

WELLINGTON REGISTRY

Under The Judicature Amendment Act 1972, Part 30 of the High Court Rules, the Bill of Rights Act 1990, and the Search and Surveillance Act 2012

In the matter of An application for judicial review

And in the matter of A search warrant issued by Judge IM Malosi of the Manukau District Court on 30 September 2014

Between **N A HAGER**
Applicant

And **HER MAJESTY'S ATTORNEY-GENERAL**
First Respondent

And **THE NEW ZEALAND POLICE**
Second Respondent

And **THE MANUKAU DISTRICT COURT**
Third Respondent

Applicant's chronology

Dated: 10 July 2015

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Applicant's chronology

Date	Event
Early 2014	Whale Oil website is subjected to denial of service attack. Documents are alleged to have been taken from his systems at this time. Mr Slater takes steps to improve his security.
XX.03.14- XX.04.14	Mr Hager meets the Source and assesses his motivations. The Source agrees to provide Mr Hager with materials related to political and corporate attacks if Mr Hager promises to keep his identity confidentiality. Instead of releasing the materials on Twitter as he had planned, the Source allows Mr Hager to write a book based on the parts of the materials that are in the public interest.
XX.04.14- XX.07.14	Mr Hager researches and writes <i>Dirty Politics</i> .
13.08.14	<i>Dirty Politics</i> is released. The book is very high-profile news for the following weeks.
XX.08.14	The Source makes contact with other journalists, using special software to hide his identity.
14.08.14	In a radio interview, Mr Hager says he has promised to keep the Source's identity secret.
17.08.14	In media interviews, Mr Hager says he has returned the leaked materials to the Source, telling Radio New Zealand "I gave it all back for legal reasons".
18.08.14	The Source sets up Twitter accounts called Whaledump and publishes material taken from Mr Slater, in response to challenges from the Prime Minister and some journalists to release source documentation.

Date	Event
19.08.14	Mr Slater complains to the Police.
30.08.14	Mr Slater completes a written statement. Police in Counties-Manukau investigate a possible offence of accessing a computer system for a dishonest purpose. They initially consider Mr Hager a possible suspect for criminal wrongdoing.
01.09.14	Police record on their Investigation Plan that a warrant to search Mr Hager's house will be the "next logical step in the investigation" if the examination of the Whaledump tweets and Mr Slater's computer do not produce results.
05.09.14	Mr Slater obtains an interim injunction against the Source to prevent the further release of information. The Source closes his Twitter account and bids farewell.
17.09.14	In response to a Police production order seeking information about Whaledump, Twitter responds saying Police would need to invoke mutual legal assistance treaty or letter rogatory. The Police do not do this before the search.
XX.09.14	Police consider approaching other journalists contacted by Mr Hager's source, or obtaining production orders over their accounts. They do not do this before the search.
17.09.14	In response to a Police request to identify people with skill-set to commit hacking crime, the Police National Cyber Crime Centre say this would be impossible, and instead suggest identifying people associated with Mr Slater who have skill-set to commit the offence. This is not done before the search.

Date	Event
18.09.14	In response to a Police production order seeking information about Mr Slater's email account, Google Inc provides some information and identifies further information identifying some activities in other jurisdictions. Police conclude that these foreign activities might reveal