faintly weird—
- Graham More than faintly.
- Kibblewhite —or weird at all. Clearly—
- Graham OK, “unweird” then.
- Kibblewhite Look, I was very mindful of exactly the issues that you’re raising, and, indeed, that was why we made sure that the inquiry behaved very independently, why we engaged someone of Mr Henry’s standing to undertake it, because I do not think anybody would expect that Mr Henry would in any way be engaged in some sort of cover-up if it had been Mr Fletcher and myself. Mr Fletcher and I had commissioned the—or Mr Fletcher in the first instance, supported by me—compliance review that Miss Kitteridge undertook. So I think you can very clearly see why it would be appropriate that we would be the ones taking the lead in terms of investigating its unauthorised disclosure.
- Graham The final question pertains to the operation of the Henry report itself. This morning Mr Henry attached a lot of importance to what I suppose he would wish to call the doctrine of necessity, that basically he felt free in performing his terms of reference to require any information relevant to the inquiry that he felt was necessary. I put it to you, and I did to him this morning, that it may be the case that within the totality of what is necessary, there may be a subset that is not appropriate to obtain. Would you agree with that?
- Kibblewhite Certainly in the general way that you have phrased that, yes. There may be some information that wouldn’t be appropriate to obtain.
- Graham Thank you.
- Collins I also have three questions. So Mr Kibblewhite, if we go to the written statement that you have made in your submission to the committee, and on page 2 you have made a statement halfway down that “The Henry inquiry, unlike a formal commission of inquiry, did not have any powers to compel people to provide information.” Do you stand by that? So if we accept that information comes in various forms, surely Mr Henry having access to MPs’ and journalists’ swipe card details does, in fact, constitute Mr Henry having access to information by actually, frankly, compelling it?

- Kibblewhite No, I don't think it was by compelling it. I think it was all provided voluntarily by the—
- Collins By whom?
- Kibblewhite —Parliamentary Service.
- Collins But it wasn't their information, really, was it—about personal and private details about where people were?
- Kibblewhite Well, I think Parliamentary Service does probably hold the information and they hold it for a range of reasons. You'd be best to ask Parliamentary Service about it directly.
- Collins So Parliamentary Service—I don't believe and I can't imagine that you would believe this, so I will put it to you. Do you believe that Parliamentary Service holds information as to where Miss Vance happens to be in any part of the building, for the purpose of finding out who is talking to Miss Vance?
- Kibblewhite I would be surprised if that is why they hold that information.
- Collins So in which case, if they held the information, it should be used for the purpose that it is held, which will be either security, whether it's personal security, building security, or it's security of information such as—or property security, such as, you know, if somebody steals something off someone's desk, well, that would be a legitimate purpose, I would say. But surely not to see who she's talking to.
- Kibblewhite Well, I think that was obviously not a decision that I was involved in. I think the question would be worth addressing to Parliamentary Service as to whether and how they saw that this was a security-related matter.
- Collins So my contention and point to you is that if the information is provided without the person whose personal information it is, then, effectively, they're being compelled, whether they know it or not. In her case she didn't know it.
- Kibblewhite Indeed, but I certainly don't think it was in the minds of the inquiry that they were compelling that information; they were seeking information.
- Collins No, they just weren't thinking about it, were they, I think is what we've found it. The other issue is Mr Thorn has produced a written statement to the committee, where he has criticised the level of engagement between Mr Henry in his inquiry and Parliamentary Service. I think he refers to a third-tier engagement, which, he has said, has put at risk and did put at risk the ability of Parliamentary Service to protect members of Parliament and the other users of the parliamentary complex to protect their privacy. When you engaged Mr Henry, did you make it clear to him that he could engage at any level, that he could go to the IT contractor employed at, or contracted to, Parliamentary Service to get that information, or did you leave that up to Mr Henry?
- Kibblewhite Well, as I've said, I was very mindful that Mr Henry should act independently in the inquiry. You've seen the emails, as I have, and there

- was extensive discussion of authorisations for various bits of information throughout those emails.
- Collins So you left it up to Mr Henry; you didn't say you can go to the IT guy that happens to be contracted today?
- Kibblewhite No, I certainly did not.
- Collins All right. Are you aware that members of Parliament, whether they are Ministers and members of the executive or members of Parliament—all of our executive are actually members of Parliament first and foremost—do receive information which comes to them from constituents or personal information? Would you expect Mr Henry to have been able to access constituent information? Because most Ministers would deal with all of that information through the parliament.govt.nz email addresses that they use, rather than the ministerial email addresses.
- Kibblewhite I would only expect Mr Henry to access information that was relevant to the inquiry, and I would only expect him to do it after receiving the appropriate authorisations from those who held the information.
- Collins Why would you expect that? What did you say to him?
- Kibblewhite I think the terms of reference set that out for starters—and I think it effectively goes without saying that he's not on some sort of wild romp, and I don't think that's how he interpreted his role.
- Tolley So if I just refer you back to the terms of reference, given what you've just said in relation to Ms Collins, what did you understand by the line at the bottom of this, talking about "All relevant rules of natural justice will be observed in terms of any persons identified in the conduct of this inquiry."? What did you expect when you put that in the terms of reference?
- Kibblewhite Well, certainly, in the first instance, what I expected was that if any accusations or statements were being made about the culpability for the unauthorised disclosure, whoever was so mentioned would have every opportunity to comment on and reflect on that. That was fundamentally what I interpreted.
- Tolley And that was the only context of natural justice?
- Kibblewhite Well, I think natural justice is no doubt a broader concept than just that—
- Tolley Absolutely.
- Kibblewhite —and, in part, why we got somebody of Mr Henry's standing to do this inquiry was because he would have a good and sound understanding of that. He'd been involved as a commissioner on the royal commission for Pike River, which clearly would have dealt with all of those sorts of issues.
- Tolley And would you have understood, though, that might mean if you were examining, for instance, a journalist's records, location within the building, that that journalist might be contacted and made aware of that, in the interests of natural justice?

- Kibblewhite Well, certainly, that would be one possibility, but I would expect that Mr Henry would undertake the inquiry, making the judgments about what information to ask for and getting sufficient confidence that the information had been authorised, taking into account all those sorts of principles.
- Robertson Just to follow up Ms Collins' question, just to be clear, is it your understanding that the authorisation for the access to the records of MPs, effectively, although as Ministers, was a result of Mr Eagleson's contact with Mr Thorn?
- Kibblewhite Certainly, I understand, as I think Mr Eagleson set out himself, that he had provided approval, if you like, for accessing Ministers' logs.
- Robertson I'm just taking this because of Ms Collins' point about the different roles people played. So it was that?
- Kibblewhite It was in the context of the fact that they were Ministers, and the Cabinet Manual clearly sets out that Ministers are accountable to the Prime Minister, and the Cabinet Manual actually doesn't discriminate between the various roles that a Minister holds.
- Robertson Just very briefly, then, one very quick point. In your submission, on page 3 you talk about the material that was provided in error to the Henry inquiry, i.e. email correspondence and phone logs. I would challenge that statement. Those things were asked for by the Henry inquiry, so they can't have been provided in error if they were asked for.
- Kibblewhite Certainly, the content of the emails was asked for by the Henry inquiry, subject, of course, to the appropriate authorisations. I think it was sent in error because it was sent without the appropriate authorisations.
- Robertson But it was asked for. That's my point.
- Kibblewhite Certainly, the email content was asked for—no question.
- Finlayson Right, now, before I go to—Mr Peters, do you have a question? Mr Brownlee has got a brief supplementary.
- Peters Well, Mr Brownlee has had a lot of questions. Perhaps I could get one. Before he gets to all his supplementaries, perhaps we could go through the full panel like it usually happens in question time, rather than giving a whole lot of people supplementary questions—
- Finlayson All right, fire away.
- Peters —and everybody has to wait. That's not how it is properly handled. So in answer to a question, you said that there wouldn't have been an inquiry unless the PM agreed.
- Kibblewhite Correct.
- Peters Well, you knew there was more than one leak from this committee, didn't you?
- Finlayson What was the question again, please?

- Peters The question is that you say here: “We would not have had an inquiry unless the PM agreed.” You said that that’s correct. You know there was more than one leak from the GCSB via the Intelligence and Security Committee, because that’s where it originally arose—for example, on the matter of morale of the GCSB. OK? So you’ve got now more than one leak, or were you only aware of one?
- Kibblewhite Certainly, I was aware, because I read it in the newspaper, the day after an ISC meeting in the prior calendar year, of that very story about morale in the GCSB that you’re talking about. So I was quite concerned that there appeared to have been a leak from someone in the Intelligence and Security Committee.
- Peters So you are aware that there was more than one leak, to your knowledge?
- Kibblewhite The one that you’ve identified is the only one that I was aware of.
- Peters OK. Did you think that was deadly serious?
- Kibblewhite Yes, I was very concerned that there had been a leak from the committee.
- Peters But up to that time there was no inquiry going on as to who this leak could possibly be.
- Kibblewhite The nature of the Intelligence and Security Committee is such that I am not allowed to talk about what happened in there, but I can, I think, in the interests of this committee, note that that committee itself had a conversation about the importance, reiterating, of not leaking from that committee, and they were all very mindful of that at a subsequent meeting, particularly because of the story on morale.
- Peters Hang on. That discussion was leaked as well, wasn’t it? That discussion was leaked as well, and it appears in the Andrea Vance article. So you’ve got the morale leak, you’ve got the very concerned about what’s going on leak, and now you’ve got the early leak of the report. Three leaks and you are saying that if the Prime Minister hadn’t agreed, you wouldn’t have had an inquiry.
- Kibblewhite Look, I’m not sure about the second one that you refer to. It may have even been that the committee resolved that they were happy to talk about that, so I cannot comment one way or another on that. But, no, certainly, it would be up to a Minister to agree—and, in this case, the Prime Minister—whether we have an inquiry. My role would be to advise him if I thought that was necessary, which is what I did.
- Peters Everything in your submission you think is relevant to this select committee hearing today?
- Kibblewhite Sorry?
- Peters Do you think everything in your submission is relevant to the select committee today?
- Kibblewhite Well, hopefully. That’s why I provided it.

- Peters Well, you're one of the ones that chose Mr Henry because you, amongst other things, including his roles as Commissioner of Inland Revenue—what did you know about that role?
- Kibblewhite I was conscious that, on a whole range of fronts, Mr Henry was a public servant of high standing.
- Peters Are you saying that that was a role he fulfilled with high standing?
- Kibblewhite I think he has fulfilled a wide number of—
- Peters There was a massive raid on the Treasury of this country. Don't you know about it? It was condoned by the head of the IRD.
- Finlayson Where are the elements of relevance on all these questions?
- Peters That's why I established relevance because I asked him—his submission in writing—was it prepared with relevancy to this committee. He said yes, and I didn't see you demur then, so now I went straight to the issue that he said is relevant and you want to stop me. I said there was going to be a botch-up long before Mr Henry made his inquiry known. And you know that, don't you? I said there was going to be a botch-up long before he made his inquiry known. Don't you know that?
- Kibblewhite I think you wrote to me, making some remarks along those lines.
- Peters Well, exactly. And it was a botch-up, wasn't it? That's why we're here now.
- Kibblewhite I don't think the inquiry was a botch-up at all.
- Peters Oh, you don't think it was a botch-up? Well, what do you think you're doing in front of this committee now? What do you think you're explaining? We've got some people whose fundamental rights have been invaded and you don't think that's a botch-up?
- Kibblewhite Look, I think certainly some mistakes were made about handing information over, and I think those have been well canvassed and identified, so I certainly wouldn't say that everything has been perfect, but the inquiry has provided me with the assurance that I sought that public servants and all but one Minister had not leaked the report.
- Peters Mr Kibblewhite, who leaked the report, then? If this inquiry was satisfactory in your view, who was it that leaked the report?
- Kibblewhite Well, you can see the report of Mr Henry's, just the same as I can. What I have been assured by in the report is that there is no evidence that any public servant—and, certainly, Mr Henry was satisfied that all but one Minister had not leaked the report. It is another step from there to say who leaked the report, and I don't think that's absolutely clear.
- Peters Well, what sort of botched-up inquiry is it that doesn't get to the truth? We want to know who leaked the report. You're standing here, as a highly paid civil servant, saying no one, apparently, according Mr Henry, but there is a clear inference from his report that it must be one Minister. What is it? Is it satisfactory that you have a report costing a lot of money, hundreds of

- thousands of dollars, and a whole lot of people's time, and you don't know what the outcome is?
- Kibblewhite I think the cost of the inquiry was \$42,000, which I think is—
- Peters What about everybody else involved?
- Kibblewhite It was a short, sharp, and effective inquiry. What I have got from the inquiry is a great deal of assurance about systems and the integrity of staff inside DPMC and inside GCSB, and it is clear that all but one Minister were eliminated from the inquiry's view of who perpetrated the leak.
- Peters OK, so you cleared up all the people around you and we have an inquiry that does that with respect to other Ministers. At the end, you are satisfied with a report that doesn't identify who leaked the report in the first place?
- Kibblewhite I am satisfied with the report, subject to, I think, clarification that this committee can helpfully provide to some of the issues around accessing information.
- Peters Look, that's a banana republic inquiry, surely? Mr Kibblewhite, surely that's a banana republic inquiry, when you are satisfied with that sort of outcome?
- Finlayson You are starting to argue with the witness now and making submissions. We can deal with that—
- Peters Well, do you know who leaked them?
- Finlayson I beg your pardon?
- Peters Do you know who leaked the report?
- Finlayson We're here to discuss—
- Peters Apparently he's not interested.
- Finlayson The idea is primary fact evidence this morning, not getting too far into opinion or conclusions. There are certain matters that we're going to need to look at as a committee—very important policy issues. But the scope, as we discussed very early in this inquiry, was as I've said.
- Banks Who would have suggested that Mr Thorn should pack his bags?
- Kibblewhite Look, I think that's a question you'll have to address to Mr Thorn. That would relate to conversations that I wasn't privy to.
- Banks It seems to me that given the sort of legacy of these matters and the myriad of mistakes, if we could put it in a kind way, that were made by the leader of this, Mr Henry, that it was at least unfortunate and at worst very unfair that Mr Thorn has now gone and lost his livelihood. Do you agree with that?
- Kibblewhite What I can say is that I feel real regret that Mr Thorn has resigned. I think he has had a very fine career as a public servant.
- Banks So he's had a fine career a public servant, and he's got caught up in these matters, and he finds himself out of work and out of his livelihood. Do you think that's fair?

- Kibblewhite As I say, I think that relates to conversations between Mr Thorn and the Speaker, and, clearly, I'm not in a position to comment on that.
- Banks In terms of where we want to land with these matters, what have we learnt from this? Have we learnt, for instance, that we need to choose carefully the kinds of people that we put into these roles, and that Mr Henry indeed was a mistake? Have we learnt that?
- Kibblewhite I think we already knew that we need to think very carefully about the kinds of people we put into these roles. I don't think appointing Mr Henry to undertake this inquiry was a mistake.
- Banks Have we learnt that dealing with third-tier managers around this place, to get responsibility, was a mistake?
- Kibblewhite I think the discussions around making information available were clearly discussions that took place between the inquiry and Parliamentary Service. I think I heard Mr Henry say earlier that perhaps a degree of greater formality around some of those interactions may well have been appropriate, and I wouldn't disagree with that. Clearly, as the inquiry was under way, I made an absolute point of not involving myself in those sorts of things, given the points raised earlier about needing to ensure the inquiry was run in an independent fashion.
- Hipkins Just very briefly—the time line that you've provided us at the back of your submission doesn't include Wayne Eagleson authorising the release of ministerial emails. Why is that? From 9 May—between 8 and 10 May there was an email from Mr Eagleson authorising the release of those ministerial emails.
- Kibblewhite I'm sorry. I'm not aware of that specific email. I'm sure we can go and identify it. This was simply the chronology that was prepared when we went through and pulled out the key information.
- Hipkins It was the most substantive email, was it not? It was the one that basically said, yes, they were allowed to get the emails.
- Kibblewhite I think I'd have to take that request around that particular email—I suspect they are not held by DPMC, which may have been the reason—and we'd have to have a look at the specifics of it.
- Hipkins So the file—at the bottom of the page it says “time line of events public”. Is there a non-public version of this document?
- Kibblewhite I think the time line of events public would simply be the file name we put on that, because this was pulled together I think at quite short notice to get put out to inform the public discussion on these matters.
- Hipkins So there's no non-public version of the file, then?
- Kibblewhite Certainly there's been no attempt to in any way submerge any details, and I think Mr Eagleson was actually quite forthright and forthcoming in his testimony as to the nature of the conversations that he had with Parliamentary Service.

- Graham Thanks, Mr Kibblewhite. I appreciate the way you're answering the questions. I just want to refer back to the issue of the outcome of the inquiry itself, and the fact, as I think has been raised, that there is no clear indication as to the product of what the commission was meant to produce. My question to you is that on your page 2 you say here that "The Henry inquiry, unlike the formal Commission of Inquiry, did not have any powers to compel people to provide information. The expectation was that if Mr Henry considered he needed further powers"—etc.—"that would be considered as and when required." Can you elaborate for the committee as to precisely what that might have been? Given the report back that said because of the refusal of Mr Dunne to provide information, he could take it no further, so you as commissioner are in receipt of a conclusion that the matter is not resolved. Did you give consideration to taking it to stage two—and if stage two only involves the State sector and therefore officials, it would have to go beyond that—into something that empowers the inquiry or you to get the access from that particular Minister? What would be the nature of that further inquiry? Would it be a formal commission of inquiry or something else? Did you discuss with the Prime Minister whether to take it?
- Kibblewhite I think the inquiry did come to quite a clear resolution on a number of points. It provided a great deal of confidence that staff in GCSB and DPMC had not leaked the report, and it provided a great deal of confidence around all but one Minister. That is not the same as saying that the other Minister is guilty, but beyond that point matters moved into a different domain. They clearly moved into a discussion between the Prime Minister and Mr Dunne, which has been well discussed by both of those two, where Mr Dunne wasn't able to make the further information available, and the Prime Minister at that point, as I understand it, accepted his resignation.
- Graham It's one thing to accept a resignation, it's another thing to determine whether there should be a higher commission of inquiry of some kind, so I think my question still stands.
- Kibblewhite Well, a higher commission of inquiry was not something that we particularly contemplated going to, because we felt that this inquiry had reached a resolution.
- Graham I put it to you, with respect, that it had not. You have the resignation of a Minister. That's somewhat incidental. The question is you had not got the result. You had the option of going to another inquiry. Did you consciously decide not to do that? And why?
- Finlayson We're not here to just deal to those matters, Kennedy. This is a preliminary factual inquiry—
- Graham I will accept your judgment on this, Mr Chairman, but I would put it to you that if, in the stage two, when looking at principles for the future to recommend, then I think we do need to know whether, if a particular informal level of inquiry didn't produce the result required, was there a decision to take it to another stage, which was an option. I would like to

- know whether that option was considered and not exercised, and why. I think that's relevant to stage two.
- Parker I have two areas of question. The first is that it seems strange to me that it now appears the inquiry got information it shouldn't have got, and didn't get information it should have got. The first instance is obviously the journalist's logs and the phone records of the journalist. That's information that the inquiry shouldn't have got. One of them they said they didn't want; the other one they did want—being access logs. Then we've heard evidence this morning that until 23 May, everyone thought that Mr Dunne was happy for all of his ministerial emails to be handed across, the content of them. After he said he wasn't happy for all of them to be going across, no one got the emails that he had to put across because they were official documents that were, through a simple mechanism like the Official Information Act, properly obtainable. How did we get to this point? We've got information going to the inquiry that they shouldn't have got. The inquiry didn't get information that it should have got. We're left in the position of you saying: "Well, we only have one suspect, and the one suspect says: 'It wasn't me.'"
- Kibblewhite I'm not sure I understand the question.
- Finlayson It's more of a rhetorical.
- Parker Well, did you expect that the inquiry would get information that it wasn't entitled to?
- Kibblewhite No.
- Parker Did you expect that the inquiry would get all of the relevant information that it was entitled to?
- Kibblewhite Well, I certainly hoped that it would.
- Parker Did it get information that it wasn't entitled to?
- Kibblewhite Yes, clearly, it was sent some information—
- Parker Did it not get some of the information that it was probably entitled to?
- Kibblewhite If the member is suggesting there's a certain irony in the situation, I'm happy to agree with that.
- Parker My next question relates to metadata. The metadata here shows that over a period of less than 2 weeks there were 86 emails between Peter Dunne and Andrea Vance—a somewhat unusual turn of events, shown by metadata. The metadata also—and this is made clear in Mr Henry's report—said that the email log, which is part of that metadata, on the subject line showed that a meeting was set up between Peter Dunne and Andrea Vance on the day of, or a day before, the leak.
- Peters The day before the leak of the report?
- Parker Yes. The day before the leaked report was reported. We have a submission from the Office of the Clerk, and I will read it to you: "The issue of the release of metadata is one that the committee may wish to consider further in terms of providing guidance. It was not entirely clear to me what was

included in the metadata that was released, but the perceived wisdom now seems to be that metadata ought to be treated in the same way as the actual content of the email.”

I think what the Clerk is suggesting there is that the quantity of data or things that are in the metadata, like in the subject line, setting up a meeting, can themselves, effectively, be intrusions into privacy. Would you agree with that?

- Kibblewhite Certainly I think there is information included in what we’re calling metadata here, which, in particular, I think are the email logs.
- Parker So this distinction that seems to have been made, not just here but actually also in respect of the GCSB bill, between metadata and the content of emails is rather arbitrary.
- Finlayson Too far.
- Parker Well, it’s not for you, Mr Chair, to say it’s too far. It’s for this witness to say—
- Finlayson I have to decide on the question of relevance, and the GCSB legislation is not part of the purview of the inquiry of this committee.
- Parker Speaking to the point of order, which you seem to be raising, Mr Chair, the clerk of the committee says that the issue of the release of metadata—
- Finlayson You can ask questions on that.
- Parker Well, I just have.
- Finlayson You’ll need to range far and wide.
- Parker I have just suggested, Mr Chair, that the clerk of the committee is right, as evidenced by the fact that this metadata shows 86 emails in less than a 2-week period, which is very unusual in itself, and disclosed the subject place of a meeting on the day before a leaked document appeared in the media. If there is a proper privacy interest in that information not being disclosed— I’m not asking you to opine as to whether there was a privacy interest— doesn’t that show that this distinction between metadata and the content of emails is arbitrary?
- Kibblewhite I think that I agree with the Clerk, that it would be a very—
- Peters Mr Chairman, how many witnesses have you got now?
- Finlayson It’s very difficult—
- Peters I can hear three voices, and I can only see one witness up the front—
- Finlayson This has happened a few times this morning. Generally, people have been pretty good, but sometimes there are cross-currents and it’s helpful if the witness can answer the questions.
- Kibblewhite I’m very happy to. I think the Clerk makes a very useful point, and I think it would be very helpful to have that explored.
- Brownlee Just getting back to the reason why we’re having this inquiry, which is to work out what we need to do to reinforce the protections around members’

- communications and dealings with other people. Your stage one terms of reference stating to Mr Henry that the expectation was it was a [inaudible] and include review of all communications, copy of records, and everything else. It was never ever possible for him to do that, was it?
- Kibblewhite Well I think, subject to him getting the appropriate authorisation to have that information—
- Brownlee That's the issue. Just so we don't overreact in the way we do, and why we prescribe things from here, is it simply a failing on the part of DPMC to make clear to the inquirer the limitations of its inquisitive powers?
- Kibblewhite No, I don't think so. I think Mr Henry was undertaking to seek information from those who would provide it and who held it, and that's what he did.
- Brownlee But then he has reached a conclusion, whether you like it or not, he's reached a conclusion that it is unfavourable to someone who has simply sought recourse to a privilege that he thought he always had. I think that is one of the difficulties here, for us, and we're certainly going to have to sort that out with some pretty hard and fast rules.
- Kibblewhite I look forward to any guidance the committee can provide in that respect. I think that, in terms of seeking that information and getting the appropriate authorisations from Parliamentary Service largely, which held that information, but also from DPMC in relation to information of my staff, they basically acted in an appropriate way.
- Finlayson All right. Thank you very much Mr Kibblewhite and Mr Subritzsky.
- Finlayson If I can just say that it's now 12.30. I'm conscious that Mr Thorn may not be available next week.
- Brownlee Is Mr Thorn here?
- Finlayson And Mr Buchanan, you're here. I'm conscious also that there are other witnesses from the Parliamentary Service who will want to speak—Mr Stevenson in particular. Can I suggest that to accommodate Mr Thorn, subject to what you may say, Mr Buchanan, that if you like, we could have your opening statement and then hear from Mr Thorn. Would that suit you?
- Buchanan Mr Chairman, the intention was to have a short opening statement from Mr Thorn, followed by one from Mr Stevenson on behalf of the service. They have been prepared as complementary statements, and the proposal was going to have them both speak first, and then open for questions to both of them.
- Finlayson Mr Buchanan, by arrangement, is appearing as counsel for—
- Robertson Counsel for Mr Thorn?
- Buchanan For both Mr Thorn and the service.
- Finlayson Mr Thorn, I was given to understand that there may be some time constraints on you in terms of your travel arrangements.

- Thorn Yes, Mr Chair. I'm actually out of the country as from Friday next week, so the hearing would have to be reconvened—
- Finlayson Friday next week?
- Thorn Yes.
- Finlayson OK. So it could well be—I don't want to inconvenience you—we'll see how we go, but it could well be that you could be available next week, although it would be much more preferable from your point of view if we dealt with it today.
- Thorn I'd certainly prefer to.
- Finlayson Let's start, and we will see where we get to.
- Thorn Thank you, Mr Chair and the committee. I appreciate the opportunity to come and be heard on some of the issues that are now before the committee, in terms of the way that information is managed by the Parliamentary Service.

There are some key points I would like to make in terms of my personal involvement in these issues. First off, I would like to note that the service does generate and hold substantial amounts of sensitive information relating to members of Parliament, Ministers, and the parliamentary parties in the way that it performs its functions. Throughout my time as General Manager the service took its responsibilities extremely seriously in relation to that information. It was an axiom of my time as General Manager that the service holds this information on their behalf, as its custodian, and that it must not give that information to anyone other than the member concerned or with the member's consent and authority.

At the outset it's important for me to say that at no time was I, as the General Manager, ever approached formally or informally by either Mr Henry or any member of his inquiry team about the terms of reference or the inquiry itself. I believe that this was a contributing factor to some of the errors that subsequently occurred, and I will go into that in slightly more detail.

My staff involved me with four key decisions in relation to the inquiry. Although I believe that my decisions were based on sound principles, I'm in no doubt that the implementation of my decisions was undermined because of the extensive and ongoing interaction that occurred between the inquiry team and my staff over a lengthy period. This interaction removed some of the formality that I would have expected in such a process.

My staff informed me of the first request and sought my guidance as to whether it could be responded to. On seeing the email exchange, I instructed my staff that there was no authority for the service to release the requested information to any person other than the account holders. This was a request for metadata. In other words, the Ministers and ministerial staff identified in the email requesting the metadata had to be consulted.

I expressed concern to my staff about the lack of information concerning the nature of the inquiry or why the information was being requested. In

these circumstances I said that we would need to apply our normal approach to these matters and get the agreement of each account holder to access their account to obtain the information before handing any information over to a third party.

About a week later I was made aware of an email from Janice Calvert, the General Manager of Ministerial Services, who had now been approached by the inquiry team, seeking the same metadata information which I had refused to provide. Miss Calvert emailed my ICT staff, saying that she would be grateful if we would provide all of the information that, she said, we held on Ministerial Services' behalf.

The metadata information had been expanded at this point, to include email logs and cellphone and landline logs in relation to the same Ministers and staff members who were included in the first request. Miss Calvert noted in the request that Ministerial Services itself held the cellphone records for its staff based in ministerial offices and records for some Ministers who held phones in addition to those phones that were issued by the Parliamentary Service.

On being informed of the request, I directed that the position was unchanged. We needed written confirmation from each Minister that they were willing for us to make available information that we held in relation to them, although I agreed that we could hand over the staff metadata, on the basis of the email from Miss Calvert, as I considered that this was her authority as the employer of those staff.

I believe that that position was conveyed back to Miss Calvert. She then called me and we discussed the situation at length. In relation to employees, she confirmed that the staff had signed the DIA's code of conduct, which allowed their employer to gather and use information of the type requested. I agreed that we could provide the staff members' information on that authority. However, I reiterated that in relation to Ministers' records we needed authorisation from each Minister. Miss Calvert undertook to obtain that authorisation. She then emailed my ICT manager to confirm that situation.

Shortly after that conversation the Prime Minister's Chief of Staff, Mr Eagleson, contacted me in relation to the request. During my discussion with Mr Eagleson I reiterated my position that in accordance with our practice the service required written authorisation from the Ministers concerned before the service could give the inquiry any information from those accounts.

The discussion proceeded on the basis of seeking an understanding of whether Ministers had actually already consented to the information being released to the inquiry. In the end, Mr Eagleson satisfied me that Ministers had agreed to the information being released.

The rationale explained by Mr Eagleson was on a number of points. First, Ministers had agreed to the inquiry being set up. Ministers had agreed to the terms of reference, which stated that the metadata would be sought, as part

of the inquiry. The Prime Minister had made it clear to all Ministers that he expected them to cooperate with the inquiry. Mr Eagleson had written to Ministers' offices advising the Prime Minister's expectations of cooperation, and that no Minister had indicated that they were not prepared to cooperate with the inquiry. That conversation was followed up with an email, dated 9 May, which has been referred to.

I then directed my staff to make available the metadata information that had been requested. The service received a further request on 20 May that sought the full email content of certain emails between Mr Dunne and Ms Vance, which was referred to me by my CIO. I was most concerned at any suggestion that the service should release any ministerial email content without the account holder's knowledge or agreement.

I contacted Mr Eagleson by phone and advised him that I was concerned about the disclosure of the email content, and did not consider his previous authorisation covered the matter. We agreed, and I must say at this point that it was not a long conversation before we agreed—we both agreed—that he probably was not in a position to authorise the release of the content of Mr Dunne's emails, particularly as he was a support party Minister and the leader of a party.

Mr Eagleson asked me for additional time to consider the situation and get advice. I then left the next day, or thereabouts, to travel to Australia. I subsequently learnt that Mr Eagleson confirmed that position with Mr Stevenson, who was acting in my capacity.

I believe that I took a principled approach to the release of the information to the Henry inquiry, but I subsequently learnt that there were two errors in the way my decisions were implemented.

I would just like to pause at this point and note that I agreed to the release of the metadata information, based on an understanding that Ministers had consented to that, through Mr Eagleson. However, when I saw the request for email content, at that point I decided that there would be no further information provided to the inquiry that related to any Ministers and that any further requests relating to Ministers had to go back to the Ministers concerned. I wasn't even prepared to deal with them on the basis that the Minister might provide authority. The request had to go to the Ministers. At that point I believe that I changed the position that I had started from with Mr Eagleson.

In terms of the two errors, I understand that the content of Mr Dunne's emails had been provided to the inquiry. Mr Stevenson will provide more detail on how that error occurred. Although I was later advised of this error, I understood that the error had been discovered shortly afterwards and that the email had been successfully recalled. In addition, I understand that the file format of the content sent to the inquiry administrator was incompatible with the software used by the inquiry, and that the members of the inquiry would be unable to open it. I therefore considered that although this was a close call, the content of the emails had not actually been seen by the inquiry.

The second error involved the mistaken disclosure of telephone records from the Fairfax media telephone extension used by Ms Vance. Again, that is described in more detail in the Parliamentary Service submission. At the time that I was advised that this occurred, I was told that the information was not from Ms Vance's account as such, but, rather, it was information showing calls from other accounts on the precincts to her number. I advised the Speaker of this.

Subsequently, as a result of further work by my staff to ascertain the detail of what happened and how the records had been generated, I learnt that the report from the system had in fact been generated in reference to the extension used by Ms Vance and showed calls to and also from that number. Although the information was effectively the same, no matter which account it's released from, I can say that had the inquiry requested disclosure of telephone records specifically from Ms Vance, I would have refused that request unless her authorisation had been obtained.

The next request from the inquiry was the one seeking access to the swipe card records for Mr Dunne and Ms Vance. I considered the position as regards to Mr Dunne to be clear. The information related to his role as a member and/or as a Minister and it should not be released to the inquiry without his authorisation. I later spoke directly with Mr Eaddy of Mr Dunne's office, who confirmed that Mr Dunne was willing for that information to be given to the inquiry, and the information was provided on that basis—again, fully in accordance with principle and our past practice.

I did consider Ms Vance's building access records to be in a different category because she was not a member of Parliament, and there was no policy or precedent about how to deal with this part of the inquiry's request. Indeed, these issues are dealt with more by convention and practice than they are by any particular rules. I was aware that the press gallery has very broad access across the precinct, and in fact the press gallery has wider access across the precinct than any of the committee members or most MPs.

I was aware that the investigation was considering the unauthorised access to a classified report, and I'm also aware that there have been other issues that have involved the press gallery that suggested that it would be appropriate for me to release that information.

From my perspective it was a security issue, and the access rights that the press gallery have carried a commensurate responsibility on the gallery to act in accordance with the rules as laid down by the Speaker. These matters fell squarely within the guiding principles of the security policy for the parliamentary precincts. This policy required me, as the General Manager, to manage access to the precincts in a way that ensured a balance between access, as well as the protection of people, property, and information.

In the end I had to balance these factors. It appeared that the access to classified material might have resulted in a security breach within the precincts, and I decided that I should not second-guess those security

implications, and on that basis I decided to release the information to the inquiry.

In closing, I wish to reiterate the concern I have, in hindsight, about the way the inquiry went about its business. Direct approaches to third tier staff and the service's contractor, in my view, compromised the service's position and my position as the holder of sensitive information on behalf of members. During the process I became concerned about the lack of formality or clarity about the inquiry status and role. In hindsight, I should have contacted Mr Henry directly and expressed my concern about the way the inquiry was going about its work, but I did not do so.

I believe that the service and the other agencies involved in this matter will obviously benefit from any guidance that the committee can provide about how members' information should be managed in the future. I believe that some important, but also very complex, issues have been raised. Thank you, Mr Chair.

- Finlayson Mr Buchanan, do you want Mr Stevenson to read his—
- Buchanan I think it would be helpful, Mr Chairman, because it does cover a little bit more detail of the mistaken disclosures of the information, and it would be helpful for completeness, I think. It won't take too long.
- Finlayson I invite comments from members as well. I've just briefly had a chat to my deputy chair. Next week, say? Would that suit people to come back? Would that be convenient to you, Mr Stevenson?
- Stevenson Yes, it is.
- Brownlee It's very bad timing.
- Finlayson It's a very bad time.
- Parker Mr Chair, I would say that we can't do it properly today. Mr Thorn goes away at the end of next week, so we effectively either have got to do it later this week or next week.
- Peters Just for Mr Thorn?
- Finlayson Well, we could try to deal with all witnesses. Look, I thought—it's my fault—we could short cut it, but maybe we just have to have a discussion, because we know Mr Thorn's movements, so we'll just have a discussion with the committee at the end of Mr Stevenson's statement.
- Buchanan Given that there's not really effectively any time for questions, it is probably worthwhile hearing from Mr Stevenson, and then you can consider what to do from there. Great. Thank you, Mr Chairman.
- Finlayson I emphasise Mr Stevenson that we've read the submission, so you can take it as read but you're more than welcome to make any additional comments or provide a summary, or whatever.
- Stevenson Good afternoon. I'm David Stevenson and I'm the Acting General Manager of the Parliamentary Service. By way of statement I wish to make the following points. First, it is important to understand that as a service we

received and dealt with four separate requests for information relating to the Henry inquiry. These requests are set out in my submission.

Secondly, it is important to note that each and every one of these requests, the decision whether to comply with them, was rightly made by the General Manager of the service, who at the time was Mr Thorn. This was despite the fact that, as Mr Thorn has said, at no stage did he receive any communication directly from the Henry inquiry about the terms of reference, legal status, or the nature of the information it needed.

Thirdly, the requests were not and were never regarded as legally binding on the service. For each request, therefore, as he has said, Mr Thorn applied the fundamental principle used by the service in its role as the provider of ICT and security services to the agencies which occupy the parliamentary precincts.

That principle is that the service holds members' and Ministers' information as their agent, directly through the Ministerial Services and secretariat branch of DIA, and that information may not be used in any way without the express consent of those individuals.

Mr Thorn's decisions were that he would not allow any members' information to be released to the inquiry unless he could be satisfied in each instance that such authority existed. He required the equivalent authority for ministerial and support services in relation to the Ministers' staff, on the basis that they are DIA employees.

Where he was not satisfied that such authorisation existed, Mr Thorn directed that the inquiry's requests be refused. That was in the case in respect of the first two requests, until appropriate authorisation was provided; the third request, in so far as it concerned Mr Dunne's emails; and the fourth request in respect of Mr Dunne's swipe card usage.

Fourthly, the factors relevant to the inquiry's request for Ms Vance's building access records were different from those relating to the information held on behalf of members. Ms Vance was not an MP. As Mr Thorn has said, his decision on this request came under his ultimate responsibility for security on the parliamentary precincts. His decision that that requested information should be given to the inquiry was made in the exercise of that responsibility.

Fifthly, the service knows that its implementation of its General Manager's decisions on the second and third requests—that is, the requests for the phone records and the content of Mr Dunne's emails—was less than adequate and resulted in the mistaken disclosure of information to the inquiry. The information that was wrongly disclosed can be described in simple terms. First, records from the Fairfax media parliamentary telephone extension used by Ms Vance showing calls to and from the extension, in addition to the records of Ministers' and staff members' telephones, for which authorisation existed, but for which no data could successfully be extracted. Second, an electronic file containing a number of Mr Dunne's emails, which was not removed from a larger zip file containing the

ministerial staff emails, was sent in error to the inquiry administrator. The error was picked up immediately, and the inquiry administrator was contacted before he had an opportunity to open the file. He undertook to delete the file. The email was recalled by the service, and in any case we later found that the zip file had been sent in a form that the inquiry could not open.

Sixthly, the service accepts that these two errors occurred because of our inadequate oversight of staff, including the Datacom Wellington staff who were given the rather difficult task of extracting the phone records that were being sent to the inquiry, at Mr Thorn's direction, once he had received the necessary authorisation from Ministers and DIA to release them.

The service accepts that errors have undermined confidence in its role as the custodian of parliamentary information. The service apologises to those concerned.

Seventhly, and in the service's defence, it needs to be understood that the task of identifying and extracting information for the inquiry, particularly in relation to the metadata of the phone records, became protracted and highly complex as a result of repeated requests and refinements received from our staff by the inquiry administrator. The task was also unprecedented. None of this metadata had ever been analysed before, for the simple reason that it is not our role to analyse it. We are merely the custodians of this information.

As our written submission explains, Datacom is our ICT service provider and has staff based in our Bowen House offices. We had to rely on Datacom to extract that information to the inquiry. Our contract with Datacom already had stringent confidentiality requirements, and because their personnel work in our office they understood the sensitivities involved. However, we also stressed to Datacom in this particular instance that we needed to treat these requests with the utmost confidentiality.

The only reasons any records were extracted from the Fairfax telephone extension was that when Datacom attempted to run reports to the ministerial extensions, they showed no results. Datacom ran a test in order to show that the systems were capable of producing data. These records were then given to the inquiry, without authority but in a genuine and good-faith attempt by a staff member to provide useful information that would satisfy the inquiry's request.

In relation to Mr Dunne's emails, it is important to explain that our staff knew there was no authorisation to provide them to the inquiry. This had been communicated by Mr Thorn, following discussion with the Prime Minister's chief of staff. That said, the zip file containing all the emails should have been checked before it was sent, to ensure Mr Dunne's emails had been removed.

Finally, I can report to the committee that on taking office as the Acting General Manager of the service I engaged KPMG to carry out two urgent reviews. The first involved a thorough review of all the communications

and interactions between our staff and the Henry inquiry team, leading up to the authorised disclosures and the two unauthorised ones. This was in response to the confused picture that was emerging, both in the public domain and in our own efforts to get to the bottom of what had happened.

We now have the benefit of an excellent piece of work by KPMG, which I am confident has got to the bottom of what went on. We have drawn on that analysis, and the written material that I have provided you here today. I refer members in particular to the two appendices in relation to the phone records and Mr Dunne's emails respectively, which include spreadsheets of all the communications and two very helpful Visio diagrams which plot the course of the decision making and the ongoing interactions we had with the Henry inquiry team.

The second step I took was I also instructed KPMG, in light of the events, to undertake an immediate review of our information management policies and practices, particularly in reference to members' and Ministers' information. The interim findings I have received indicate a need for the service to carry out further work to enhance information management policies and to document more clearly and accurately our practices in relation to the information we hold as custodian for members and others who work in and occupy the parliamentary precincts.

I would like to say, from a personal perspective, having been with the service for nearly 2 years, that from my experience the Parliamentary Service is a very risk-averse organisation. The service mentality is ingrained in all the staff, and it is well-understood that we gather and hold large amounts of highly sensitive and confidential information on behalf of members and those who work in the precincts. But, if the KPMG review identifies that we need to embed that ethos more effectively in our operating policies and management processes, then I will make sure we do so.

I personally regret that the service let down customers, through these lapses. My intention with the KPMG review is that I will discuss its findings with the Speaker, as our responsible Minister, and then institute a programme of work to implement them, in conjunction with the learnings from these events. In this respect we will also welcome any guidance this committee may produce in relation to how, in future, such matters should be addressed.

Finlayson

Thank you very much, both of you. I'm going to ask all members of the public and members of the media to leave, and we will just have a brief meeting in committee.

conclusion of evidence

Appendix F

Corrected transcript of evidence 22 August 2013

Members

Hon Christopher Finlayson (Chairperson)
 Hon David Parker (Deputy Chairperson)
 Hon John Banks
 Hon Gerry Brownlee
 Hon Judith Collins
 Dr Kennedy Graham
 Chris Hipkins
 Rt Hon Winston Peters
 Grant Robertson
 Hon Anne Tolley
 Hon Tariana Turia

Witnesses

Geoff Thorn, former General Manager, Parliamentary Service
 Robert Buchanan, Counsel

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| Finlayson | Good morning, Mr Buchanan and Mr Thorn. Thank you very much for coming back. Apparently, we have this large room until about 9.40, so we'll just launch into it, if that's all right with you. Mr Parker, do you want to lead off? |
| Parker | Yes, thank you both for your openness, for a start, and I'm sure we all regret the step that you felt you had to take, Mr Thorn, at a personal level. Can I ask you, firstly—

[Interruption to deal with sound issue] |
| Parker | You said in your opening remarks that you were surprised that you weren't contacted and that the contact was at the third tier, or the second tier—can you tell me what contact you had personally with the inquiry? |
| Thorn | I personally had no contact at all until it had reached a point where I had made it clear that we were going to provide no further information relating to Ministers, unless the Ministers expressly agreed to it, and that was, I think, after the point that I was aware of the request for Mr Dunne's email content. And I thought I had been reasonably clear about that. I got a phone call from my CIO to say that Mr Holliss was in his office seeking clarification or further information, and he asked me whether he should bring him up. I said "No, I will come down." I went down to the CIO's office and I spoke to Mr Holliss and said "Look. I don't wish to be bureaucratic or put up barriers, but this is the way that it's going to be played. We're not providing further information." I tried to do that in a way |

- that was conciliatory and to be seen to be providing what assistance we could, but that was the only conversation I ever had with anybody from the inquiry.
- Parker Did that conversation take place after you had said that you wanted express authority to release the content of Ministers' emails?
- Thorn From memory, I believe so, yes.
- Robertson Can I ask a supplementary on that? In your written evidence, Geoff, it's clear that Mr Holliss made a lot of contact with your staff and there was a lot of expansion of the requests and so on that were being made. The example you've got in paragraph 44 of your thing is that—this is what Mr Parker was just asking you about—Mr Holliss has actually come to the offices and is making requests in person like that. Did you regard that as unusual, or is that the kind of behaviour you were expecting?
- Thorn No, it wasn't. I think if there was a failing on my part, it was by not putting in place formal processes within the organisation to deal with the way the inquiry was being conducted and to manage the information requests. And it wasn't until after the KPMG investigation that I got a full sense of the scale of the interaction between the inquiry and my own staff. In fact, if you look at the Visio diagrams, you can see that there's a large amount of activity between the inquiry and my staff and, indeed, Datacom, which I was not privy to at the time.
- Parker Did you at the time see a difference between what's been called metadata and the content of emails?
- Thorn I did. I didn't have a huge comfort level about providing metadata. This is a situation that is unprecedented. In the past, whenever anybody has requested information relating to an MP or a Minister, I've always sent that request back to the individual Minister or MP. I've never provided it directly to a third person, even on the agreement of the individual account holder. I've always provided the information to the account holder and then they make their decision about what they do with it from there.
- Parker With the benefit of hindsight and having probably heard me read out what the Clerk of the House said to us in her submission that metadata raises privacy concerns, just the quantity of emails, for example, or the fact that inside that metadata was an appointment time—do you now have more concerns that that division between metadata and other information that might be more private is a bit arbitrary?
- Thorn I think metadata does disclose some information. In this case, I believed that I was acting on the authority provided by Mr Eagleson. So as far as I was concerned, I was not prepared to release anything until it had been approved or agreed to by the individual Ministers. Mr Eagleson was able to convince me that he had the authority to say that that had been provided and that Ministers had agreed to that. On that basis I was prepared to release the metadata. I didn't have a high comfort level with that, but I agreed to it. But as soon as there was a request made for one Minister's

- email content, I immediately put the flag up at that point and said no, that's too far.
- Banks As soon as what?
- Thorn As soon as there was a request made for the content of emails belonging to a Minister, I decided that that was simply one step too far.
- Banks So the metadata thing you were happy to go along with but a little bit shaky on, but when it came to content, the alarm bells started to ring?
- Thorn I certainly was not comfortable at that point. I wanted to revert back to my normal process, which is to send the request directly to the Minister.
- Robertson Just to go back a step. It is quite clear from your evidence that when at first Isaac Holliss made the request for the metadata, you said no. When Janice Calvert made the request for the metadata, you said no. Then when Wayne Eagleson made the request for the metadata, that was the point at which you said you were "able to be convinced", but you didn't have a high comfort level. Why was Mr Eagleson able to convince you of that?
- Thorn I think I went through those points yesterday. Basically, the points that we discussed were that the Prime Minister had agreed or ordered the investigation. Mr Eagleson had written to Ministers about it. Ministers were aware of the terms of reference. The Prime Minister had made his expectations of cooperation with the inquiry quite clear—that no Ministers had come back and said they would not cooperate. So on that basis Mr Eagleson believed that Ministers had, in essence, agreed to the release of the metadata. The other aspect of that is that the metadata—we're talking about scan records, photocopiers, email logs, and telephone logs—was part of the terms of reference. So when you put all of that together into a package, it seemed to me that Ministers had given their consent to that.
- Parker How could the Ministers give their consent through the terms of reference?
- Brownlee I think that's an unreasonable question, Mr Chair. The reality is that the terms of reference were discussed obviously by Cabinet—
- Robertson Were they?
- Brownlee Therefore Ministers would have known what the matter was.
- Robertson I didn't know that. They discussed it in Cabinet?
- Brownlee Oral discussion.
- Parker Mr Chair, I think my question is fair. One of the justifications for belief that Ministers agreed to release this data was the terms of reference, but I don't see how that conveys consent of people to disclosure of information.
- Thorn I mean, I can't comment on that, because I didn't second-guess where Mr Eagleson was getting his authority from. It's not unusual for me to deal with chiefs of staff over matters of this nature. So I relied on Mr Eagleson's authority as a chief of staff.
- Finlayson Extensive authority.
- Thorn Yeah.

- Hipkins Mr Chair, can I ask a supplementary on that? I guess Parliamentary Service is in the unique position that while you report to the Speaker, you're a provider of services to Ministerial Services. So where do you see your accountabilities lying, for example, with regard to data held by Ministerial Services? Is that still to the Speaker, to whom you report as Parliamentary Service, or is that somewhere else?
- Thorn I was accountable to the Speaker for the provision of services. In terms of the accountability for the data, I don't believe that I ever had an accountability to Ministerial Services for that. I note in Janice Calvert's email she considered that we were holding it on Ministerial Services' behalf. I didn't agree with that and I had that discussion with her. I believe that we were holding that information on behalf of Ministers and members. I have always believed that we only ever hold that information on behalf of the Ministers. We're providing a service to members although we are contracted to Ministerial Services to provide that, I believed that it was directed to Ministers.
- Hipkins Just to clarify on that, so, ultimately, your accountability therefore is still to the Speaker rather than to the Prime Minister as Minister responsible for Ministerial Services?
- Thorn The accountability for the provision of the service is to the Speaker. The accountability in terms of the protection of data is to the members and to the account holders, basically.
- Parker Just one final question. Are you surprised that the inquiry—having sought very broad levels of information through the Parliamentary Service computer route, when that, about 23 May, was cut off by Mr Dunne—didn't look at how else it could get that information properly, for example, through the Official Information Act?
- Finlayson It's verging on a question of law, asking him to interpret that.
- Parker Well, I'll take out the Official Information Act, then. Are you surprised that having sought the information so assiduously through you, it appears that they didn't try to get it any other way?
- Finlayson And then you're asking a primary fact witness to give an opinion.
- Thorn Yeah, and I don't have a view on that.
- Finlayson That is contrary to you said in our preliminary meeting about just dealing with primary facts.
- Robertson There was a lot of that yesterday, Mr Chair—more so.
- Peters I think we're entitled to know it passed his mind that that would be another way of getting the information. I think that is not really a question of law. We've got someone in front of us. He can give us the answer as a matter of fact or not.
- Parker I'll put it another way, then. Are you aware that it's not normal for people wanting to get official information to get it through you, but rather to get it under the Official Information Act direct from the Ministers concerned?

- Thorn I receive requests from time to time for exactly that information, and my response is always to send it to the Minister. So I didn't form a view on whether the inquiry had other avenues open to it. As far as I was concerned, I had closed the door on providing that information myself. It was up to the inquiry to decide how it wanted to behave from that point on.
- Brownlee Firstly, thanks for the email that you sent clarifying the position for all of the members of the committee with regard to Mr Eagleson's discussion with you. Secondly, what is the purpose of the swipe card monitoring that is kept by the PSC?
- Thorn The security policy is reasonable clear. It is about balancing access along with security of people, property, and information, and the security information is only ever used for examining issues that relate to security.
- Brownlee How long is it held for?
- Thorn I actually don't know the answer to that.
- Brownlee What was the time lapse between the request for the swipe card information about the persons involved in this case and the provision of that information?
- Thorn I'm not sure I understand the question. Are you talking about how long did it take for the service to provide it or how long between the events and when it was asked for?
- Brownlee Well, it relates to the first question. I'm really interested in how long you hold all that information.
- Thorn I actually don't know the answer to how long we hold it. We could find that out.
- Finlayson That would be helpful.
- Brownlee And the purpose is, you say, for security?
- Thorn The security of people, property, and information.
- Finlayson And you can identify, can't you, pretty well immediately if someone has gained access to a particular floor. So, for example, I go into my office on a Sunday, and often one of the security officials will come up in about 10 minutes. So you know that there has been an entry.
- Thorn Yes, we would. And I think we would know also if there had been an attempt to gain unauthorised entry. So if somebody had used a card at a swipe area that they were not entitled to pass through, that would probably show as a flag.
- Brownlee You must get a lot of those with my name of it because I'm always being barred from all sorts of places.
- Robertson The cafe is closed on a Sunday.
- Brownlee No, no—your office is the one I've been trying to get at. The seat of power for the Labour Party.
- Finlayson No, no, we're bipartisan. Dr Graham, I think, had a supplementary.

- Graham Two questions, Mr Chair. The first is essentially picking up from this discussion. I'm interested in the relationship between the expectations on the part of the inquiry and what they perceive to be your responsibilities, and how you perceive those responsibilities to be, because it seems to me to have been a catch-22 situation which has landed us in this difficulty. Yesterday we heard from Mr Henry that based on the principle of necessity he felt free to ask whatever he deemed necessary for the inquiry, and he left it to the recipient of that request to determine whether it was appropriate or not. So, in your paragraph 42 you say: "...I was by this time aware that Mr Henry had been asked by the Prime Minister to inquire into access to a sensitive classified report ... and it appeared that the access might have resulted from a security breach within the precincts. I decided I should not second-guess those security implications ...". So the inquiry sees no limit in what it can ask in terms of what is necessary, and you, because of security implications, do not feel free to second-guess that. That is not an even or principled—and I mean principled in an abstract sense—situation. Now, can I ask you what you perceived those security implications to be; to what extent were they so important that you couldn't second-guess? The security dimension of this is a domestic political kind, not a national defence kind, and almost by definition of that you ought to have been on notice—and I think also Mr Henry himself, but both parties should be on notice—that there would be natural constraints. Yet on the part of the inquiry they felt no constraints and you felt obliged not to exhibit any constraints. That's unsatisfactory.
- Thorn Yes I understand the point that you're making. I was surprised, actually, to hear Mr Henry's testimony yesterday to say that he believed it was Parliamentary Service's responsibility to decide what was appropriate to provide and that it was Parliamentary Service's responsibility to seek that authorisation, because I had placed some weight on the fact that he had asked for Andrea Vance's security records. So I was in a situation where I had to balance security of information against a situation where a person had unauthorised access to classified information. I had not had any conversations with Mr Henry about the theory of his case, what exactly he was intending to do with that information, how that would contribute to his inquiry, so I couldn't second-guess what he was actually looking for or what he expected from that. So I believed on that basis that it was appropriate to release it. In hindsight, and looking now at his testimony yesterday, I should probably not have put as much weight on his request as I actually did.
- Graham So just on that, did it occur to you at that particular point in time that you should, or he should, have communicated with each other?
- Thorn It didn't occur to me at that time, but in hindsight that's one of the things that I probably should have done, and I think I've said that in my submission—that there's probably at least one point, which is probably at the time that I was aware of the request for Mr Dunne's email content. But at that point I probably should have picked up the phone, but I didn't do that.

- Graham Yes, OK. Thank you. The second question, Mr Chairman, just picking up in a sense from what Mr Hipkins was exploring—the relationship between the legislature and the executive, which seems to me to underpin all of this, and we have a very messy relationship, especially in this country, I think. In terms of the ministerial responsibility, we have already established that your strict reporting responsibility is to the Speaker, and the Speaker recognises that. He in his own ruling on 11 July refers to himself in the role of Speaker as a responsible Minister, and in his media statement of 30 July he says: “As Speaker I am responsible for the Parliamentary Service and I have instructed the general manager to look at internal controls.” And on 1 August he expresses his regret at your resignation. He says: “I acknowledge that the confidence in Parliamentary Service has been undermined by events, and as general manager Mr Thorn accepts responsibility for this.” Has the Speaker intimated to you at any time his own perception of his responsibility for these events that led to your resignation?
- Thorn We haven’t discussed that expressly.
- Graham Did you have a discussion? Presumably when you were about to make known your resignation—I guess that was your decision—did you discuss that with the Speaker in advance?
- Thorn Not in advance. I think there had been some conversations with him that became clear to me, as I was trying to provide advice about parliamentary questions, that I was unable to find some of the answers. I felt that that was a failing on my part to put the right processes in place, and, therefore, I offered my resignation.
- Graham You offered your resignation—
- Banks Can I just—
- Graham —just a second—you offered your resignation to the Speaker?
- Thorn To the Speaker.
- Banks Why? Supplementary. We need to know. You offered your resignation to the Speaker because you thought the Speaker was looking for your resignation, or you knew the Speaker was looking for your resignation? How did that work? What discussions did you have about you leaving your job with the Speaker?
- Thorn The discussion that I had was at the time that I offered my resignation. We had been working through some parliamentary questions. There had been some errors in some of the answers. I had provided advice based on my understanding of the facts at the time. I subsequently found out that those facts were incorrect. I was having difficulty establishing exactly what the facts were and exactly what had occurred within the organisation. When I look back now, actually, at the KPMG material, I now understand why. But I felt that I had let myself and the Speaker down by not putting in place the processes that would have normally been appropriate. So I offered my resignation.

- Banks Now knowing what you now know about all the other stuff around this, did you do the right thing or should you still have this job, or do you feel that you have been a scapegoat?
- Thorn I don't believe I have been a scapegoat. I did not put in place the processes I should have put in place. There were two errors made where I believe information was provided. It was provided not authorised. I certainly did not authorise it, but for whatever reason—I don't know that we can go into the detail of that—that was provided. As I said to an earlier question, I could have picked up the phone and spoken to Mr Henry. I didn't do that. So I felt that I was responsible for part of the mess that we actually do have here.
- Banks But Mr Henry could have come and seen you as well, couldn't he?
- Thorn He could have, and I could have spoken to him, as well.
- Banks Have you ever met Mr Henry?
- Thorn No.
- Finlayson Can I ask one question? In the course of your work in over a number of years, would you have had a number of interactions with, say, the Australian Parliament, Canadian Parliament, and so on?
- Thorn I meet once a year with my counterparts with the Australian State and Federal Parliaments. I've got a good working relationship with them.
- Finlayson And just looking forward as we deal with this issue, are you aware about whether they have policies to deal with these sorts of access issues, particularly for the media? Well, obviously, we are dealing with different factual situations, but it could be a fruitful source of inquiry for us looking forward.
- Thorn I'm not sure that they do. I believe that we're actually in uncharted waters here. This is unprecedented in the way that this has occurred. It's unprecedented for me to agree to provide material to a third party rather than directly to Ministers or members. I don't know that anybody has actually dealt with a situation like this in the past.
- Peters Yes, they have. Supplementary. Do you have a precedent file in your operation so that past things may be recorded as to how you handle them?
- Finlayson Sorry?
- Thorn We do record some—
- Peters Does he have a sort of precedent file on past activities or actions like this and how they were handled by the prior system or the Speaker at the time? Because I want to know whether you've established a sort of working manual based on precedents in your office, or is there one? I'll give an example. Accessing a person's swipe card record has been refused by the Speaker in the past, and by Parliamentary Service. Are you aware of that case?
- Thorn No, I'm not.

- Peters Well, it's a case, some of you may recall, of the ACT Party fund-raiser in the rooms of Parliament, and other parties were prying into who came to it—who put it on and when it happened. The Speaker Doug Kidd at the time denied that knowledge to any political party. He denied knowledge at all and any use of the information for the record to get there. So this is a precedent for you.
- Brownlee That's why the purpose was important.
- Peters Pardon?
- Brownlee That's why my question about the purpose was important.
- Peters But there is a precedent in the sense of knowing what you—
- Brownlee No, it's not. It's not a precedent.
- Collins Mr Thorn, In your written submission you've mentioned that you felt that Mr Henry had undermined you by going to, basically, third-tier people. When you knew that he had, why didn't you speak to him?
- Thorn I don't have an answer for that, and that's the one thing I failed to do that I believe I let myself down on.
- Collins OK, so you failed to do it, but then why didn't you take that issue to the Speaker? Or did you take it to the Speaker?
- Thorn At the time I believed that I had the authority from Mr Eagleson to provide the metadata. If I get requests from various people for information relating to Ministers or members, I provide that request to the Minister or member. It may be that I assist, or that our staff assist—
- Collins No, no, that's not the question. The question really is that if you were concerned that Mr Henry was going directly to contractors, first off, you didn't actually raise it with Mr Henry—which I think none of us can think why, including yourself—but then why didn't you elevate it to the Speaker? And what matters would you elevate to the Speaker?
- Thorn Where I was going with my answer was that I don't provide the Speaker with all of the incidences where things like that occur. I think if I had decided I needed to elevate it to the Speaker, I would first have made contact with Mr Henry. I actually didn't do that. This is the one area where I believe I've let myself down, so I don't have an answer for you on that.
- Collins So why did you resign?
- Thorn Because I believe that I let myself down, the service down, and Ministers.
- Finlayson You admit that there was no precedent for this sort of inquiry. In paragraph 41 you say there was no policy or precedent about how to deal with this matter, so it was uncharted territory.
- Thorn Yes it was, but I still had principles that I believe I was trying to uphold, and they had been undermined.
- Graham Your comment just a second ago that "I believe I had authority from Mr Eagleson" seems to me to be the nub of it. Mr Eagleson is not in a position to give you authority. He gives, on behalf of the Prime Minister, directions

- to Ministers to do something, but not to you. Essentially, Parliamentary Service is a part of the legislature in an operational sense. You report to the Speaker. He is in a position to ask you for something, not authorise you to do something. That is the distinction.
- Thorn I see the distinction slightly differently. What I was looking for was consent from each of the Ministers to release that information. Mr Eagleson, as the chief of staff, I believed and he believed, was in a position to provide that consent. So he wasn't directing me—
- Graham But that's conveying information to you, not authorising you to do something.
- Thorn Yes he was conveying information to me. He was conveying to me that Ministers had consented to the release of that information. But he was not directing me. He was—
- Graham You used the word "authorised" here.
- Thorn Yeah. When I used that word "authorised", what I'm saying is that he was providing me with the authority that I required before I would release that information.
- Peters The problem is that Mr Eagleson says to you two things: "This is the Prime Minister's wish.", and "I've cleared it with the Ministers by writing to their secretaries." Why did you construe that to be consent?
- Thorn There were a number of other factors in that. The fact that Ministers were aware of the terms of reference that the request was in line with—
- Peters But they can be aware of all those things, but none of that is acknowledgment of "Yeah, I know what you're asking for, and I'm signing out. You're right to pick this up now." That's what you would have been required of any circumstance. So why did everybody fall short of that?
- Thorn My normal process would be to get—and I asked for this on two occasions—express agreement from each of the Ministers involved. The conversation I had with Mr Eagleson was that he was able to provide that consent in a block consent to me. So I didn't question that any further. I didn't question his authority to provide that authorisation.
- Robertson Well, just on that point, it is quite clear from the email that Wayne Eagleson sent you, which you furnished us with a copy of today, which begins: "Geoff, further to our discussion, this is to confirm that the Prime Minister would like Parliamentary Service to provide ... ". So I think that explains where you're coming from, but it also raises the concern that Kennedy Graham has raised that you're not actually responsible in that particular instance to the Prime Minister.
- Thorn No, and I didn't consider that I was doing it at the behest of the Prime Minister. I believed that I was doing it because Ministers had consented, and that was conveyed to me by Wayne Eagleson. So I understand the subtlety of it, but I was looking at it in a different way.

- Robertson I want to ask you a different question about consent, and that's around why you did not seek Andrea Vance's consent to release her swipe card records.
- Thorn I believed that this was a security matter, and at the time, I put some weight on the fact that she was a journalist. I also put some weight on the nature of the request—the fact that it was an investigation into unauthorised access to classified material. And I had to balance those factors against themselves. In the end, I came down on the position that it was a security issue, and that it was appropriate to release that information.
- Robertson Why was it relevant that she was a journalist in terms of whether or not you should be seeking her consent?
- Thorn I do understand the role that the media has in the precinct, and I believe that that required some weight. But at the end of the day, I decided that actually the nature of the request, the nature of the investigation, the nature of the issue determined that, in fact, it was a security issue, and that it was appropriate to release that to the inquiry.
- Robertson So you're not making any differentiation between different types of security issues here—security in terms of physical security versus a security thing around the fact that a journalist appears to have access to a document? I mean, there was nothing at that point to indicate that that access to that document had occurred inside this building, was there?
- Thorn But I was not aware of why the question or the request had been made, and I didn't have that information from Mr Henry. And as I said, I could probably have picked up the phone, but I didn't. I didn't want to second-guess why the inquiry was seeking that particular information.
- Robertson But you had no evidence that Andrea Vance had done anything wrong—to justify breaching her privacy, essentially.
- Thorn I didn't have any evidence either way.
- Robertson So you just went ahead and did it, because Mr Henry asked you for it?
- Thorn It wasn't just because Mr Henry asked for it. As I said, I had to balance the unauthorised access to the information. I didn't know what line of inquiry the inquiry was actually pursuing. I didn't know where that information fitted into the investigation, and I balanced that against the security of the information.
- Robertson Sorry to harp on, but doesn't the fact—I've just got one more—doesn't the fact that you didn't know all of that information, wouldn't that have been a reason to have stopped and thought: this is about the privacy of someone who works in the complex that I manage. I owe them the duty to seek their consent.
- Thorn I think that was the point at which I probably should have picked up the phone to Mr Henry.
- Robertson Or Ms Vance.
- Banks Can I ask this supplementary? So it was about Ms Vance, one journalist. If it had been two, or three, or four, or half a dozen journalists, do you think

- you would have picked up the phone then? Would the alarm bells have rung if it had been more than one journalist or all of the gallery, or would you still have just released the whole lot to this Mr Henry?
- Thorn Yes, well, I mean, it's a hypothetical. I don't know the answer to that. I don't know how—it depends on the context.
- Peters I've got one supplementary to Mr Thorn. Did you think you were investigating a leak or a theft?
- Thorn I didn't know where the inquiry was going to. I had no idea what the theory of the case was that Mr Henry was pursuing.
- Peters Well, if it was a theft, you might be able to assert some security issue here that would override anybody's right to privacy. If you're in this place stealing some assets or property, you can't really assert your civil rights and liberties like you would in any other circumstance. That's my question: were you investigating a leak or the theft? Because if it was a leak, then surely that would have occurred to you that there is something going wrong with the requests here for this information.
- Thorn As I said, I probably should have picked up the phone and talked to Mr Henry. I also think that had we had a discussion much earlier in the process, that request may not have actually been forthcoming. I actually wasn't sure where he was coming from with his request. I relied—and I put some weight—on the fact that he was making decisions about the appropriateness of the request.
- Peters And he was the investigator after all, not you.
- Thorn And he's a very senior public servant. I relied on—
- Peters That's a pity about that part. Shambolic the return of him. He's been promoted by the present Government to get all sorts of inquiry jobs.
- Hipkins Along those lines, I want to come back to the issue of precedent for you, or ask about the issue of precedent. When, with regard to swipe card access records, the police were called in to investigate the theft of the Leader of the Opposition's emails, were swipe card access records provided to them as part of that investigation?
- Robertson Dr Brash, we are talking about.
- Thorn I don't know the answer to that. That was before my time. I think the police would have had an arrangement with the Speaker. There were possibly search warrants involved; I don't know.
- Hipkins Can I ask that that be followed up—that we get that information? So basically, when the police were called in to investigate Don Brash's email theft, were those records provided—
- Collins About 18 months after it occurred.
- Hipkins —yes, I know, but were those records provided to the police?

- Finlayson That would be quite interesting. Maybe if someone could pursue that, and if the records are still in existence, and they haven't been accessed, maybe we could get to the bottom of that.
- Peters Well, that was an inside job, so it wasn't so difficult.
- Collins Pretty hard to be inside when we don't have access to other people's things. How do you know? He was inside?
- Thorn We'll take that back and try and find out.
- Finlayson If material has been released, your policy—it can be released if was by consent, so Mr Horan's phone records were released by consent.
- Peters Yes.
- Collins His consent. And then released all around the press gallery. They were released around the press gallery with his consent too, were they?
- Peters No, no, no. Excuse me, excuse me. Let's not have this sort of rash statement here. What happened was—
- Finlayson No, I'm asking a question.
- Peters I know, but I'm the one—Mr Horan gave me a written—
- Adams We're not getting into this now. Come on. We are waiting for questions.
- Finlayson I'm just asking a question about the release of Mr Horan's phone records, and the witness has said they were released by consent, so that was most helpful.
- Peters I just make one—you know about the allegation of being leaked around the press gallery. The reality is that he said that they could be used to prove his innocence.
- Thorn While we're discussing that, could I just make a comment on that? Those phone records were released to Mr Horan. What Mr Horan did with them was up to him. I didn't pass them to anybody other than Mr Horan.
- Finlayson And what happened thereafter was a matter between Mr Horan and his colleagues—his former colleagues.
- Thorn Yes.
- Turia You talked earlier about—you believed that you had been undermined, when you talked about your resignation. Who were you talking about undermining you?
- Thorn I believe that the way that the inquiry was dealing directly with staff and with Datacom developed a level of familiarity that removed what I might have otherwise had in terms of a formal process. But I accept some responsibility for that, because I could very well have put in place a process that ensured that all of that material came through me. But I didn't do that.
- Turia Do you think, then, that the way in which the investigation was carried out should have required the person who was given the authority—and I'm talking about Mr Henry—should he not have sought your authority before he went to your staff?

- Thorn I think that would have been an appropriate way to deal with it.
- Collins Can I ask a supplementary on that please—which is, do you know, how did Mr Henry know who in your third tier he should go to?
- Thorn I've got no idea.
- Collins You didn't give him that information? So what was it you think that was wrong in the culture of Parliamentary Service, under your leadership, Mr Thorn, that the third tier person that he went to felt that they could give Mr Henry the information without coming through you?
- Thorn It didn't quite happen that way. The third tier person approached his manager, who then came to me, and at that point I instructed him not to provide the information. So, at each of the key points when information was sought, I did make the decision about whether it would or would not be released. So the culture of the organisation was to recognise that there was a high degree of risk, and that that was brought up. Where the errors were made is where I'm almost a victim of my own success, in that I was trying to develop a culture of providing solutions rather than just barriers and saying no. So when people spoke to Datacom, and the email incident, for example, they were told by the inquiry that authorisation will be coming when it came to the content of Mr Dunne's emails. So in order to facilitate that, and at the request of the inquiry, they continued with trying to dig that out. An error was made, and they knew that that was unauthorised, but it accidentally got attached to the email.
- Collins So you didn't know who gave Mr Henry the details, of whom in Datacom to contact?
- Thorn I think the understanding of who in Datacom to contact became part of the information that passed through, with the level of contact that there was between the inquiry and my team.
- Collins You're not sure.
- Thorn I think it just developed over time.
- Graham Just essentially a supplementary to all of this in terms of third tier. You said that at no stage did you meet with Mr Henry. So my question is: who in the inquiry, if anyone, did you actually meet with at any time? Did you meet with Mr Holliss at any time? If not Mr Henry, did you meet with Mr Holliss or any other person directly acting on behalf of the inquiry?
- Thorn As I said earlier, the only conversation I had with anybody from the inquiry was when Mr Holliss turned up in my CIO's office seeking further information. At that point I got a phone call to say he was there. I went down and spoke to him. That's the only conversation I had.
- Graham Was he invited by the CIO or did he just arrive?
- Thorn I don't know.
- Graham OK. Mr Chairman, I don't know if this is the moment, but it would be useful for the committee perhaps to have information pertaining to the

- physical movements of all members of the inquiry, including Mr Holliss, in terms of a relationship with Parliamentary Service.
- Collins So you're wanting his security details?
- Graham Yes. I wouldn't use the word "security"; I'd use the word "Privileges Committee inquiry".
- Finlayson Yes, well if we just bear in mind what the first stage of the inquiry is—to get the basic facts so that we really focus on policies that I think will probably be of some assistance to Parliamentary Service. We're not seeking to find anyone in contempt.
- Graham No, no, I'm just trying to follow up on his point as to whom—
- Parker Mr Thorn, I'm pretty concerned that you still seem to think that accessing Andrea Vance records was a matter of security. I have before me the security policy for the parliamentary precincts and I've read it. I've read through again the guiding principles, which are set out on page 5, and I can't see how you can think that that authorised you to provide access details in respect of Andrea Vance. So could you please tell us—perhaps, if you can't do it now, come back to us—as to how it is you thought that these written principles, because there was a written policy here, authorised you to do what you did? I can understand mistakes are made, but I find it a little bit hard to accept that you think, having had the opportunity to read through the guiding principles that were already out there, that that was the correct decision.
- Thorn Further over in the policy it does talk about, I think, CCTV surveillance, on page 13, and it refers there to security of people, property, and information, and that's not repeated in the area that relates to security passes. But I consider that's commensurate with the policy in relation to CCTV.
- Parker But isn't that dealing with, you know—obviously if a journalist was snooping around offices trying to steal information, that's wrong. But that's not what this was about. This is about someone coming in and out of the building. You had no evidence that Andrea Vance had done anything wrong and yet you thought that there was a security interest that enabled you under this policy—well, tell me was it under this policy that you handed over those records, or is there some other authority that you thought you had?
- Thorn It was under the policy and it was under my responsibility for maintaining security in the precincts. What I believed I was dealing with at the time was a situation where a person had unauthorised access to information, and I did not know whether that had occurred on the precinct, but I believed that it was possible. As I said, I did place some weight on the nature of the question asked by the inquiry.
- Parker You've made reference to the CCTV reference there, which I think is pretty thin, personally, justification. Can I take you back to the guiding principles, and I'm just going to run through them quickly: "maintain a level of security commensurate with the assessed level of threat at any particular time; to be based on sound intelligence and timely advice; provide a safe and secure

- environment ...; define authorised persons, readily identify them and give them access to the precincts; welcome visitors who will be subject to security scrutiny ... and ... ensure access where possible, and limiting access, only where and when necessary; [to] enable: The House and its committees to conduct their business without disruption;”. You know, it really seems to me to be about protecting the security of people and the premises, including information, from threats rather than authorising you to help others snoop into the practices of the fourth estate.
- Thorn But this was a situation where a person had unauthorised access to classified information. From my perspective, there had been or there had possibly been a breach of security—
- Parker We’ve already covered that point. You had no evidence that Andrea Vance did anything wrong.
- Thorn And in that respect I was relying on the nature of the request from the inquiry, which I did not believe that I should second-guess.
- Finlayson It is interesting when you look at these policies, page 14, there is provision for access to recorded images but there’s not a similar policy for access to information concerning swipe cards. That’s something that we need to look at.
- Robertson Can I ask a supplementary on that point, Mr Chair. Can Mr Thorn clarify—you used the CCTV clause before to justify. Were CCTV images handed over?
- Thorn No.
- Robertson It was only swipe card.
- Thorn Yes.
- Robertson So you’ve used the CCTV justification, but actually that’s not what was handed over.
- Thorn No, I believe that that—the principle—and if you go to the guiding principles it does talk about safe, secure environment for people, systems, assets, and information. So, when you look at that and you look at the CCTV, I don’t know whether that’s now highlighted a gap in the policy, but the principle is the same.
- Parker Can I ask one more question?
- Finlayson No, because I’ve been—
- Parker No, there’s an important principle here. If the Labour Party suffered a leak and the National Party had the information, and we were conducting an inquiry into that, would you—
- Collins It happens all the time.
- Parker —and it does happen, both ways, all the time.
- Finlayson Let’s not get partisan. We’re dealing with an important issue.

- Parker I actually used that example so that I did not make it partisan, Judith. Do you think that that would give you cause, if we were doing an inquiry as to how that information leaked out, for you to provide us with access information either about journalists or members of the National Party?
- Thorn I think there's a—the distinction that we're dealing with here is the fact that material was handed to a third party. I'm not quite sure in your hypothetical who is doing the investigation. It may be something that—
- Parker Well, it's a leak of confidential information on parliamentary precincts. It seems to me the same principle, if you're going to do this—
- Collins I'm sorry, it's just like Chris Carter's situation.
- Finlayson Well, I know. I think that there are a number of hypotheticals we could put to this witness. I think he's dealt with the issue. There are certain matters going forward that we are going to have to address.
- Parker With respect, Mr Chair, I don't think he has.
- Finlayson Amy Adams.
- Parker With respect, Mr Chair.
- Finlayson Well, I've ruled on the matter.
- Adams Hang on. With respect, I'd like a question.
- Parker Well, you know, you've intervened and said—I think there's the same principle at foot here. Why would it be that you can provide information in respect of Andrea Vance in that situation, but wouldn't be beholden, if that was a proper principle, to give me that same information if something had leaked from my office to the media and I wanted access.
- Turia It's not relevant.
- Parker Well, it seems to me to be an equivalent—
- Finlayson No, I think there are a number of good policy questions arising out of this discussion, which we as a committee when dealing with policy can deal with. Whether they can be extracted on the hoof from this witness is another story.
- Adams It's following on from the same issue, really, and the first question is just one of clarification. To your knowledge, had anyone alleged that the report had been stolen? Had any Minister made an allegation that the report had been stolen, to your knowledge?
- Thorn No.
- Adams So just in terms of this issue around disclosing of swipe card information, I understand that yesterday you were very clear that you thought there were two errors in the way the service handled this matter: one around the content, one around the phone records. But on the issue of the swipe card access that we're just looking at, I understand you said yesterday that you were aware of issues relating to the gallery's access in the precincts, which could be relevant as to whether Miss Vance was involved. What did you mean by that?

Thorn Over the years the Speaker has removed temporarily, or permanently in some cases, access to various people associated with the gallery because of things that have occurred. I think there was a circumstance where a cameraman was seen photographing documents on an EA's desk. The EA made a complaint about that, but wasn't sure who the cameraman was. And that's a situation where I think—we don't have security cameras anywhere near MPs' offices, but if they were in that region you would probably look at that to try and find out who had been involved. I must say that in that case I think the gallery itself actually identified the person and brought the person to the Speaker, so the gallery made a very quick investigation itself to work out who was involved.

So I'm not suggesting that the press gallery is always acting badly. That is not my intention at all. All I am saying is that there have been instances in the past where the Speaker has seen fit to remove access passes. I did not know what the allegation was from the Henry inquiry that necessitated the request of that information. And, as I said, at that point I probably should have picked up the phone.

Adams So in relation to the gallery having to comply with Speaker's rules, how did you see that relating to this instance?

Thorn I didn't know what the allegation was that Mr Henry was dealing with when he asked for that information. I placed some weight on the fact that he made that request and that he had considered that it was appropriate.

Adams Can I just have one last punt at that? So I understand from yesterday's proceedings that Mr Henry was of the view that Ms Vance's swipe card records actually pertained to Mr Dunne's movement. Is that something you agree with? Would you see it as a reasonable intrusion into her privacy?

Thorn I didn't look at Mr Dunne's movements or swipe card access. I didn't do any analysis of that information.

Adams No, the question was: do you agree that the release of information relating to Andrea Vance's swipe card is justifiable evidence of Mr Dunne's movement, or is it simply in terms of Ms Vance's movements?

Thorn I don't know what he was intending to do with it. I can't comment on that.

Banks Mr Thorn, the Andrea Vance swipe card matters that we are discussing, in your view, were an unfortunate one-off, or is it your knowledge that this has been going on for years with individuals and their swipe cards, and access by third parties to their movements inside these precincts?

Thorn No, it is very unusual to provide swipe card access of any person. We treat information of that nature fairly seriously. We have provided information, I think, on two occasions to individuals who have asked for information about themselves and their own movements. And we have provided information, I think—you had some information about the other occasions. Since 2008, five occasions have they been released, twice at the request of the individual concerned—so, in relation to their own swipe card access. One set was released to the police as part of a criminal inquiry, and two records were released as part of the Henry inquiry, and that was the Andrea

- Vance records and Mr Dunne's, and Mr Dunne's were released on his own—
- Collins So only those times?
- Thorn Yes.
- Collins So you didn't release anything when Chris Carter was—
- Thorn No, no, no. There was a rumour floating around that I was aware of that CCTV footage had been used, and I can assure you that actually the areas where it was alleged the CCTV footage showed him, there are no cameras. So that was a rumour floating around in the precinct.
- Robertson Never believe those rumours.
- Banks So that we can deal with this going forward, because that's what this inquiry is about. So, does a policeman turn up and say: "Geoff, I want the swipe card movements of these people." and you hand it over? Or does he bring up some documentation from the High Court, like a warrant, or how does that work?
- Finlayson This committee is also looking at the whole question of policing within the precinct, so we're going to be addressing those issues.
- Banks Yeah, but what's your knowledge about the one case that you talk about—because there's only one case—where the police rocked up here and you gave them information about individuals and their swipe cards. What legal authority did they have to ask you for that?
- Thorn That was a criminal investigation, I think. It involved an EA and allegations of theft. The police were involved. The protocol was brought into play, so there was a conversation between the police and the Speaker.
- Finlayson I think we know, yeah.
- Robertson This is actually for Mr Stevenson, I think—
- Finlayson Oh, no, Mr Stevenson is coming back.
- Robertson Oh, you're coming back. OK.
- Finlayson Because Mr Thorn is heading off overseas. Have you got a final final question?
- Hipkins Yes, and it's a very short one, too.
- Finlayson Oh, great.
- Hipkins You mentioned in your submission the basis on which you made the decision to resign. Did anybody indicate to you prior to that that your resignation was desirable and/or required?
- Thorn I think I would prefer not to answer that question.
- Banks I asked it before.
- Finlayson It's been asked on a number of occasions.
- Peters Sorry, I didn't get the response—

- Banks I asked the question.
- Peters Yeah, but I'm trying to get Mr Thorn's answer, because he gave one.
- Robertson He said "I would prefer not to answer that question."
- Banks So, Mr Thorn, did you jump or were you pushed?
- Finlayson I think he's indicated very clearly that he would prefer not to answer.
- Hipkins No, no, it's actually very material to this investigation as to whether he has been forced to resign or not.
- Banks We're asking questions. This is important because this is the only scapegoat we've seen.
- Hipkins So I would like to know whether he was compelled to resign; whether somebody indicated to him that he was required to resign, and, if so, who that person was.
- Turia What's it got to do with the inquiry?
- Hipkins It's absolutely material to the inquiry.
- Finlayson How?
- Turia Tell us how.
- Peters I'll tell you how. I'll tell you how. We are dealing with information and its dispersion, and the witness has outlined some fundamental principles by which he said he abided by then when he was doing his job and was the reason why he resigned. Now, there were some other people who have been utterly unprincipled in this matter, and they have not resigned. That's why it's relevant.
- Finlayson Well, he may prefer to deal with that in another place, I don't know.
- Graham Mr Chairman—
- Finlayson No, I think we've exhausted questions—
- Graham Can I just pick up on that by way of a supplementary question, because in answer to the question of its relevance, it has to do with acknowledgment of culpability, whether Mr Thorn, himself, as general manager, acknowledges culpability himself, or whether the attribution of culpability—
- Turia He said he took responsibility.
- Peters By your criteria, that's a legal judgment. We'll put it off until we get to the second round.
- Finlayson He's talking to his lawyer.
- Thorn I resigned because I believe I let myself down and I let the Parliamentary Service down by not putting in place the processes that should have been in place—
- Robertson That's not the question you were asked.
- Hipkins Did anybody ask you to resign or suggest to you that it was desirable that you resign?

- Finlayson I think the problem is we are not investigating culpability. The first stage of this inquiry is to deal with particular facts so that it leads on to policy.
- Graham That is a fact.
- Hipkins This is the fact that I'm trying to establish.
- Finlayson I'm ruling it. I'm saying the question is not relevant.
- Hipkins That's an absolute disgrace. That is absolutely disgraceful.
- Finlayson Well, you can be as disgraced as you like. Thank you very much, Mr Thorn.
- Brownlee Mr Chair, before this all goes, I would just like to say, I have been on and off the Parliamentary Service since 1998—
- Peters There's a bit of a cover up going on here.
- Finlayson Order!
- Brownlee —and I think in that time you have been the best of the management we had there. This is a very unfortunate circumstance. I think the integrity that you have shown and demonstrated clearly, this committee here, should serve you well in the future and is a hallmark of how you've conducted your responsibilities in that role. Thank you.

conclusion of evidence

Appendix G

Corrected transcript of evidence 27 August 2013

Members

Hon Christopher Finlayson (Chairperson)

Hon David Parker (Deputy Chairperson)

Hon John Banks

Hon Gerry Brownlee

Hon Judith Collins

Dr Kennedy Graham

Chris Hipkins

Hon Murray McCully

Denis O'Rourke

Grant Robertson

Witnesses

David Stevenson, Acting General Manager, Parliamentary Service

Robert Buchanan, Counsel

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| Finlayson | Good morning, everyone. Mr Stevenson is going to start. Mr Buchanan, good morning. There are other time constraints, so let's hit the road. |
| Stevenson | <p>Good morning, Mr Chair. I have presented a letter containing the two items of further information that the committee sought at last week's meeting. The committee's discussion with Mr Thorn last Thursday canvassed his role in the events involving the Parliamentary Service and the Henry inquiry. Mr Thorn gave evidence about his decisions in response to the inquiry's request, including his refusal to release members' records without their authorisation but also his decision to release to the inquiry the swipe card records of Ms Vance on security grounds without prior agreement, even though, as he said, he received advice from his security manager about the request and that the security manager was rightly concerned about his decision.</p> <p>Mr Thorn also accepted responsibility for the administrative errors within the service which led to the wrongful disclosure of two items of information to the inquiry: the records from the Fairfax phone extension and the electronic file containing Mr Dunne's emails, even though he had no personal involvement.</p> <p>I am happy now to answer any questions the committee may have, including how the information came to be gathered and how it came to be mistakenly released.</p> |
| Finlayson | Thank you very much. Can I take you just briefly to paragraph 37 of your statement and its subparagraph iv, and you have three bullet points there. |

- “The General Manager decided that the information relating to Ms Vance should also be disclosed on the basis that: ...[she] was not an MP; the information related to a potential security breach; and it was not for the General Manager to form judgments in relation to that potential breach.” In relation to the first bullet point, do you accept that the whole concept of parliamentary privilege goes wider than members of Parliament, and that people who work in these premises have rights as well?
- Stevenson We absolutely do, Mr Chair, and let me draw on our practices around access cards. I mentioned that Mr Thorn did take advice from both myself and the security manager, and we are very clear that with anyone working within the precincts the practice in relation to the access of those records is if it is lawfully requested, or, secondly, if it is authorised by the person to whom the records belong.
- Finlayson So coming to that point about being lawfully requested, you say that the information related to a potential security breach; who alleged it was a security breach?
- Stevenson Mr Chair, you heard from Mr Thorn his process around his decision-making in relation to that and how he arrived at his decision around thinking of it as a security breach.
- Finlayson We’ll just take you through it again. Who assesses security and on what basis?
- Stevenson In this case the security manager and myself provided advice to Mr Thorn. Security is the responsibility of our security manager, and that advice was sought in this case, and Mr Thorn made his decision based on the advice from both myself and the security manager.
- Finlayson But even if you go to the guiding principles, which are annexed to your statement, even if there is no particular policy on access cards—something I do find a bit odd—even if you go to the guiding principles, then I just have difficulty assessing how this particular matter came within the ambit of something that would justify the release of these records.
- Stevenson I think Mr Thorn in his evidence, oral statement, details his process of arriving at his decision to release the access records of Ms Vance.
- Finlayson Well, if you look—and I’m really just focusing on whether for the future, and obviously you too are looking at the adequacy of these—if you look at the principles governing access to recorded images, on page 14 of the policy, you will see that any images captured by the CCTV system “are only retrieved for the purpose of ensuring the safety and security of members,” and so. Surely those sorts of principles should apply to the release of access card records?
- Stevenson I think we identified, Mr Chair, that this policy statement is remiss of details around a statement around the access cards, but from a practice perspective we are very clear that access records should only be released if they are lawfully requested or the individual’s authorisation has been provided.

- Finlayson And certainly it was not obtained here, so you fall back to level 1, “lawfully requested”. You can’t simply rely on someone coming in and asking for them who may be conducting an inquiry; it must go further than that. And your guiding principles would have to be the sort of the lode star by which you operate?
- Stevenson Absolutely.
- Robertson Can I just ask a supplementary on that and then another question. The question of whether this was a security breach, what was the connection between Andrea Vance and it being a security breach?
- Stevenson The connection between Andrea Vance and a security breach?
- Robertson You are saying that one of the reasons—
- Finlayson Hold on, Mr Robertson.
- Buchanan Can I just ask a question, Mr Chairman. The question is related to the judgment that Mr Thorn formed that this was a security matter. Is the question directed at an explanation of the judgment that Mr Thorn formed or is it directed at Mr Stevenson’s own view?
- Finlayson Well, we are looking at—you are looking at paragraph 37—
- Robertson Yes.
- Finlayson —and Mr Stevenson’s role in it. So it wasn’t Mr Thorn operating in a vacuum. He was offering it in his connection with Mr Stevenson.
- Robertson Mr Stevenson has already told us that he was part of providing that advice—
- Finlayson So it’s sort of teasing out propositions. If he can’t answer the question, he can’t answer it.
- Robertson The question I’m getting at is: in making a judgment that you could release the access card information you have considered that the information related to a potential security breach. The information was about Andrea Vance. I’m trying to work out what security breach you believed she was guilty of.
- Finlayson Or not even the word “guilty”. What issue of security potentially involved Ms Vance?
- Stevenson Well, I think in this instance Mr Thorn believed that there was—the inquiry believed that there was a security breach.
- Brownlee Well, the question would be: did the inquiry, or the inquiry’s agent, allege that?
- Stevenson No.
- Robertson So, just to clarify. I am specifically looking at the paragraph that the Chair was mentioning. There is a set of reasons here, and it says that the information related to a potential security breach. While the information itself may hold, and what was—were you confident that Andrea Vance had

- a role in a security breach in this building, or was that the inquiry? Where did that come from?
- Stevenson I go back to the advice that we provided Mr Thorn in the sense of, you know, the privacy of an individual, and demonstrating those two practices that I mentioned around the test of whether or not a record should be released. It was Mr Thorn who assessed the potential security breach in relation to Andrea Vance's records.
- Graham Just a supplementary on that. It seems to me that the critical thing is—I understand from you that at various stages you discussed with Mr Thorn this issue, including the issue of security breach. My question is: when you were discussing it with Mr Thorn did you discuss together what you took to be the nature of a security breach? It obviously isn't physical security, it's obviously not national security; it's about information security only—
- Stevenson Yes.
- Graham —and if it is information security, then I would have thought that actually heightens the concern on the part of Parliamentary Service, because of the political sensitivities of an information breach, not diminishes.
- Stevenson In answer to your question, the discussion I had with Mr Thorn was purely from a physical security perspective in relation to our principles and the fact that releasing records, access records, on anyone within the parliamentary precinct—there are two practice notes around that, which I have explained, and that I felt uncomfortable that this was a case that justified that release. That was Mr Thorn who put forward his version on how this potentially could be looked upon as a security breach, not me.
- Graham Just to reinforce a point. It is not physical in the sense of the physical person—
- Stevenson No.
- Graham —when you say “physical” you mean the release of information that is of a domestic political character.
- Stevenson Absolutely.
- Graham So I would put it to you and Mr Thorn together as one unit that heightens the concern on the part of Parliamentary Service not to release it.
- Stevenson It could be construed that way, yes.
- Finlayson If you just look at the requirement about access to recorded images—and I sort of by analogy apply that to access records—you're really looking at handing over such records for the purpose of investigating offences and identifying people who exhibit criminal and/or inappropriate behaviour. It's a pretty high standard for CCTV recorded images, isn't it?
- Stevenson Yes, it is.
- Robertson When Mr Thorn went to Australia you had a conversation with Wayne Eagleson after that, didn't you, about Mr Dunne's emails, is that right?

- Stevenson Mr Eagleson came to me when I was acting in Geoff's role to request that I speak to Mr Dunne's office to understand if he was prepared to meet with the inquiry to discuss his emails.
- Robertson And that was the only subject of the conversation you did end up having?
- Stevenson Absolutely.
- Parker Part of the purpose of this inquiry is to look at what went wrong. Something did go wrong. And the other is to give guidance to the Speaker and the House as to where we go forward. You have obviously been giving a lot of thought to these issues since the furore erupted. Have you had the opportunity to read the Clerk of the House's submission saying that, really, there are privacy issues that arise from metadata; the two obvious ones in this case being 86 emails within a short period is in itself unusual, and the so-called metadata included a luncheon appointment dated at a relevant time. Do you, with the benefit of this inquiry and what's gone on since, think that metadata should be treated the same as the content of emails?
- Stevenson I think I would look to this committee's input into whether or not that is the case or should be the case.
- Parker You don't have an opinion now? I would hope that the acting General Manager of Parliamentary Service—
- Stevenson I believe that metadata should be treated similar to content.
- Parker Thank you. And in respect of access information do I take it from your answer to Mr Robertson that you think that the release of access information ought to be in relation to genuine security concerns as the Chair has outlined in respect of CCTV footage?
- Stevenson As I have mentioned, that has been a common practice on these precincts for many years, yes.
- Parker So yes is the answer.
- Stevenson Yes.
- Finlayson I think it is common knowledge that you released access records in relation to the investigation of a criminal offence—the theft of an MP's wallet or something. Have there been any subsequent requests for swipe card information that you're aware of?
- Stevenson We've had a question on this, and my recollection is that since 2008 there have been five occasions; two where the individual requested access card records; the criminal investigation that you mentioned; and the two recent, Mr Dunne's and Andrea Vance's records, although Mr Dunne's were released with his consent.
- Finlayson You accept that special sensitivity general principles should be adopted when dealing with journalists' records, because they are not employees of members of Parliament and they are not employees of Parliamentary Service—
- Stevenson Absolutely.

- Finlayson —and they have every right to be working and present in these premises?
- Stevenson Our practice is for everyone that works in these premises regardless of who they work for, which organisation, and whether they are an MP, the general practice principles apply to each and every person.
- Collins Can you confirm, if you could, you were acting for a while in the role that Geoff Thorn had during all of this. Did you or anybody else that you are aware of elevate the issue to the Speaker? Mr Thorn said he didn't. I just wonder if you did.
- Stevenson No, and my involvement I've just provided the committee with was purely in setting up a meeting between Mr Dunne and the inquiry.
- Banks Have you thought about any proposition that you would like to put to this committee in terms of moving forward for the reason that this committee is meeting is to make sure that these things don't happen again? Have you thought about that?
- Stevenson I've done more than think about it. I have actually put in place two pieces of work where I have contracted KPMG to provide the committee with a very robust, independent review of the time lines surrounding these events, and also to detail how the unauthorised access of the phone records and emails occurred. Secondly, the second part of that piece of work with KPMG is to look at the adequacy of our processes and procedures, and I think that that is clearly something that we as Parliamentary Service will need to focus on in coming months when we have got the recommendations from KPMG to ensure that this isolated—and I must stress isolated—incident doesn't occur again.
- Banks So in this particular case we have members of Parliament who work here in the Parliament doing parliamentary business, and we have members of the fourth estate who are here undertaking a role on behalf of the public—slightly different, I would have thought—private citizens not members of Parliament, private citizens, contractors doing work, earning a living in here. Do you see a difference between their rights and the rights of members of Parliament, or do you see it as the same?
- Stevenson In answer to your question, you know, the Parliamentary Service's purpose is to provide administrative support and services to those who work on the precinct, so we don't recognise any difference between whether it is a person working in the press gallery versus a member of Parliament. Our policies and practices are consistent across all of those groups.
- Robertson But you quite clearly did with Andrea Vance. You didn't seek her consent; you did seek Mr Dunne's consent?
- Stevenson Personally—
- Robertson I'm not talking about you personally; the service.
- Stevenson I mean, as I said, that was a decision that Mr Thorn made based on—
- Robertson You've just given a statement of principle, though, which is a very laudable one, but that clearly wasn't what was followed in this case, was it?

- Stevenson For reasons which Mr Thorn has actually outlined, yes.
- Banks So here we have Mr Thorn sneaking around this place, getting information on Ms Vance for his inquiry, and the rest of that is history—
- Stevenson Sorry, Mr Henry?
- Banks Mr Henry. Mr Henry sneaking around getting information on Ms Vance, who happens to be a worker in this place, not a member of Parliament, doing her job, without her knowledge. I put it to you that this could be a proposition that we decide here at this committee—see if you could buy into this—that the only people who can come into this place and get information should be police officers with a warrant from the High Court, pursuing a criminal offence, as opposed to what we have: an unqualified public servant who made a botch of it, sneaking around this place, getting information illegally, in my view. How would you feel if this committee landed at a place where no access to members of Parliament or anyone else working here is available to any party, except the police operating under a warrant from the High Court, pursuing a criminal office?
- Stevenson I would seek guidance from the committee on that matter, but I think there is also the dimension around the accessing of an individual's information, which we also seek the committee's guidance. But I think I'm very clear that the ownership issues with regard to information lie with the owner of the information rather than with the service as custodian or agent. I think there are two dimensions, actually. There is the dimension of providing information for a lawful purpose and there is providing information that an individual owns and requests.
- Banks So you think that anyone can be nominated by the 9th floor or by the Speaker to come into this place to undertake inquiries of a real or perceived offence without any constraint as they have in the past, or would you see it as a role for the police?
- Stevenson Look, again it is something that this committee obviously is considering, but in the case of the Henry inquiry I think we have heard from the former Parliamentary Service General Manager as to the way in which that inquiry was set up and how in hindsight he would see that there would need to be much more robust processes around the interaction between any inquiry and the service if they were requesting information and the basis of why they are requesting that information or why they are authorised to.
- Banks So you don't sign up to the proposition that only the police, on a warrant from the High Court, should be able to come in here and pursue offences and get metadata, emails, videotape recordings, swipe card mechanism recordings at will?
- Stevenson Well, to a certain extent, Mr Banks, that happens today by our practices that I've mentioned. But there is that dimension about the ownership of information and understanding from the service that that lies with the member or their staff, Minister, or anyone working here. I would clearly like to get guidance on the protocols around how that would work going forward. We are very clear that, you know, this is an isolated incident which

- occurred. This is not the way that Parliamentary Service operates normally. We work very formally, we take those requests very serious, and, as you can see, the amount of information that was being thrown at us by the inquiry administrator around the changes in the way that the phone records were to be collected clearly took us into a position where the formality of that process became quite informal. Therefore, I think, you know, we've got to step back and actually look at what makes sense given that, you know, as far as my time here this is the first instance that I have actually been involved in, and it is definitely not a regular occurrence.
- Finlayson No, but, I guess, we are trying to tease out positions, because we want to provide some guidance to Parliamentary Service going forward. That's fair enough. I understand exactly where you are coming from.
- Collins Just in hindsight—and hindsight is a marvellous thing—I'm just wondering whether or not this is a matter where the involvement of the Speaker in these processes—either in hindsight or in the future for matters—is something that should be pursued rather than this situation that we find ourselves in. Was there some particular reason—
- Stevenson Absolutely.
- Collins —not to involve the Speaker that you are aware of?
- Stevenson Not from my perspective. And in the case that we cited around the criminal investigation of an EA, it was the Speaker's approval to release that information, so there was the involvement of the Speaker's Office in that decision.
- Collins Do you know why the Speaker wasn't involved in this case?
- Stevenson No, I'm not sure.
- Finlayson Do you think there is a good understanding in Parliamentary Service about the difference between Parliament and the executive?
- Stevenson Yes.
- Finlayson Because in this Bowen House, for example, you've got one floor and one half of the floor might be Ministerial Services and the next, Parliamentary Services. We are all sort of tossed in here in a pretty haphazard way.
- Robertson Looking for a new office, Chris?
- Finlayson No, no, I'm very happy in my eyrie on the 19th floor of Bowen House. One wonders whether there is, in a practical sense, an understanding that Parliament is different from the executive, and that it is possible to be a member of the executive and a member of Parliament, and one has to be aware of the differences.
- Stevenson I think there is a very strong understanding of that difference within the service.
- Robertson Section 6 of their Act. Section 6 of their Act says they are not a branch of executive Government.
- Finlayson Oh yes, but there is practical application on a day-to-day basis.

- Collins Particularily if it is brought down to third tier, and that is one of the issues, I think, that we've worked out.
- Finlayson That's right. Well, that's been very helpful. As I say, we are not on the hunt for finding a contempt or on a witch hunt. We are trying to get to the bottom of the matter so that we can do our bit to ensure this unhappy episode is not repeated. Unless members have other questions for Mr Stevenson and Mr Buchanan, I will thank you very much for your time.
- Buchanan Can I make just a final observation, Mr Chairman, just recognising I act for both Mr Thorn and the service. I did not want to disrupt the flow of questioning, which was obviously helpful, but in relation to Mr Thorn's evidence about his view that there was a potential security issue relating to, as he put it in his evidence, the misappropriation of a classified document—I think that was the evidence he gave—I would be very happy to prepare some further submissions for the committee drawing that evidence together and drawing out his explanation, together with the service's—
- Finlayson Yes, that would be helpful.
- Buchanan —view both on how these things have been dealt with in the past and how the service intends to do it in future. Would that be helpful?
- Parker Can I ask, through you, Mr Chair? I find you in a slightly difficult position in that regard, in that you have Mr Thorn advocating for a position which doesn't seem to be the position of Parliamentary Service, and how can you do duty to both those masters? I don't know how you can be assiduous in respect of both of those, so I wouldn't find it very helpful.
- Banks I don't think it would be helpful.
- Parker No.
- Buchanan OK. I've been certainly conscious throughout of the potential conflict of interest. In fact, my engagement for Mr Thorn and for the service was at the request of Mr Speaker, and I would be happy to do that, if necessary. But if the committee would not think it helpful, then we'll leave it.
- Finlayson OK, well, your kind offer has been considered and rejected. Thank you.
- Buchanan Thank you, sir.
- Finlayson Yes, Dr Graham?
- Graham No, it's all right. The decision has just been made.
- Finlayson No, I was just responding to your assiduous nodding. I was only trying to be inclusive—
- Graham I would have thought we might have benefited—
- Finlayson No, we won't have the debate; we will just leave it at that.
- Graham No.
- Finlayson Mr O'Rourke, I'm conscious that you are fulfilling a major role as Mr Peters' representative. Do you want to say anything?
- O'Rourke No, it's all right.

Finlayson Thank you very much, everyone.

conclusion of evidence

Appendix H

Corrected transcript of evidence 29 August 2013

Members

Hon Christopher Finlayson (Chairperson)

Hon David Parker (Deputy Chairperson)

Hon John Banks

Hon Gerry Brownlee

Hon Judith Collins

Dr Kennedy Graham

Chris Hipkins

Denis O'Rourke

Grant Robertson

Hon Tariana Turia

Witnesses

Claire Trevett, Chair, Parliamentary Press Gallery

Katie Bradford, Deputy Chair, Parliamentary Press Gallery

Jane Patterson, Gallery chief reporter, Radio New Zealand

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- Finlayson Good morning. Thank you very much for appearing. We are sorry you had to wait, but, as you know, there have been other witnesses. And I understand congratulations are in order for a special day yesterday.
- Trevett Thank you.
- Finlayson The way we do it is that we take the submissions as read, but if you want to emphasise points or have a preliminary statement, we are more than happy for you to do so.
- Trevett I do have a preliminary statement. First, introductions. You probably all know Jane Patterson. She is here in her capacity as a former chair. Katie Bradford as my deputy chair—Katie Bradford Crozier. And behind us is Linda Clark, who has been our counsel, and in the interests of full disclosure of donations she has offered her services on a bona fide basis.
- Finlayson Pro bono.
- Trevett Pro bono. What did I say?
- Robertson I'm sure it's that as well. It will be that too.
- Trevett You all knew what I meant.
- [Interruption to check sound]
- Trevett We are not here on behalf of Andrea Vance herself, as you know, except insofar as she is a member of the wider gallery. In terms of the leak and inquiry we know only what is already publicly available. So, rather, we are

here to speak to the gallery's interests in the future as regards the information held on us. I will spare you a lecture on the freedom of the press—I know you are all aware of the concept regardless of your own views on the desirability of it sometimes. Should you require a refresher, I refer you to the Media Freedom Committee's written submission to you, or, should you prefer, Mr Chair, to the apotheosis of constitutional virtue, Sir Geoffrey Palmer, who has also recently made comments on this issue.

Finlayson

You had started so well.

Trevett

I would like to begin by getting on record the gallery's concern that an accredited journalist's information, held by Parliamentary Service, was sought, accessed, and released for use in the Henry inquiry, which had no powers of compulsion, without the consent or even knowledge of the journalist involved. As our written submission goes into in some detail, we believe Parliamentary Service's actions were contrary to both general principles relating to the role of the media and the legal protections in place which allow it to fulfil those duties. The most pertinent of these is the Evidence Act under which journalists cannot be compelled to produce information that identifies their sources other than in exceptional circumstances and under the orders of a High Court Judge. That provision to allow for the protection of sources also effectively amounts to a reverse duty on the journalist to protect those sources where they have undertaken to do so. It seems perverse and somewhat disturbing that the Parliamentary Service effectively overrode that protection which even a court can only do in limited circumstances, by producing a journalist's information which could have the exact effect of revealing her source. In normal circumstances, the person or body seeking the information would have had to take the media outlet to court to get it released.

Even without that legal protection we were appalled by the apparently cavalier approach the Parliamentary Service took toward accessing and releasing the journalist's information. We noted Parliamentary Service required some form of higher authorisation or personal consent before agreeing to the release of information relating to 74 others whose information it accessed in the inquiry. We note that the Henry inquiry did receive rather more than it asked for from Parliamentary Service, but it was of concern that the Henry inquiry does not state that any of the journalist's own records, including the swipe records which it did request, were accessed and handed over to it while investigating the leak, despite listing in some detail the information it obtained and used on Ministers' staff and public servants.

We note also that the Henry inquiry claimed it had abided by the principles of natural justice, an arguable claim given subsequent revelations. In terms of Parliamentary Service, Parliamentary Service has statutory and employer obligations to both MPs and staff. It has no such relationship with the press gallery, whose main relationship is directly with the Speaker. In addition, its special position means it is exempt from both the Official Information Act and the Privacy Act, except as regards its own employees. So, a journalist who recently sought information on whether his own swipe cards had ever

been accessed in the past was told it did not have to provide that information.

The relationship with Parliamentary Service is predominantly an administrative one in that it provides phone lines and swipe cards. This is a practical necessity of being based in Parliament for the journalists, and it is a point the Clerk also makes, saying Parliamentary Service is effectively simply an agent for both media and MPs in holding that information, and has no authority to release it of its own accord.

This puts us in a different position to our free-range colleagues in our normal newsrooms, whose information, such as phone logs, is held by our employers. Had the leak gone to a journalist outside Parliament, Parliamentary Services and the inquiry would have had no access to the journalist's records except in the unlikely event that the employer agreed to release them or the courts ordered it.

As a general principle, we do not believe any of the information Parliamentary Service holds on us should be accessed or released without consent or in other circumstances in which our employer would be required to produce that information by law.

That said, we acknowledge there are responsibilities that come from working in Parliament. In that regard, there are different considerations that apply to the categories of information involved. We would like to see clearer criteria set out governing Parliamentary Service's role in holding that information.

In terms of the phone records, we do not believe these should be released other than in circumstances our employers would have to release them. We note that the Clerk also again believes that Parliamentary Services is simply the agent which holds the information.

Swipe cards—again, we do not believe that swipe card records should be accessed and released without consent. There are responsibilities attached to our use of the cards, and we not above the law. However, even in circumstances where the police have a warrant for such information, there is an opportunity to object or appeal it in the courts. That right, especially where the purpose is to uncover a source, should not be overridden lightly by Parliamentary Service. When we sign for the card we agree to abide by the conditions against misuse of the cards. There is no mention on those forms we sign of the possibility the records will be accessed or released, and clearer guidance is needed of the circumstances in which this can occur for all parliamentary inhabitants.

It has been argued that the swipe card records were released because it was considered a security incident. We strongly object to Geoff Thorn's decision making on this, which was nothing less than arbitrary. In his evidence he said there were no precedents for him to act on, but he was aware of previous incidents relating to the press gallery and the press gallery rules. Those incidents were unrelated to the recent incident, and, had he read further through the rules, Mr Thorn would also have seen that he

should refer all such matters to the Speaker. We also submit that Andrea Vance had not broken any of those rules. We believe in the process of acting without any precedent to guide him, he has set a dangerous precedent, and we would not like to see it used in future cases. We were also concerned the journalist's full swipe card records for the period in the question were accessed, a situation which could have had ramifications for others, including other MPs, beyond the immediate inquiry.

Press gallery journalists' emails and internet services are provided by our employers, rather than Parliamentary Service, so it has no access to our own email logs. Communications between journalists and Ministers may be obtained under the Official Information Act in the same way any other information may be obtained under the Official Information Act. We abide by that, and journalists have always been subject to the OIA in that regard, so we believe that was the threshold that should have been applied to the emails, as it was in the end.

In terms of the Inquiries Bill, we do note that the Prime Minister has referred to the Henry inquiry as a reason for the need of the Inquiries Bill, which would give greater powers to compel evidence in such ministerial or Government inquiries. We welcome that the Inquiries Bill does include the Evidence Act protections, such as that relating to protection of sources. However, we would be concerned if that meant an inquiry head could compel a journalist to disclose that information in the same way as a High Court judge. However, had the Inquiries Bill actually been in force during the Henry inquiry, we do not believe that the information would have been able to be used, because of those Evidence Act protections.

In terms of our general position for the future, Parliamentary Service, we believe, should immediately refer any requests for press gallery records to the Speaker, who should then consult with the affected journalist and gallery chair. We do not believe even the Speaker should have authority over the phone logs, which should only be released in circumstances, as I've said, in which our employer should have to release them, such as where forced to by the courts.

In terms of the swipe cards, the Speaker should consider what the purpose of the request is. If, like this, it is to use the journalist's own information to try and uncover their source, the request should be refused outright and the person seeking that told to apply to the courts if they cannot get consent for it. The Speaker should consider the wider legal and constitutional protections that apply to journalists. If it is in relation to another incident, such as a criminal offence, the Speaker should weigh up the gravity of the offence and consult again with the affected journalist and gallery chair, giving an appropriate amount of time to seek legal advice. The information should only be accessed outside any protocol in cases of life and death.

We do not believe that the Speaker's responsibility as regards members of the press gallery should be able to be delegated. On that issue, we note that the Privileges Committee is also looking at the policing protocol in Parliament. That came up as a result of an incident involving a press gallery

member, and we would appreciate the chance to submit on that on some occasion, at least in a written form, if further changes are proposed. We do note, and especially the provision that allows for the Speaker currently, in cases where the police do want to remove an accredited journalist from somewhere within Parliament's grounds for something short of an arrest, yet they do have to get authorisation from the Speaker, but the Speaker is also allowed to delegate that back to a range of people, including the police themselves. We do not believe that authorisation is appropriate. That is a side issue.

Brownlee How would you categorise the information that Andrea Vance clearly used to publish her article about the GCSB?

Trevett It was classified as a sensitive document.

Brownlee No, we know that, and that's important, but once she has that information, how do you categorise it? How do you describe it? What is it? Well, I'll tell you where I'm going.

Trevett I don't understand your question.

Brownlee I just find it slightly ironic that you say that the Parliamentary Service can hold records about movements, about phone calls, about everything else—quite rightly—but without the permission of the person whom that information concerns. They should not be releasing it or publishing it or anything else, because it is personal information to that person. Now, here, as you have just said, this was a classified document, clearly not in the public arena, not at that point for public consumption, but the content found its way to Andrea Vance. So what is the difference here?

Trevett Well, it wasn't personal information. I presume whoever did pass it on to her did have lawful access to it and passed it on to her. I do not know who it came from, but I do note that it wasn't of a classification in the area of national security. I also note that the Henry inquiry makes it quite clear that the onus on guarding that information is on the person who has original access to it to start with. And to be honest, it was, basically, just politically inconvenient timing. The Prime Minister himself had said when he was going to release it.

Brownlee Well, that's a supposition on your part. But the issue, though of—you've just said it was handed to her by someone who lawfully had it or conveyed it to—

Trevett I said I assume it was. I don't know who handed it to her.

Brownlee Yeah. But that's exactly what happened here with the records, so I'm just trying to work out what the difference is. And there must be something that you can say quite categorically that makes a difference or creates that difference.

Trevett They're completely different areas of information.

Brownlee No, they're not.

- Trevett They are. One was a report which was going to be released publicly a week later.
- Parker Can I have a supplementary on that? Isn't that the role of the media? Isn't that the central role of the media? So long as you haven't done anything illegal, you can publish anything you want.
- Hipkins Can I ask a supplementary—
- Finlayson Hold on. I'm sure you do, but let her answer the question—if you can, if you want to.
- Trevett One was a public report which was going to be released within a week. The rest of it is personal information. You know, the report could have been released under the Official Information Act, arguably, had it been sought.
- Brownlee Yep. So where is this—
- Trevett And now personal information other than certain emails, if we don't beware—
- Brownlee All right. So that's exactly my question. So you characterise it as a scoop on information that was going to be in the public arena.
- Trevett Yes.
- Brownlee Although that's interesting too—that, you know, it's a hindsight opinion in some ways. The bit I'm interested in, though, is where is a point where it might be reasonable for PSC to release those movement and telephone records to an investigator of some sort? Is there a type of investigation that it would be acceptable for those records to be released to?
- Trevett It depends on the circumstances. This related to a journalist's protection of the source. If they're required to by the courts, then I'd assume they would have to hand it over, but they can't just willy-nilly go handing that information out.
- Parker You're not conceding to Mr Brownlee that just because the person who provides information to the press is acting improperly in respect of their duties, that you don't have a right to your protection of your sources and to do with it as the fourth estate is expected to do with it?
- Trevett Yes.
- Parker Thank you, because—
- Trevett They're different categories of information.
- Brownlee I wasn't asserting anything. I was asking questions.
- Finlayson He was asking questions, actually.
- Hipkins David Parker just asked the question that I was going to ask.
- Finlayson I beg your pardon?
- Hipkins David Parker just asked the question I was going to ask.
- O'Rourke Well, I just would like to clarify the position that you've proposed—that requests for information concerning journalists should always be made

- through the Speaker to you, and then you should respond on that directly back to the Speaker. Would that cover all forms of information—phone logs, swipe cards, content of emails, and metadata, which includes data relating to journalists’ information to or from?
- Trevett Information they hold on behalf of the journalists.
- O’Rourke Any information?
- Trevett So they wouldn’t have the content of our emails unless it was held by an MP or a Minister. So in terms of that, we think the OIA should apply in terms of the content of emails, because they don’t hold our email logs anyway. In terms of the phone logs and swipe card records, yes.
- O’Rourke And metadata—anything?
- Trevett It is metadata, the phone logs and the swipe cards, that’s all they currently hold on us.
- O’Rourke Yes. So any kind of information at all without exception, you would expect to have to consent to?
- Trevett Yes.
- O’Rourke Just wanted to make that clear.
- Robertson Just a supplementary on that—
- Brownlee Could have a supplementary for that?
- Robertson No, no, Gerry—
- Finlayson Mr Robertson, then Mr Brownlee.
- Brownlee Well—
- Parker He gave him a supplementary first, Gerry. You didn’t hear it.
- Brownlee Well, did he?
- Finlayson Just spit it out. Get on with it.
- Robertson Thank you very much, Mr Chair.
- Brownlee There’s not that many voters here. I didn’t think you were that keen for the limelight.
- Robertson No, always seeking the truth, Gerry. In reference to the release of the emails that, as you say, could have been dealt with under the OIA, would it be a reasonable expectation that when a decision was being taken to release a Minister’s emails or phone calls to and from somebody, that would involve releasing a journalist’s emails? That would be a reasonable expectation for the people making that decision, wouldn’t it?
- Trevett If the emails held by the Minister—
- Robertson —were released, it would—
- Trevett Yes, if they otherwise met that. We’ve always known it’s—
- Robertson And you would expect the people making that decision, Ministerial Services, Parliamentary Service, the Prime Minister’s Office, you would expect that

- they would realise that that would involve the release of some information from a journalist?
- Trevett Are you talking about this specific case or in general?
- Robertson Yes, I am; in this specific case.
- Trevett I don't know without knowing what was in the emails, to be honest. I mean, that depends, as Judith Collins has argued, on the content whether they were within his capacity as a Minister or not.
- Brownlee How would you treat swipe card information, emails specifically, telephone logs, and anything else that falls under the category of that first layer of metadata if it came into your possession as members of the press gallery and you felt was relevant to a story? Would you then turn around and phone the person or contact the person about whom that information related and ask if you would use it, or would it simply make its way into a story?
- Trevett That would be up to individual media outlets and journalists.
- Brownlee So you want us to have a policy but the gallery has no policy?
- Trevett We don't hold that information.
- Brownlee No, no, that's right—
- Trevett It's a matter of who releases it, not whom it is released to.
- Brownlee Well, no, you are missing the point, I think. If it is released to you, do you have no duty to find out is it legally released to you, does the person whom it is about know you've got it, etc? Your duty stops with receipt?
- Trevett It is leaked—I mean, if the information is for public interest, it is our responsibility to cover it. I mean, people make judgment calls on it if they receive, but we don't hold the information ourselves. We're not in control of releasing—
- Brownlee Nor did the Henry inquiry.
- Trevett No, but it got it from Parliamentary Service.
- Brownlee Just as you would get it from someone.
- Trevett Yes.
- Graham Just to follow up on the questions from Grant Robertson and invite you to elaborate a bit more on it. If I understood you correctly, when focusing on emails, email exchange, if I understood you correctly you are saying there would be a distinction between an email between a Minister acting as a Minister and a journalist, and an MP and a journalist. So, the critical distinction, and in the former case it is OIA accessible, and in the latter case it's not. So, if that's the distinction, then the critical thing in the case of Mr Dunne and Ms Vance is what the capacity of Mr Dunne was when he was emailing Ms Vance, would you agree with that?
- Trevett Yes.

- Graham And was your understanding in these particular circumstances of the capacity of Mr Dunne when he was engaging in those emails with Ms Vance—as a Minister or as an MP?
- Trevett I don't know. I know what the content of the emails is.
- Graham Do you know whether Ms Vance knew at the time which capacity Mr Dunne was acting in?
- Trevett I haven't spoken to Andrea Vance about the case in preparing for this submission.
- Graham Do you think that that point is relevant to establish for the purposes of the committee's inquiry?
- Trevett Whether he was acting as an MP or a Minister?
- Graham Correct.
- Trevett Well, it is relevant, it's just that I can't answer which one he was acting in.
- Graham No, no, I understand you can't. I was just interested in your thought on that.
- Parker Two questions. The first is just to follow up on Mr Brownlee's point. I think Mr Brownlee—and correct if I've got this wrong, Gerry—was asking you whether you thought there was some duty of confidence that you received in respect of information because the person who provided you with the information might have had it improperly or owed a duty of confidence. And I don't think that's right. Your right and role as the fourth estate is to publish information of public interest that comes into your possession, irrespective of whether the person who gave it to you held it under a duty of confidence. Do you agree with that?
- Trevett Yes, I think that was my answer—if it was in the public interest.
- Brownlee That's the answer I—
- Finlayson Mr Brownlee was asking questions to tease out some interesting propositions.
- Parker OK. Now, the other question of mine was a separate one and refers to your statement verbally and in your written submission, which I think is right about the—if information between a Minister and—
- Finlayson Paragraph?
- Parker Paragraph 33.6. If the information between a Minister and a journalist is publicly ascertainable through the Official Information Act, well, the fact that it comes from a journalist or from a Minister and is inconvenient to either the Minister or the journalist is irrelevant.
- Trevett That's right.
- Parker Then you said, I think, in what you said to us verbally that that's eventually what happened in this case. My understanding is that we still don't know whether any of those emails were disclosable under the Official Information Act. We heard from Mr Henry, when you weren't here, that he didn't even

- check or seek the Official Information Act route to obtain access to those emails. Did I misunderstand your answer—
- Trevett My answer referred to the fact that a lot of media organisations have OIA'd those emails.
- Parker You haven't had an answer, have you?
- Trevett Yes, we have had an answer, and we were told that it was within his capacity as an MP, not as a Minister.
- Parker So you were told that—I mean, that's very convenient, isn't it, for someone to say "Oh, look, I sent this from my ministerial email address, but I don't want to disclose it, therefore it was something that was sent in my personal capacity. How can that be right?"
- Collins But that's not true, though.
- Parker Well—
- Finlayson No, we don't want to get into arguments. We ask questions and then we can have consideration later on. Ask the question.
- Parker OK, I'll ask the question then. How do you think the authorities should—well, if an email was sent from or to a ministerial address, would it be enough for someone to say "Oh, you can't see that because it came from my ministerial address or went to a ministerial address, I think it was private."? Do you think that's where it should end?
- Trevett No, I think that the decision should be made on the content of the emails, not on the email address they were sent to. The replies we were given didn't say it was because it went to a parliament.govt.nz email address instead of a Minister's one.
- Parker But at the moment it is an assertion that it's private. A very convenient assertion, if you leaked a document from a ministerial drive. And I haven't got proof that that's the case. But if that was the case, it would be very convenient for a Minister to be able to just block it by saying "Oh, that was private."
- Trevett That's true.
- Parker So the way through that then, you would expect that at least—and I'm not saying in this instance, but you would expect in some situations because of the self-interest and preserving you, say, from the consequences of your own inappropriate actions, you might just say "Well, I don't want to. I'm going to claim it's private." What's the route through that?
- Trevett Whose view? The Minister or the journalist?
- Parker The Minister.
- Collins She's not a legal expert. Come on.
- Finlayson You're asking a question about—
- Trevett My main point relating to—

- Parker With respect, Mr Chair, if you are going to take that point of order, I actually thought that we were actually here—
- Finlayson I'm not taking a point of order at all in this.
- Parker Well, then, be quiet.
- Finlayson I would like a question rather than an essay.
- Parker Mr Chairman, the gallery, I think, would be more expert in matters of using the Official Information Act than you or I. I am asking this witness, in terms of—
- Finlayson Well, ask it.
- Parker Well, I was, if you would—
- Robertson Carry on.
- Parker Through you, Mr Chairman, where the gallery receives an initial rebuff, which is a claim of privacy, where the gallery is suspicious of whether that is an appropriate refusal to provide information, is your route then to appeal to the Ombudsman? Are you aware whether any appeal has been provided to the Ombudsman here?
- Trevett I don't know if any of the media outlets have, no. Someone may have but I not—
- Parker I'm struck with the—
- Trevett Jane can answer. Jane.
- Patterson I just know from our media organisation, we are either in the process or about to appeal to the Ombudsman based on the rejection that we had. That's our only form of following something—
- Finlayson Judith Collins—
- Parker Well, no, just let me finish. Well, it might not be convenient to you, Mr Chair—
- Finlayson No, I just love succinct questions; to the point. We can continue after 9 o'clock by leave, if the committee wants to, but it is 10 to now.
- Parker I am struck with the fact that this inquiry got information that it shouldn't have had access to, yet didn't even follow to the end of the Official Information Act process whether it could have had access to information under the Official Information Act. Do you, in your capacity, have any opinion on that?
- Trevett On whether the Henry inquiry should have, if it couldn't get consent, tried to get it under the Official Information Act—is that what you're saying?
- Parker Yes.
- Trevett That's up to the Henry inquiry, but we do believe the Official Information Act was the criteria that should have applied to those emails in the absence of consent or any other form of ability to compel it.

- Collins I just want to get an idea from you, Claire, is there any form of information that is received by journalists of the press gallery that you would consider to be off limits for publishing?
- Trevett Again, it is a matter of judgment for the individual media outlets concerned.
- Collins So the answer is no.
- Trevett Issues related to the children of Ministers or MPs might be one, but it is a matter of judgement for the media outlet.
- Collins So, basically, the answer is it's a matter of judgment and there are no hard and fast rules?
- Trevett Well, there is basic journalists ethics, but I can't answer for all media outlets from what they were doing in such cases—
- Collins No, so the answer is pretty much no.
- Trevett That's the kind of issue where that judgment would come into effect.
- Collins So what about issues of national security?
- Trevett Issues of national security—again, I suspect it would be referred up to the editor—
- Collins Right.
- O'Rourke Just a couple of quick—
- Trevett —yes, and public interest would be weighed up in those cases.
- O'Rourke I just want to ask you in relation to 9.2 of your submission. You set out there four matters which you consider the Speaker should consider when getting a request. Wouldn't there be a fifth one as to whether it would be in the public interest to obtain the information to assist an inquiry, with the exception of the source from which the journalist obtained the information?
- Trevett That's up to the committee. It could be included, indeed. But, again, the Evidence Act—if the issue is the protection of sources, and the information source, the journalist's own information which might reveal who that source is, there is a process to have that released, and it is through the courts.
- O'Rourke But there is a distinction between the information itself and where it came from—that's what I'm getting at. So there's a public interest in getting the information, even if the source is not revealed, and that would be a consideration for the Speaker.
- Trevett Such as a criminal investigation, I assume you are talking about here.
- O'Rourke Well, whatever. Anyway, I just put that to you. The other one is in relation to paragraph 17 of your submission. Are you submitting there that information about swipe card usage should not be kept or used at all?
- Trevett No, that's not what we are submitting there. We are suggesting that a process be put in place to govern that.
- Finlayson Yes, looking at that, that's right.

- Trevett That just simply sets out what we do and don't know about signing swipe card access, paragraph 17.
- Brownlee If you had an incident of vandalism or theft inside the gallery offices themselves, would you expect initially the internal security people to have a look at these things first up, to access information about who came and went over a particular period of time?
- Trevett I assume that would be a police matter.
- Brownlee Well, it may not be. You don't have to think back too far for a similar incident being handled exactly in the way I'm suggesting, internally.
- Trevett Jane was the chair when that—
- Patterson Which one are you referring to—Ian Llewellyn?
- Brownlee I beg your pardon?
- Patterson Are you referring to Ian Llewellyn?
- Brownlee No, I'm not.
- Trevett The EA? Or the press gallery wine?
- Brownlee Well, in both cases, actually.
- Patterson Well, the police, as far as I was aware—with the press gallery wine, the police were called immediately on the night. The police were involved from about 10 minutes after we became aware of it. And I wasn't involved in the EA because that was an MP's situation—
- Trevett It didn't involve the gallery.
- Patterson And with Ian Llewellyn, the same thing. The police were notified immediately. So in both cases there was immediate consultation with the Speaker, the police, and we were worked with both of those organisations.
- Brownlee So a clear test, in other words?
- Patterson Yes.
- Finlayson Now, I'm conscious—I'll come back to you. Thank you for the comments you made about the agreement on policing which, as you know, was referred to this committee by the Speaker some time ago, but we thought we would not finalise that until we had dealt with this and so on. I am very happy to invite you to make a submission on that. There is only one other thing I was going to ask, and maybe, for the sake of completeness, I'm not even sure whether it will go anywhere. The swipe cards are not owned by the individuals who hold them but are owned by Parliamentary Service. Maybe your lawyer, in her pro bono role, or bona fide role, could prepare a memorandum for us on your view, provide some guidance to us on the ownership of information.
- Trevett On swipe cards?
- Finlayson On swipe cards. As I say, it may not go anywhere but I just want to see the issue.

- Trevett That issue was why we separated out the phone—
- Finlayson Exactly right.
- Trevett —records and the swipe card access.
- Finlayson Yes, and I'm just teasing it out. I'm not sure, I'm genuinely not sure whether I know the answer to that. But I would be interested in Linda's view.
- Brownlee We should go back to keys.
- Finlayson Well, again, the same principle probably applies to keys—we don't own them.
- Brownlee No one knows you're using them!
- Finlayson Look, thank you very much. As I say, I will come back to you on the policing one. And very grateful for your very helpful submissions.
- Trevett Thank you for your time, as well.

conclusion of evidence

Appendix I

Corrected transcript of evidence 4 September 2013

Members

Hon Christopher Finlayson (Chairperson)

Hon David Parker (Deputy Chairperson)

Hon Judith Collins

Hon Clayton Cosgrove

Dr Kennedy Graham

Hon Tim Groser

Chris Hipkins

Rt Hon Winston Peters

Hon Dr Nick Smith

Hon Anne Tolley

Witnesses

Mary Harris, Clerk of the House of Representatives

Renato Guzman, Manager (Legal Services), Office of the Clerk of the House of Representatives

Hon Peter Dunne MP

Dr Matthew Palmer, Counsel

Finlayson Good morning, everyone. We are going to start this morning's hearing with the Clerk of the House. Thank you very much for attending, Ms Harris, and you have Mr Guzman with you. The way we do it is we can launch straight into questions, if you like, but you may wish briefly to say a few things before we begin.

Harris Thank you, Mr Chairman. I have a few brief remarks to make, but I am certainly not intending to read my submission. Just, firstly, to say that I wasn't involved in the release of the data to the Henry inquiry, so, really, I can't throw any light on what actually happened. But I have given considerable thought to why the particular turn of events may have occurred. I feel that Parliament has been let down, and that concerns me. I am concerned about what my office can do differently to make sure that we react in a different way in the future, and the knowledge that we have and the experience that we have can be fully brought to bear on these sorts of situations. My submission sets out what I believe is important in considering requests for information, some reflection on what may have led to an environment in the parliamentary agency where parliamentary independence was not of paramount consideration, and then just comment just a little bit on what we as the parliamentary agencies are doing about that.

In terms of what is important in considering information requests, I think there needs to be clarity about the nature of the inquiry to which an agency is responding, the powers of inquirers and the intersection with the powers of the House, and then who owns the information. The investigation of a potential offence—a serious breach of security, for instance—is quite different to dealing with a leak, a political inconvenience. At one end of the spectrum there are no particular powers, and the other may be dealing with the execution of a search warrant.

I've just had a bit of a look. There are a number of bodies that have statutory powers to inquire and obtain evidence that could be used in these circumstances. The new Inquiries Act provides powers, the Human Rights Commission has powers, the Broadcasting Standards Authority, the Ombudsman. I think there is a tendency to seek to use these powers without regard to the powers and immunities of the House. It is more a matter of unawareness and about the need to balance particular powers against parliamentary independence. I acknowledge that Parliament is not above the law, but there are certain powers there to protect its independence; in particular, the power to control its own operations and immunity from proceedings and Parliament being questioned—in other words, free speech. I think that the intersection of the law there with these powers and immunities is where guidance from this committee would be really useful to us.

In terms of access to information, it is complicated, because the Parliamentary Service holds information as an agent. There are many owners of that information and different access arrangements will apply.

The Clerk is the custodian of parliamentary proceedings on behalf of the House. Those proceedings are absolutely protected, but a large amount of them, in the electronic form, is held by the Parliamentary Service. The Parliamentary Service holds ministerial records for DIA, and they are subject to the Official Information Act. It also holds records not protected by privilege and not covered by the OIA, members' representative and party records, members' personal records, and then, finally, the administrative records of my office and the Parliamentary Service. While the OIA may apply in some context—or one particular context, really—it shouldn't be used as a backdoor means of general access. I think, in terms of guidance, the Law Commission has done some very instructive thinking on this and it is worth reflecting on that. Also, the privacy principles—while the Privacy Act does not apply to the Parliamentary Service or members, those principles are really valuable in trying to establish some protocols.

I think it is the category of members' representative and party information and their personal information which poses most difficulties. It is not protected as if it were proceedings in Parliament and it is not subject to the OIA regime, which has protections, and currently our thinking there is that we should work through a number of steps where there are requests for that sort of information. Firstly, recognising that the Parliamentary Service is an agent and it is holding that information as an agent, and it has no role to disclose that information.

- Finlayson Agent for whom?
- Harris For whoever is the owner of the information. It is variable. It may be Ministers, it may be members, it could be my office, it could be the Department of Internal Affairs. So there are a whole lot of different owners—
- Finlayson So you say it is not determined by who holds the card; like, my card is not owned by me—
- Harris No, I'm talking about electronic information.
- Finlayson Oh, generally?
- Harris Yes, not specifically card information. I think where there are requests for information, the permission of the owner should be sought. It is necessary to clarify a process for access to that information, and I believe the Parliamentary Service should not be the place that access is obtained; it should be the owner who provides the access. It is necessary to advise the owner of the information of the right to claim privilege and possibly have a representative present if they are not present themselves when any sort of search occurs or any examination of information. Where privilege is claimed, for the Clerk, or a representative of the Clerk, potentially, to be present to deal with any issues about proceedings in Parliament, and possibly to have the Speaker ultimately as the determiner of what is a proceeding in Parliament issue a certificate in a way that is suggested by the Law Commission.

I think the committee has the power—or has been given the exercise, really, of looking at a protocol, and working through the existing protocols would be informative. Also, you might want to know that the House has the power to issue guidelines for the Ombudsman, and they may be something that would become a standard more generally, because the Ombudsman does have quite significant powers to examine information where she is looking at a complaint about official information not being supplied.

There is one smaller, I think, more technical issue, and that is around metadata that it would be worthy of looking at. How should metadata be treated? Should it be treated in a different way from the content of an email or other associated documents? From my discussions with members I feel I have reached the conclusion that the metadata around emails at least can provide a lot of information about with whom members are meeting and talking and what they are meeting about, and that is information that probably shouldn't be released. Those sorts of things could be addressed in any protocol.

In terms of the environment that created the climate where an appreciation of parliamentary independence wasn't paramount, there are just a couple of risks that I want to touch on. The first is section 9 of the Parliamentary Service Act, which provides for the service to provide services beyond core parliamentary services—those core services required by the House and members. I think any further expansion there needs some more careful consideration, to the extent that it might dilute that primary purpose for the

Parliamentary Service and the original objective of independent agencies serving the Parliament and responsible to the Speaker. So section 9 does pose something of a risk.

I think it is also important to acknowledge that in the parliamentary environment our processes for dealing with information are probably not as well ingrained as in departments. Because the OIA doesn't cover most of the work that we do, we are not regularly dealing with Official Information Act requests. But we have given considerable thought to this area in the work that we did with the Law Commission review of the OIA, and I think my office probably needs to share that more widely with the Parliamentary Service so that we are aware of some of the difficulties, because they certainly were well canvassed in that work that we did for that review.

So, what are we doing to deal with those risks? You can have all the structures in place, but if the relationships and culture are not right, then they are not going to work. That is something about running an organisation. We are working on some informal governance arrangements that are really focused around getting greater collaboration, more sharing of strategy, and establishing some common outcomes for ourselves and the Parliamentary Service, with the aim of creating a culture where issues are shared and escalated across the agencies if necessary.

We might also take an opportunity to look to see whether there are some better information technology developments that we can harness to help with this. And because of that, we've looked at an advisory board that will also have, potentially, an IT specialist on it to help us deal with some of these issues. The idea of the advisory board is that it is an informal group that would be sponsored by the Speaker, and it would help us with our kind of strategic governance setting of outcomes. The Government sets outcomes for departments; we don't have that process. It is informal at present, but I think it could potentially help with the risk of service expansion proposals under section 9. Even going as far as the independent determination of members' services to ward off the criticism that is rife about the use of the privilege of exclusive cognisance which underpins parliamentary independence but is often criticised as being self-serving. If the services were set by an independent parliamentary body rather than one appointed by the Government for quite a different purpose and serviced by the Government, that would be a step ahead for Parliament. But that is really another matter, beyond the scope of this inquiry, so I will leave it at that.

Finally, I just think there is some work to do around rebuilding relationships with the media, and our approach to doing that is through the communications strategy that the Standing Orders Committee endorsed us developing, in 2011. There are quite a number of things that we are working on there.

Finlayson

Thank you very much. There is nothing in what you've said that I have discerned that would necessitate a change to any of the legislation governing this place.

- Harris No, the work that we are doing around the advisory board, as I say, is informal. It is not part of our strict accountability structure, which is from the General Manager or myself to the Speaker, but it involves the Speaker. I think it is important that we keep the Speaker involved in that.
- Collins Thank you, Ms Harris, for your submission and also for this morning. Can I just ask you a couple of questions. The relationship between the General Manager of Parliamentary Service and you as Clerk of the House, could you just perhaps explain how that works and where the interactions are when it comes to matters of protocol or procedures, particularly relating to this sort of matter?
- Harris We are both appointed separately, with slightly different processes, but as chief executives reporting to the Speaker. We are responsible to the Speaker for the administration of our offices. I have more independence. The Speaker doesn't direct me in the same way as he directs the services that the Parliamentary Service provides, but I don't think that makes a huge difference to the way that I interact with the General Manager. Our practice with Mr Thorn was to meet every fortnight. Those were informal meetings where we would just discuss how anything was going and any issues that might affect both agencies.
- We have, over a number of years, been increasing the number of what we call shared services. The Parliamentary Service now provides almost all of our IS, information services, in terms of our computer hardware, and we provide them with legal services. We are working on more shared policy services. There is quite a lot of common work, and what we are trying to do is formalise that a little bit through the advisory board.
- Collins So in this particular matter you weren't advised of—
- Harris No.
- Collins —what was going to happen?
- Harris No. I became aware of it through an informal conversation at one of our fortnightly meetings when I was talking to the General Manager about the difficulties I was facing in the House with the position of the United Future party and some of the pressures I was coming under there. It was just an informal conversation that it came up then.
- Collins But that was after the events.
- Harris Yes. It was in June.
- Collins So this protocol that you are suggesting, that will be something that obviously will assist, you think, in the future?
- Harris I think so. To me it is unfortunate that Geoff has gone, because we were making a lot of progress on the shared services. This has had a bit of an impact on that, but we have to continue that work.
- Parker Can I begin by just endorsing your comments around metadata. There seems to have been some sort of false distinction being drawn between some classes of data and others when, as you rightly point out, the quantity

of data and what is in the subject line and what meetings may or may not be contained in the so-called metadata shows that there can be a confidence issue in respect of those. I don't want to go any further on that. I want to explore this issue about—you said in your presentation that there is a difference between leaks which are political inconveniences and other matters. Am I right in saying that that is a reference to the fact that a political leak, or a leak which might be politically inconvenient, doesn't give rise to security concerns that would justify access to logs about who is going in and out of buildings? Is that what you meant by that?

- Harris Well, I think you have to look at what the situation is, the powers of the inquirer, and then balance that against the powers of the House. So you weigh up whether you've got a serious security issue or whether it is more of a, as I said in my submission, political—and so there's going to be various grades of, you've got a spectrum, really.
- Parker Mr Banks in talking to an earlier witness asked the witness whether the line should be a strict line as to criminality and that you should use official processes like warrants to get information, and then the normal privileges that—you know, people understand that if there is a warrant there, then the normal privileges apply to protect against self-incrimination or journalists' freedoms. Do you have a view as to whether we should be drawing a bright line like that and say "Well, pursue your remedies, and if you haven't got a legal remedy you can't have it."?
- Harris Well, I don't know that that is entirely helpful, because if you look at the kind of spectrum of persons that have powers and the nature of those powers, you can cover off a warrant procedure but you've still got a number of powers that don't require a search warrant but are still quite extensive. Looking at the Ombudsman's power to obtain information when she is investigating a complaint, well they are quite extensive and there is a direct conflict with the powers of the House there. My view is that there isn't a way—I don't believe that Parliament should, every time that sort of power is given, legislate for the powers of the House and try to sort that in legislation. I think parliamentary privilege should always speak. What that means is that there needs to be a way of working that out. To me it is getting together with the inquirer and sorting out a process to get through it.
- Parker Well, there are a couple of points there that I would just like to tease out. One is in respect of the Ombudsman's powers. If the Ombudsman were to receive a complaint in respect of information that was held by Parliamentary Service on behalf of DIA and/or the Minister, that would be dealt with by her through the Minister in the future, do you think, or do you think she should ever be able to come to Parliamentary Service and try to get an indirect route into the information?
- Harris I don't believe so. I can't prevent her, obviously, approaching the Parliamentary Service, but, as I said, I think the process needs to be to look at who is the owner of the information that is the subject of the inquiry, and direct the inquiry there.

- Parker I agree with you in respect of the Ombudsman. In respect of your reference to Parliament's privileges, are you referring to parliamentary privilege in the narrow sense—that which is absolutely privileged—or are you referring to something broader than that, which is what are the rules surrounding what we do as members of Parliament in a way that enables us to go about our business without our parliamentary business being unduly looked into by people who shouldn't have a right to what is private? Now, can I give you an example. If we had someone coming into an office making an allegation to a member of Parliament of corruption, we want that sort of thing to be brought out through the parliamentary system, and, you know, it can't always start in Parliament. It has to actually start by someone raising it with a member of Parliament, who might raise it in Parliament and put it into the public in a way that is absolutely privileged. But the background step is the public interest and members of Parliament being able to go about their business privately. Now, I think there is an interest here in privacy that goes beyond absolute parliamentary privilege in that narrow definition of parliamentary proceedings which we nevertheless need to protect. Can I ask you that general question first, and then I have got a particular one. Do you agree with that?
- Harris I see parliamentary proceedings as connected to the transaction of the business of the House, not limited to what goes on on the floor of the House or in a committee. As you know from Leigh it can include conversations, material that is provided that relates ultimately to something that is transacted in the House. But it does not include all of the things that members do.
- Parker I agree that all of the things that parliamentarians do aren't subject to absolute parliamentary privilege. In respect of those things that aren't absolutely privileged—because I think we are pretty clear about what they are, absolute privilege—in respect of other issues, do we then just resort to, well, who owns the information, and if that is information that is private to the member of Parliament, including who is coming to visit them, including their emails and including their access records, that is the information of the member. Is that the appropriate way to look at it? And unless someone has a right to look through that, whether that information becomes public or not is a matter for the member to give consent to. And if the member doesn't consent, shouldn't the rule be that no one is entitled to it unless they've got a legal right to it and they can force it out of them?
- Harris I tend to agree with you on that. That's the way they handled it in Australia, and in the UK they've got slightly different arrangements, where, under their Data Protection Act, they do recognise members as a sort of entity—I think they call it a data controller or something like that. They actually recognise that members themselves have information that is not part of the proceedings. So there are varying ways of doing it. An informal way that involves a protocol does mean that ultimately there could be a test in court. The Australians follow a similar sort of idea, and they don't release member information. But they say it's not been tested in court.
- Parker We could as a Privileges Committee opine to what we think the rule is—

- Harris Yes.
- Parker —rather than creating something that is justiciable. The last question is: if you extend that to other participants in the parliamentary process, like people who might be coming into Parliament to make an allegation of corruption, or a journalist who might have interactions with a member of Parliament—both of them have got access trails in our modern communications situation—do you have a view as to similar rules applying there? Who does that information belong to?
- Harris To the extent that it is in the member's possession it belongs to the member. Journalists have other protections that apply to them in terms of their sources and things like that.
- Parker Well, can we just tease that out a bit, because I'm not sure that I think it is right that it is within the members of Parliament's right. Obviously, if member of Parliament knows something, then he or she can say about it, but what about the visiting person making an allegation of corruption or the journalists chasing down information? Where is the principle that lies behind when and if that information ought to be disclosed?
- Harris An individual will have protections under the Privacy Act, and I think that's what would need to be relied on, and journalists have the same protections but they also have other protections around their sources.
- Parker Well, is that right? Because we've only had a Privacy Act for the last 20 years, and I don't think that the rights of protecting the way in which Parliament exercises its rights in order to protect democracy—because that is effectively what these things are about—they predate the Privacy Act. Could you give some thought as to what principle—I don't want to catch you on the hop here, because we've been thinking about it and we haven't got all the answers. I would quite like to see if we can articulate a principle. The MP one, I think, we have virtually agreed with—
- Harris Yes. But it's that step further.
- Parker The journalist one, I think, arises from the rights and the importance of the fourth estate. The third party one, I don't know.
- Harris That is something we can certainly give some thought to and come back to it.
- Smith In your submission you have rightly pointed out the important constitutional separation between the executive and the Parliament. Have you given consideration—given the natural tension that there will always be, and should be, between the institution of Parliament and the executive—as to whether it is appropriate for the telephone and information systems effectively being integrated completely together? Look, for instance, in the UK, where Ministers' offices are quite separate, often separate departments. If we look at the US you have a complete constitutional separation of the executive from the Congress. Is it a matter where for convenience's sake we have the same telephone system, so our journalists in the press gallery and Parliament and Ministers, and, actually, departmental staff who work in Ministers' offices are all on the same telephone system and they are all on

the same IT system? And then you get a contractor, who doesn't understand the finer points of constitutional propriety between the two, gets confused, doing an inquiry into what is Minister's business. Does that raise the question as to whether we actually should have more of a firewall, effectively, between the Beehive and Parliament, and a separate telephone and information system that enables us to maintain that proper constitutional separation down into the system of IT that in today's world has become so important?

Harris It certainly concerns me. In 1984 when it started out, the idea was that there would be a separation. Information technology development is such that I believe it is impractical—as I say, I think there are risks in the Parliamentary Service providing that service to Ministerial Services and for Ministers. From my point view, what started me addressing me it was around the priorities, because they are also providing an IT service to us, and where does the priority lie. My view is that it should lie with the House. But there is a tension there as well. While we all inhabit the same piece of real estate, it is probably impractical to have separate systems. Ministers and members change places—well, not too often, but reasonably often.

Smith It's quite often, in my case.

Harris I hadn't thought of that—sorry. So you don't want to have to get a new phone every time something like that happens. It's inconvenient. That's something that could be looked at. But in terms of providing a service right across the parliamentary complex, the Parliamentary Service has endeavoured to provide services to the executive and Parliament, and I think that has caused some tensions.

Smith Have you had a look, though, internationally at Parliaments that have got the same dilemma of this healthy tension that exists between the executive and Parliament, and how many of them actually have the integrated system that we do? The informal contact I've had with parliamentary colleagues around the Commonwealth that have parliamentary systems like us is that, actually, they don't have—

Harris Mostly they don't.

Smith —Ministers' systems right into the parliamentary system, and I wonder whether that has been at the core of what has gone so wrong in this instance.

Harris In fact, in Australia it is almost the other way round, the Government actually deals with members' services through a department. They have a Parliamentary Service department. The service delivery of members' services is mainly handled by their department of finance and administration, or something like that. So it is almost the opposite way round. Our position of having us all on the same piece of real estate creates some difficulties. That is why I think we maybe need to look at whether there are some smarter IT solutions to help kind of create that separation but without creating inconvenience, particularly for Ministers.

- Smith You see, if you take Ministers, we change payrolls. When you are a back-bench member of Parliament you run on a different pay, it comes through different rations, as compared with being a Minister. If it is important enough for your payroll, why would it not be as important as the sensitive information that ends up on your IT systems and, that being said, where there are far greater sensitivities?
- Harris That's really the reason why I draw attention to section 9, because it was under section 9 that the services to Ministerial Services were developed. I think a bit more thought needs to go into the way in which section 9 of the Parliamentary Service Act is used.
- Collins Isn't the situation, really, here, Ms Harris, that the IT and the need or the wish to be able to get information out and share information, whatever, that simply was not put beside the constitutional issues? So if this issue had been raised with you or with the Speaker—you can't speak for the Speaker, obviously—if it had been raised with you as “This is what I'm being asked for. Is there any issue?”, is that something that you would have said “I feel there is an issue here.”, and taken some steps?
- Harris Well, those issues have to be raised with the Speaker, because section 9 can only be used—
- Collins But they weren't.
- Harris Oh, in terms of this particular event, the Henry inquiry, no, they weren't. I do raise those issues, but there are cost savings and economy of scale issues that I get told about, so—
- Collins No, no, I'm not thinking about generally; I'm thinking about this particular inquiry, this particular issue. If you had been alerted to it as the Clerk of the House, the person who has an understanding of the constitutional issues that my colleague Dr Smith has raised, what would you have said? Do you think hypothetically—
- Harris With the benefit of hindsight, what I would have done—because this is my usual practice—is the thing about “Well, do we have any precedents here?”. Well, we don't have a direct precedent but we do have some protocols, particularly the search protocols that were developed very quickly to deal with the search of the Hon Taito Phillip Field's office. I think it does provide some very good principles, and it provides for the Speaker to be informed at every step of the way. That, I hope, would have been my starting point, but that is with the benefit of hindsight.
- Graham On the issue that we have been in part focusing on, which is the common IT platform that Parliamentary Service gives to all of Parliament including the executive branch. As I understand it, that is a fairly recent development, somewhere around late 2011, and before that they were separate.
- Harris I'm not sure of the exact date. You would need to ask the Parliamentary Service.
- Graham Well, my understanding is that it was late 2011. And the rationale for that appears to be in the Parliamentary Service statement of intent for the 5-year

period 2012–17, and it explicitly rationalises that on the basis of economies of scale within tight financial constraints. I am just quoting from that statement: “The Service has continued to expand its partnerships with other agencies to realise economies of scale, particularly in the provision of its ICT network which it has expanded to include Ministerial offices. This network expansion reduced the cost of services overall and avoided the cost of a network upgrade for the service previously provided to Ministerial Offices. The Service is now looking to expand its provision of network services to other agencies on the precinct with a view to further reducing costs through achieving economies of scale. Over the next three years, the Service will continue to seek to share services where there are clear savings to be realised.” The whole rationale is focused in on economies of scale within tight financial constraints. This is late 2011, thereabouts. At that stage were you or anyone else to your knowledge brought in on any discussion about the constitutional implications of that change?

- Harris If I recall rightly, I did have some informal discussions with the Speaker about the advisability of this. My view was to be careful, because there are issues in terms of—the way I approached it was around, because I wasn’t thinking of this particular circumstance, how do you determine priorities when you expand a service like that, when, if you look at section 7 or 8 of the Parliamentary Service Act, the service is there to provide services to the House and members. That was the approach I was taking, and those were my concerns at that time.
- Graham I understand and accept it. You are effectively saying, however, that one has to be careful as opposed to not proceeding. I do see that this currently operative statement of intent still remains: “Over the next three years, the Service will continue to seek to share services where there are clear savings to be realised.” In light of what has happened, would you now advise that that not proceed?
- Harris I think in 2011 that probably referred to more sharing with the Office of the Clerk. I don’t think there are risks there, because we are both agencies servicing Parliament. I think the work we are doing on shared services does not pose the same sorts of risks, so it is quite possible that that statement in the Parliamentary Service statement of intent refers to—
- Graham It’s in the same paragraph that refers to Ministerial Services.
- Harris The Parliamentary Service provides some services to the Parliamentary Counsel Office, but I’m not aware of any other expansion except in terms of the services that it provides for the Office of the Clerk.
- Peters Could I ask you with respect to your bottom paragraph, page 2 and it goes on to page 3. You were saying that people might perceive themselves not to be acting as Ministers but as leaders or as MPs. What is their determinant factor here as to how they were acting? I’ll put it this way. If you were an MP you would not be sitting on, for example, a serious ministerial body getting this serious information like the GCSB and SIS and that sort of information, and then trying to say “Well, I’m just a simple MP and I’m not

- therefore responsible like a Minister was.” What is the determinant factor that you would consider with respect to that paragraph you wrote?
- Harris Well, I guess the way I would look at it is Ministers have particular responsibilities. They have warrants that cover particular portfolio areas. So that is where their responsibilities exist. The other things that they do are likely to be constituency things or they may have formal roles on, say, the Parliamentary Service Commission, which are not necessarily related to being a Minister. On the Intelligence and Security Committee you have to look at how that committee is established to determine whether or not a member may or may not be there in a ministerial capacity, I guess. I don’t think there is any actual dividing line, except to me you look, really, at: what are the Ministers’ portfolios; to what do they relate; and, if there is some other activity, well, then, it is quite possible that a Minister might be dealing with that other activity as a member or a party leader.
- Peters You would accept that that committee is a pretty exclusive, privileged committee that most members of Cabinet would love to be on.
- Harris But it does have members who are not Ministers on it. If you are talking about Mr Dunne and you look at his ministerial responsibilities, I don’t see a connection with the GCSB there or the SIS, really.
- Parker Can I have a supplementary on that, Mr Chair? I think that’s perhaps a bit too narrow, because if you just look at it from a Minister’s warrant route, you are ignoring the fact that they see everyone else’s ministerial information when they sit on Cabinet committees. So the duty of confidence that arises from a Minister arises from the things that come to that person, not just through their own warrant but through what is their ministerial business, which is a lot broader than that.
- Harris Yes. True. I mean, to a large extent I don’t think there is a dividing line. From a parliamentary point of view, I would take the member’s word on how did the member consider he or she was operating at the time. I don’t think there is a particular way of defining it.
- Peters Do you not think that one of the determining factors is the nature of the information that they have acquired themselves, and that is—
- Harris Well, it might be, as Mr Parker suggests, if it came through a Cabinet process. That relies on your being a Minister. But Ministers get information from other sources as well.
- Peters Can I ask you this. In your second full paragraph on page 3, you talk about “A serious security breach involving a potential criminal offence may occasion the release of personal information to the police” etc, etc. “but leaks are rarely of this nature.” This is a bit of a chicken and egg situation, isn’t it? If you complain to the police that a serious crime has been committed and you itemise the statute that you allege, and it is, in some people’s view, a crime to leak a State secret. If the police position is “Well, show us the proof”, then where do you get them to actually do their duty by the statute that you are seeking action on? By chicken and egg I mean if you are going to wait until the police get involved before you demand this

information, you are then consigning to an outside institution a range of decisions which should be the preserve of this House.

Harris Criminal offences are investigated by the police, but the House has certain powers to deal with other matters, and it has got extensive powers to require its members to give information and others to give information. I don't see a conflict there. My point really is about when you are dealing with this as someone who holds information you need to look at what is the nature of the inquiry and what powers the inquirer has, and that is really what I am getting at. In this instance, I think it is instructive that the inquirer had very few powers—no powers, really. But if you were dealing with the police, on the other hand, they may well come with a search warrant, then we have protocols to deal with that and put some safeguards in place for members to deal with it.

Peters Just one last question. You go to your conclusion, which is that we have got an evolving situation that there are certain risks that we have to manage into the future. But it appears that there is no precedent for what you are saying here. Now, I find it very hard to believe that there is no precedent, because there has been precedent in this matter on the access of private information of an MP or of a Minister. Therefore, why would you suggest that there is no precedent?

Harris I don't think I've said there's no precedent—

Peters Hang on, you said "We don't have any precedent here." That is an exact quote.

Harris We haven't confronted, as far as I know, an inquiry of that exact nature where there are no powers but information is being sought. We have confronted a number of different situations where there have been request for information from members about themselves. We've confronted a search warrant. There are relevant examples of similar sorts of things. There's probably not a direct precedent for this particular circumstance. To me, that's why I would always look at what else has happened and what can I learn from those experiences, and they are important.

Peters Can I just suggest that there is precedent. The fact is that you were sitting there as a person on the committee some years ago when the very same request was made of an MP. There was no demur back then from anybody. No one in this whole institution thought that was wrong. So why is it not a precedent now?

Harris But that was, if I know what you are talking about, a committee that has powers to call for persons, papers, and records, asking for information. This was an inquiry, the Henry inquiry, with no powers. This committee has very extensive powers, which no other select committee has. The Speaker has similar powers if a select committee requests him to exercise them. This committee has significant powers to call for persons, papers, and records and to deal with people who don't meet their requests. I say that is a different situation.

- Peters But you would accept that it is within the Government's control to have an inquiry with all the requisite powers that you say were absent in this inquiry?
- Harris It could have been. I think that, perhaps, is instructive.
- Peters Thank you.
- Finlayson Any other questions, folks? No. Thank you very much. It raises as many questions as you have answered. But that's by the by.
- Finlayson Good afternoon. I think I should begin because I don't think you were here at the opening hearing on 21 August. I began by making a brief statement under Standing Order 221, and the essence of it is that in this hearing what we are doing is focusing particularly on gathering information concerning the circumstances which led to the release of information from the parliamentary information and security systems to the authors of the inquiry. We are speaking to some of the key entities and individuals involved in this release, those who were involved in the request, those who responded. That was what we were doing on 21 August.
- We have not been asked to investigate this matter as a contempt. Our overall aim is not to establish personal culpability or hold individuals to account; we are looking at this matter in detail only in so far as it is a practical example of how any policies and procedures which govern the access and release of information from parliamentary information and security systems are to be applied. We expect the information we gather will help inform us about where the main issues of this area lie, whether there are problems with the policies and the procedures themselves and, if so, what the gaps are, or whether the problem has arisen due to their application.
- So we are quite a long way down the track, but it is helpful just to emphasise those points to you this afternoon as we begin this part of the committee's deliberations. Over to you.
- Dunne Thank you, Mr Chairman. I'm accompanied by Dr Matthew Palmer this afternoon. I would like to make a brief statement, then perhaps take some questions if that is acceptable.
- Mr Chairman, the Henry inquiry established the dates of 27 March to 9 April as being the dates critical to its investigation. That inquiry was commissioned by the chief executives of the DPMC and the GCSB, but was to be carried out independently of both agencies. It was serviced by an official from the DPMC. The inquiry was established on 15 April 2013. My first meeting with Mr Henry was not until 23 May, when he advised me that he was interested in the period 27 March to 9 April only, and that events outside that period of time were not part of his inquiry.
- The inquiry's terms of reference included "reviewing communications and copying equipment and records, logbooks, and any other material considered relevant" of those who had access to the Kitteridge report.
- Emails released by the DPMC show that on 8 May the inquiry requested cellphone records and external mail data for Ministers, but excluding me.

Ministerial Services then indicated that such information could be provided for the relevant Ministers, including me. However, Parliamentary Service asked for written confirmation from individual Ministers before authorising access to those records. I am unsure why I was excluded from the original list of members whose records the inquiry sought, while being on the list of names that Ministerial Services said information could be obtained for.

In any event, no request was ever made by Parliamentary Service, Ministerial Services, or the inquiry seeking authorisation to access my data. Yet when I met Mr Henry on 23 May he was able to tell me of the number of emails that Andrea Vance and I had exchanged between 27 March and 9 April. At the same meeting he sought my approval, which I declined on privacy grounds, to access the full content of those emails. I further advised him that I did not have Ms Vance's approval to release her emails, a point which Mr Henry disputed. On 31 May he told me that under employment law there was no legal reason why I could not release her emails to me. Yet this contradicted his advice to me at the 23 May meeting that the very reason he needed my approval to access the content of my emails was because Ministers were not considered to be employees and therefore were not subject to normal employment law. What is clear is that at no point did the inquiry have my authorisation to access even my email metadata, let alone the content of my emails.

Yet I now know from information released by the DPMC on 2 August that all my inwards and outwards email metadata to my parliamentary inbox, not just those relating to Ms Vance and me but all my email data for the period 22 March to 15 April, were provided to the inquiry and to the DPMC on 16 May. Moreover, the email trail released by the DPMC on 2 August shows that a file containing the full emails between Ms Vance and me had been provided by a Parliamentary Service contractor to the inquiry on 21 May. It was returned unopened, according to the inquiry, approximately 45 minutes later, following advice from Parliamentary Service that it had been forwarded in error. However, that file had also been available on the Parliamentary Service server for some 5 hours 35 minutes earlier that day. It is not clear whether the file was accessed during that time, and, if so, by whom.

I have written separately to Mr Speaker seeking his assurance that the emails were not accessed by any staff member of, or contracted to, the Parliamentary Service during that time, but I am yet to receive a reply.

Later in the 23 May meeting Mr Henry asked me about a telephone conversation with Ms Vance on the evening of 15 April, outside the period of time that he had previously nominated as being the only dates he was interested in. I am now aware that on 17 May Parliamentary Service had provided the inquiry and the DPMC with my full mobile phone records for the period 25 March to 25 April. At no point was my approval sought by anyone for access to those records.

On 31 May Mr Henry requested access to my office landline data, with specific reference to calls to Ms Vance's office landline, office extension,

and mobile number for the period 27 March to 9 April. As I was overseas between 30 March and 7 April I was prepared to agree to this request. I distinctly recall his saying that he wanted them for the purposes of comparison. This strongly suggests to me he had already viewed Ms Vance's phone records. Emails released by the DPMC on 2 August also make it clear Ms Vance's phone records had been provided to the inquiry for a 3-month period. I do not know the period of time over which my records were provided.

At the same meeting Mr Henry requested my swipe card records for 7 April. I agreed, solely because I was returning to New Zealand that day so was nowhere near the parliamentary complex. I am now aware that my swipe card records were provided to the inquiry and the DPMC for 3 days—6 to 8 April.

In summary, therefore, my email metadata and mobile phone records were accessed without my approval, my swipe card details were provided for a period longer than that to which I had agreed, and while my landline records were accessed with my approval I do not know for what period of time or whether records of all my calls, other than those to Ms Vance, were handed over.

Overall, this is a very unsatisfactory situation for the following reasons. The protocols governing access to Ministers' electronic data are, at best, unclear and, at worst, non-existent. In this instance, what existing protocols there were were clearly unknown to most of the agencies involved and applied in a very haphazard way.

The inquiry was established by the DPMC and the GCSB but conducted independently of both, yet critical data relating to me personally and presumably similar data relating to other persons of interest to the inquiry were either obtained by or provided to the DPMC apparently during the period of the inquiry. The DPMC says that it had not shared such data with any other organisation or entity including the Prime Minister or his office. It is not clear to me why the DPMC as one of the commissioning agencies of an apparently independent inquiry was being provided with data relevant to that inquiry apparently during the period of the inquiry.

Despite Mr Henry being specific that his focus was the period 27 March to 9 April, the information appears to have been provided on an almost random basis for a range of dates between at least 25 March and 25 April, and quite possibly wider. Again, the reason for this is unclear.

Little or no regard was given by the inquiry or any of the agencies involved to legal rights of privacy or confidence in terms of communications between members of Parliament and the general public, including constituents, journalists, political and confidential contacts, and others. In my case my email metadata and mobile phone records covered all my emails and phone calls for the period 22 March to 25 April—well beyond the scope and the period of interest identified by the inquiry.

Nor was there any regard for members of Parliament's basic right to freedom of movement, speech, and privacy in and around the parliamentary precincts. It was, for example, for the inquiry to determine from my swipe card records the frequency of my visits to the toilet.

Under section 26 of the Parliamentary Service Act 2000, control and administration of the parliamentary precincts are vested with the Speaker. Even the police need a protocol with the Speaker to exercise policing powers within parliamentary precincts. The privileges and immunities of the House of Representatives to control parliamentary precincts, to ensure freedom of speech of members and, in particular, to resist the demands of executive Government are matters that are core to the constitutional position of Parliament. These principles were hard-fought and won in Westminster centuries ago and inherited by our House of Representatives. Mr Chairman, they must not be lightly cast away.

Finlayson Thank you very much. Just to confirm, you have read the statement by Mr Henry?

Dunne I saw via live stream the evidence that he gave.

[Discussion regarding supplying a copy of Mr Dunne's statement]

Smith My question was in respect of the differences in the roles of Ministers as compared with members of Parliament. I think the points about the privacy and the separation of Parliamentary Service is absolutely well made, and there have clearly been breaches in that regard with both the press gallery and in respect of issues with MPs. But as a Minister of the Crown, one of the most important oaths that you swear is in respect of respecting the confidence of the ministerial process. I am interested as to your view as to whether in fact there is an important distinction between the rights as a member of Parliament, in terms of the privacy issues, as compared with someone who is a Government Minister.

Dunne I don't think there is, actually. I think that in a number of instances, and those are referred to in my statement, contacts with members of the public, be they constituents, advisers, journalists, or otherwise—and this was really the point of principle on which I resigned—I think there is a right of confidentiality of those communications. I think there is a legitimate expectation on the part of those with whom the communication occurs that, unless otherwise acknowledged, those communications will not be disclosed to the public.

Smith But isn't there an equally important public interest in the processes of Cabinet being able to occur with a high degree of confidence and confidentiality, particularly when they are dealing with issues as sensitive in relation to the SIS, and that where there are leaks of sensitive documents, and you are going to have an inquiry into where they occurred, surely it is an onus on Ministers, including those who at this table, that if there is going to be an inquiry it should not just be of ministerial staffers, of public servants, but it should actually be of Ministers as well? I understand there is the delicate differentiation between us who have roles as a member of

- Parliament as a Minister and that they are separate, but in terms of roles as a Minister, shouldn't it be within the ambit of Ministerial Services and the Prime Minister to be able to inquire, including into the actions of Ministers, for him to be able to have confidence as the person who is ultimately responsible for the integrity of Government?
- Dunne Well, that's really what this particular inquiry is about in determining where those boundaries should be. I've put forward a view as to where I see the boundary being drawn, and I think I would come down on the side of an absolute protection of the rights of communication. But, frankly, I'm not sitting around this committee table, I'm not hearing all of the evidence. That's something that you've got to resolve ultimately and put in place, I think, clear rules. I think the clear lesson of this particular case has been that such rules as there were were unclear, that those who were charged with administering them didn't quite know where the boundaries were, and that a lot of the problems that apparently occurred were as a result of that uncertainty. I think some greater clarity would be helpful.
- Smith But could I be clear again. Do you accept there is any difference in the rights of a member of Parliament to absolute privacy as compared with a member of the executive, or are you putting to the Privileges Committee that those rules should be absolutely the same for both?
- Dunne Well, I think where Ministers are concerned in relation to the exercise of their portfolio responsibility, there are obviously certain restrictions that need to apply, but we have a very diverse Parliament where members perform a variety of roles. I think to protect the right of communication as a member of Parliament, as a party leader—roles that are not ministerial—I think it is very important to protect those rights. If you start to draw absolute boundaries, then you will get to a position ultimately where no one will dare contact their member of Parliament for fear of the disclosure of the information that they provide to the member of Parliament, which I think would be something we would all say was utterly wrong.
- Cosgrove Could I ask you to clarify—I haven't got time to read your statement—that you declined, if I am correct, full access to the contents of your emails to the Henry inquiry. Am I correct in assuming that at no time you provided any emails or any part of emails to the Henry inquiry?
- Dunne No, I offered Mr Henry—it would be around 31 May—access to an edited version of my emails but not the responses to them, and I took out references that were clearly not relevant to the matters he was interested in. And that's recorded in his report.
- Cosgrove You have articulated a principle of absolute privacy. I would ask you how you would reconcile that with providing—to me, the rule of absolute privacy is you either you do or you don't. You've provided an edited version. I suppose my question goes to this also. Presumably the only objective of the Henry inquiry was to ascertain the leak. If you had provided full information and full emails to the Henry inquiry, there was no interest, I assume, in the Henry inquiry publishing or making public any peripheral issues of any kind that may have been part of the emails you provided, had

- you provided them in totality. So, in doing so, you could have cleared yourself by providing the full information and still protected the content of any other issues, parliamentary or otherwise, that may have formed part of that disclosure. But I just find it difficult to reconcile how you can, on the one hand, support absolute privacy as a principle, but provide edited narrative, on the other hand.
- Dunne Well, I think the short answer to the question is twofold. Firstly, I think that's getting a little bit beyond the scope of the inquiry. The second point, and substantively, I would say that I made the call because of his persistence, really, in simply saying "I must have access to the full emails." He said that on a number of occasions. I was not prepared to go down that path for the reasons that I've stated publicly. I felt that a compromise was to give him access to a version of my emails which contained their main substance. He found that unsatisfactory, and that's where the cards fell. The point I would make, Mr Cosgrove, is that in that instance the call was mine, because it was my material. But I think, as a general principle, I would come back to the absolute privacy of those communications.
- Cosgrove So, is it your view that if you had taken the decision to provide Mr Henry with all the information he sought in respect of emails, that would have lifted any question over yourself as the person who potentially leaked?
- Dunne I think that is getting into territory that is beyond the scope of the inquiry.
- Finlayson I come back to my preliminary statement. We are focusing on—we are not setting out to find people guilty of contempt or anything—
- Cosgrove Sure. And I wasn't making any allegation; I was simply exploring the view.
- Dunne Look, I can just make this observation. I didn't make the call to withhold access lightly. Over 20 years ago I drafted what became the Privacy Act. I have a very strong interest in protecting personal privacy and making sure that information gathered about people is not misused. I guess in the end that principle, to my cost frankly, was the one that I fell back on.
- Finlayson But it can't be an absolutist principle. I don't want to thrust these on you if you haven't read them, but there is a security policy for parliamentary precincts and it deals with access to recorded images under the CCTV system that is operating around here. But even there that material can be released for security or safety questions or other permissible purposes—other legitimate purposes, i.e., recording images following a security or criminal incident. That information, which is in a similar category to access records, at least can be released in certain circumstances.
- Dunne And I wouldn't argue with that in those circumstances.
- Cosgrove Just finally. So the rationale for you partially releasing material, as I understand your response, was purely motivated by Mr Henry's persistence, would that be a good characterisation?
- Dunne Yes. Correct.

- Cosgrove So the principle of absolute privacy sort of went out the door because Henry put the pressure on. I agree with you your absolute principle, but I just have difficulty in reconciling your principle with your action.
- Dunne No, I wouldn't agree with your choice of words, and again I would say this is beyond the scope of the inquiry. But my point was simply that faced with someone who wouldn't take no for an answer I tried to be magnanimous.
- Parker I just want to continue with what Dr Smith was asking you about. It seems to me a little bit convenient for Ministers to be able to say "I obtained information in my capacity as a member of Parliament and therefore it is for me to decide what capacity I receive it in and who I disclose it to." I suggest to you that is a little bit too general, that perhaps the way in which we should be looking at the ministerial information is whether that was legally disclosable through means other than the Henry inquiry, such as, for example, the Official Information Act.
- Dunne I wouldn't use the words that you used because I don't think it is quite as all-encompassing as that. I think it comes down, as someone once said in another context, to the hats that people wear. People do wears a series of hats, and different hats at different times.
- Parker If you are a Minister and you write emails on your ministerial computer that showed—and I'm not saying you did here, because you are not on trial—if you are a Minister and you wrote emails on your ministerial email account that showed that documents were being leaked to someone, that seems to me you can't prevent access to that just because you happen to be a Minister and a member of Parliament.
- Dunne No, and in that hypothetical instance I would agree with you. But the point I would make—again we are getting off the point—is that all of the emails in question were on the parliamentary server.
- Parker Well—
- Smith But there isn't a Ministerial Service server.
- Dunne They were on the parliamentary address—
- Parker Well, let's drill down on that. All ministerial emails are on the parliamentary address.
- Dunne What I mean by that, Mr Parker, is the @parliament.govt address, not the @ministers.govt.
- Smith But Ministers use that address too.
- Dunne It is an interesting side issue.
- Finlayson That is an interesting question that we may need to explore at some stage.
- Parker Well, yes, but I would explore that now. If you are saying that all emails are—actually, can you repeat what you said then?
- Dunne You made a suggestion that using your ministerial in-box to email sensitive data to whoever would be something that would be of concern. My retort

- was to say that if you were particularising it to me, the emails in question were not sent from my ministerial in-box. That is all I was saying.
- Parker But it would be a matter of fact, I would have thought, to be determined under the Official Information Act ultimately by the Ombudsman, as to whether a ministerial document—be it embarrassing or not to the person who didn't want it disclosed—
- Dunne That may well be so.
- Parker Yes, OK. The second question. You said that you were surprised that information was coming from Parliamentary Service and DPMC—if I heard you correctly. Do you have any suspicions as to whom they might have given the information to?
- Dunne No, I don't. My point was simply that you had the two bodies, the GCSB and the DPMC, that commissioned an independent report. I was a little surprised to discover that some of the information that the inquiry was seeking—
- Parker During the inquiry.
- Dunne —during the inquiry was apparently being provided to both. No, I don't have any—I am not making any allegation, neither do I have any suspicions as to whom and why, but it did strike me as a wee bit odd if you are having an independent report.
- Parker Did you or your chief of staff, following those communications to DPMC, have representations from Mr Eagleson asking you to disclose more information?
- Dunne No, and this is also not part of this inquiry.
- Finlayson We've got to be very careful about what we are focusing on in terms of this stage of the inquiry. We are not conducting a hearing into contempt.
- Parker I'm not, but Mr Eagleson was here giving evidence about what happened. He's just said no, anyway, so he's answered the question.
- Finlayson Miss Collins.
- Parker I have a third question.
- Finlayson Hold on, you can just wait. I'll come back to you.
- Collins Mr Dunne, thank you for your statement today. You've also made some comments in your statement alluding to a concern that this file of your details was held on the parliamentary server for 5 hours or whatever. You have also written to the chair of the committee regarding statements made by the Rt Hon Winston Peters alluding to seeing or knowing the contents of your emails. Do you have any further information—
- Peters Point of order, Mr Chairman.
- Finlayson Yes.
- Peters Do you have any difficulty with this line of questioning, given your last comment to Mr Parker?

- Finlayson Well, the question has not finished yet.
- Peters No. Have you thus far determined this line of questioning, right, having regard to your last comment and your reference to others as to the nature of this inquiry—I am not in front of this committee, I am a member of the committee, and I would have thought given the speed with which you have acted in the past on such matters—
- Finlayson No, I'm trying very carefully to listen, Mr Peters.
- Peters You've written a letter back to Mr Dunne on this question, have you not?
- Finlayson I have.
- Peters Exactly. So which part of this question are you allowing in now?
- Finlayson Well, it is a compound question, so—
- Collins It is a compound question. Thank you, Mr Chair. Mr Dunne, do you have any concerns that other people than those who have been identified as part of the inquiry have had access to the information that you sought to claim as your own information?
- Dunne Potentially yes, which is why I wrote, I think from memory, on around 7 August to the Speaker seeking assurances for that 5 hour 35 minute period that the data was not accessed by anyone at all.
- Collins And you have received a reply or not?
- Dunne I have not received a reply at this stage.
- Finlayson Mr Parker, you have a supplementary and then your third question?
- Parker No, it's really a point of order for us, really. We should be able to get that information for the purposes of our inquiry.
- Finlayson Well, we can deal with that in committee later on.
- Parker You made reference, and your colleague that you have next to you might be able to help you on this, about how we should be concerned to protect the freedoms of speech of Parliament including the ability of Parliament to maintain control of the precincts of Parliament, because this is important to the functioning of Parliament, holding the executive to account, and democracy. I agree with that. You were probably in the room, I think, at the back when I asked the Clerk of the House as to what is the principle that underlines this that goes beyond parliamentary privilege in the narrow sense, which is the absolute privilege including against defamation suit for what happens in the Chamber and some things that surround that. I would like to better understand, and wonder if you can help us articulate what it is these underlying freedoms of Parliament, our privileges of Parliament, that this sort of thing infringes.
- Dunne Well, in part I have referred to it already with the comments regarding the protections around email correspondence. The second element, though, is the much more basic one of the swipe cards—the fact that is possible, and in this instance did happen, that people's movements in and around this complex were being traced, for reasons which were not to do with a

- criminal matter, not to do matters of personal safety, but really to do with proving a theory, I think, impinges quite dramatically—
- Parker And hand it to the executive.
- Dunne And hand it to the executive, effectively, through the provisions of the DPMC. I made the comment that wasn't flippant, because I have seen the records. Given the structure of Bowen House it is actually possible to record trips to the bathroom. Now, I find that deeply offensive, frankly, that someone should even be thinking they can gain access to information which might provide that level of detail to them about someone's movements around the building. All of you should just think how often during the course of a day, so to speak, you would come in and out around this complex and use a swipe card.
- Parker I'm not sure if it is important but I am wondering whether these rights to privacy or privileges of Parliament are privileges of individual members or privileges of the protection of Parliament. Are we trying to protect Parliament by protecting the rights of individual MPs or—
- Dunne I would say that they are for the institution. So that is all of the members and people who are within the institution. My own view is that where you compromise those, it is where you are investigating a criminal matter or there is a matter of serious personal safety involved. I heard Mary Harris make the point about political matters, and I think this issue comes in—
- Finlayson I'm sorry, I didn't quite hear. You heard Mary Harris say what?
- Dunne She made the distinction about matters that were inherently of a political nature. If I heard her correctly, she was saying that they shouldn't really form part of the consideration. If that was the view she was expressing, I agree with her.
- Parker So, how this is given effect to in practice, if someone wants this information, is that in respect of a member of Parliament it should be for the member of Parliament to give up their right to privacy and for no one else to do it on their behalf unless there is some legal right—a warrant.
- Dunne In principle, yes.
- Parker And in respect of journalists, have they got a separate right under the auspices of Parliament or under their rights as the fourth estate? Have you given any thought to that?
- Dunne Well, I think journalists and other employees who are working within the complex ought to have a right or some confidence that their rights of free movement around the place aren't going to be abused. I think by checking, particularly with journalists, who they are going to see, when they might be going to see them, where they might be going to see them, etc., etc., starts to get into this whole area of tracking what the fourth estate is up to.
- Parker I agree with that. I'm interested in whether—because we are trying to articulate some principles here—that arises from Parliament's privileges or that journalist's privilege. I am not expecting an instant answer—

- Dunne My suspicion—not suspicion, my sense would be the rule should apply to the institution as a whole.
- Parker And that would then cover some third party coming to try to say that some corrupt things happening elsewhere in society—it’s not just journalists.
- Dunne Potentially, yes. The rights of people who are dealing with Parliament, yes.
- Hipkins Do you accept that it is the content of information rather than the means of storage or transmission that will determine whether or not it is in fact official information?
- Dunne Yes, I think that is correct.
- Hipkins You made the distinction earlier on that you had used a parliamentary email address not a ministerial email address in the exchange of information. Do you think that by virtue of using a parliamentary address rather than a ministerial one, it made it less official information than if it had been exchanged using a different email address?
- Dunne I think the test for official information is whether it is being held by a Minister in a ministerial capacity. The vehicle by which it is being transmitted or stored is really secondary.
- Hipkins The reason I get into this is because if Ministers have Gmail accounts or Hotmail accounts or something that is completely off the grid and used that to exchange Cabinet papers or to discuss Cabinet papers, that would still meet the test of being official information because it is held by them and they are Ministers.
- Dunne Yes.
- Hipkins So the transmission mechanism, whether it is your parliamentary address or your ministerial address, does not matter.
- Dunne It is the nature of the responsibility that is being exercised.
- Hipkins The reason that I get to this is that ultimately someone needs to make the judgment as to whether it is a parliamentary piece of information or a ministerial piece of information. And then if it is a ministerial piece of information, whether there are grounds to withhold it or whether it should be released. The ultimate arbiter of that is the Ombudsman—
- Dunne Correct.
- Hipkins—in the event of complaint.
- Finlayson In an official information sense.
- Dunne Yes.
- Hipkins In an official information sense. And in making those judgments should a third party—most notably the Ombudsman—be able to access, say, your parliamentary email address to assess whether you have been transmitting information through that, that could be deemed to be official information.

- Dunne Look, I'm not going to comment on that. I think that's really a matter between the Ombudsman and the parliamentary authorities. And the Ombudsman is an officer of Parliament, anyway.
- Collins And he's not here to give legal advice.
- Graham I have just the one question, and forgive me if you have addressed it, but it remains unclear in my mind. At the beginning of your testimony you say you were unsure why you were excluded from the original list of Ministers whose records the inquiry sought while appearing on the list of the names of the Ministerial Services subsequently, which you were on. In your perception then and now was that, in your mind, because of your particular status as a Minister outside Cabinet? Did you raise the matter then or subsequently to discuss it with anybody to clarify that?
- Dunne I think it is probably more a case of oversight, to be frank. I didn't become aware of this until well after the events. A lot of the information started to become available, I think, in the last month or so. The answer to your second part of the question is no, I didn't because it was historical at that point.
- Graham So at that stage you did not see any distinction between yourself as a Minister outside Cabinet and the other Cabinet Ministers.
- Dunne No, no. My assumption—and I put that point in the statement simply, I guess, to highlight a point which I made later, which was that there was inconsistency. I think that in that particular instance they just didn't line up the records the right way. That's my assumption, and I don't think it is anything more sinister than that. It is just symptomatic of a pretty shoddy, haphazard approach, that's all.
- Peters The last sentence in paragraph 4 and then the first sentence in paragraph 5 which says: "...at no point did the Inquiry have my authorisation" etc., etc. At what time did you advise the Prime Minister that this was a case—
- Dunne Sorry?
- Peters I want to know, because we are looking at the process here—
- Finlayson Is this the first page, Mr Peters?
- Peters Yes.
- Finlayson What's the passage—I'm sorry.
- Dunne I'm with you up to—ask the question again.
- Peters If you look at your submission which you've read out with some verbals added to it as well. Paragraph 4, the last sentence, which Mr Graham has raised with you, and then the first sentence in paragraph 5. What is clear is that "...at no point did the Inquiry have my authorisation" etc., etc. My point is that the Prime Minister had put out an edict to all Ministers. When did you become aware that it applied to you, and when did you demur?
- Dunne That's not really part of the inquiry, Mr Peters.

- Peters With respect, Mr Chairman will decide that, not you. I'm asking you— because we want to know about the process of proper or improper disclosure, which is what we are talking about now.
- Finlayson What we are trying to do is that we are not holding individuals to account, we are not investigating, having a rehash of the Henry inquiry—
- Peters No, no, I'm not—
- Finlayson What we are trying to do is look forward—
- Peters I'm trying to find out when it was that his rights were infringed.
- Finlayson I'm not trying to chop you off at the pass, I am just trying to focus on my statement at the start of the hearing.
- Parker Speaking to the point of order. Mr Peters' questions aren't going to what was disclosed or not by Mr Dunne. His questions are going to what were disclosed of Mr Dunne's emails by Parliamentary Service, and that is exactly what this inquiry is about.
- Dunne Well, I have set out in the statement the dates that I'm aware of where certain things happened. In respect of Mr Peters' question, if you are asking me when was I asked to provide the full content of the emails—
- Peters No, no, I'm asking when did you become aware that the Prime Minister's edict to Ministers, which you said didn't come to you—when did you become aware that it was relevant to you?
- Dunne Oh, that would have been around 30 or 31 May.
- Peters And you contacted the Prime Minister then and said, look, it doesn't apply to me.
- Dunne No, I did not.
- Peters You didn't say anything at all.
- Dunne I did not—I mean, again, we are getting into detail that is probably beyond the scope of the inquiry. If you will bear with me one moment—
- Peters Well, we will decide on what the scope of the inquiry is, with respect. You are a witness here.
- Dunne Mr Peters, I'm actually trying to be helpful, and if you will just bear with me one moment, I can give you some information that may be of assistance.
- Peters And I won't be lectured to by you, either.
- Dunne In fact, Mr Peters, I can tell you that on 22 May I was asked to agree to the release of the emails. I indicated that the answer to that question would be no. That led to the meeting with Mr Henry on 23 May, which I've referred to.
- Peters So, 22 May. Who asked you?
- Dunne It came via my chief of staff.
- Peters Who asked him?

- Dunne I believe he had had an inquiry from Mr Eagleson.
- Peters OK. But you did not, in any way, formally or informally, advise the Prime Minister that you did not agree.
- Dunne I did not discuss this issue with the Prime Minister at the time, no.
- Peters You said, and these are your words, “compromise those where there are criminal matters involved”—that is, fundamental rights that you were asserting.
- Finlayson What page are you referring to, Mr Peters?
- Peters No, I’m not. He said it in his oral evidence. I wrote it down.
- Finlayson Can you elaborate on—
- Dunne I’m not sure what the question is.
- Peters Well, my question is this. It was in relation to a question where something might shade into criminality, and you said in a conclusion “Well, those might be compromised where there are criminal matters involved.”
- Dunne What I think I was referring to was where there was a criminal investigation—this was about access to records—under way or—
- Finlayson Was that in response to my question about CCTV footage?
- Dunne Yes, or matters relating to personal safety.
- Peters Should, whatever the rule we eventually evolve here, we have as our objective to get at the truth?
- Dunne Well, I think that probably underpins all rules, doesn’t it?
- Peters Well, do you think that the rights of Ministers in all cases are identical to the rights of journalists?
- Dunne Differing people have differing rights and differing circumstances.
- Peters Well, can a Minister’s rights be compromised by their actions?
- Dunne This is hypothetical, Mr Peters, and I’m not really going to comment on that.
- Graham Just a supplementary on one of the previous questions where you responded that through your chief of staff the request had come from Mr Eagleson. In light of your earlier comment that you were surprised that the head of DPMC, who was a co-commissioner, was none the less actively receiving information during the inquiry, does it strike you as odd that in fact it was not just DPMC but, actually, the Prime Minister’s office that was actively involved in this?
- Dunne No, I think the background to that situation was very particular. The Prime Minister’s office had given approval on behalf of National Ministers for the release of or access to certain information. They had declined to give approval in respect of both Mr Banks and me because we were not members of the National Party. So, the courtesy, if you like, was to come to

- us to say “Well, we can’t do it for you. What’s your answer?”, and I gave my answer.
- Peters Just to put on the record, because you did answer this question from Mr Cosgrove, but in terms of future process or the fact of the issues that we are looking at now, is it to be understood by us that there is nothing in those redacted and disclosed emails or the non-disclosed emails that will have any bearing on the Henry inquiry or this hearing?
- Finlayson Not relevant.
- Dunne This is outside the scope, Mr Chairman, and—
- Finlayson It is outside the scope of the inquiry.
- Dunne —given that my stand was made about privacy, to start discussing the emails somewhat compromises that.
- Peters Well, he did say—
- Finlayson I’ve ruled it is outside the scope. Not relevant.
- Peters Well, you can say that, but I don’t happen to agree with you and I want to contest it. We’re not having you sit here like some legal potentate and make the rules up as you go along.
- Finlayson No, but I’ve chaired—next question.
- Peters Because it’s already been admitted by the chair—
- Finlayson The chair determines the questions of relevance.
- Peters —that he could talk about the redacted emails, so it is inside the scope, is it not, already?
- Finlayson No.
- Peters Well, I will ask you again. Are you saying that nothing you’ve done whatsoever that you’ve not disclosed would have, if disclosed, a bearing on this inquiry, or the Henry inquiry?
- Dunne Mr Peters, I’m answering questions related to the purposes of this inquiry. I’m not going to go beyond those.
- Peters Can you answer this question then? Is it your contention that there should never have been an inquiry in the first place because you didn’t make the leak?
- Dunne I can repeat my answer or?
- Finlayson No, don’t answer that. It’s all irrelevant. We are now getting into the Henry inquiry, take 2.
- Peters No, no. We are doing a job that the Henry inquiry botched up, Mr Chairman.
- Finlayson No, that’s why I read the statement under Standing Order 221, not as a legal potentate but as the chair, so that we know exactly where we are headed. You can ask as many questions along those lines as you like, but they are outside the scope of the inquiry, and at the end of the day I have to, and

- this committee has to, do what the House has asked us to do, and I refer to the reference—
- Peters Can I ask you then, why did you allow any questions on the—
- Finlayson Order!
- Peters —redacted emails, if you want to be consistent?
- Finlayson I am neither a legal potentate nor a witness, and the reference to this committee by the Speaker is very clear, and I suggest you read it.
- Peters I've read it.
- Finlayson Oh, that's great.
- Peters So why did you allow the redacted email conversation?
- Collins He doesn't have to answer that.
- Peters You do have to. If you want to be consistent—
- Finlayson I'm not entering into some kind of Socratic dialogue with you.
- Peters —and have respect in a fairly minded chairmanship you have to answer questions like that.
- Finlayson Are there any other questions?
- Cosgrove The witness is free to answer any questions though, Mr Chair, if they so choose, in the interests of truth, as Mr Dunne referred to.
- Finlayson Yes, but I am concerned with questions of relevance and with focusing on the future processes, particularly in relation to journalists, which seems to be common ground here that something went pretty badly wrong, and other such matters and some important matters of principle have arisen—
- Peters Well, that's true. I asked him about whether or not he thought his rights were the same as a journalist's. He did not agree, so I asked him could those rights be compromised by behaviour, whereupon he appealed to you, and you agreed with him.
- Smith But it would be awfully odd, Mr Chairman, for an inquiry into the inappropriate disclosure of information to then itself, as a committee, to get into the business of breaching the very privacy rules that we are trying to protect Parliament against.
- Finlayson Exactly.
- Peters With respect, this matter began at a select committee where your colleagues did their best to shut down the inquiry back then—a different committee. Now you are trying to get away with it in front the public now. You are not going to succeed for the very reasons that one of your fellow colleagues mentioned at the start of this very hearing.
- Finlayson Well, I've ruled on the question of the relevancy of these questions, and that is the end of it.

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- Tolley Can I just ask a simple question? Mr Dunne, thank you for appearing here today. When you talked about the information that went to the DPMC, and you were surprised by that, do you know who it went to?
- Dunne No, I don't. It just went to the organisation.
- Finlayson Thank you very much, Mr Dunne, Dr Palmer. Thank you for your helpful contribution.
- Dunne Thank you.

conclusion of evidence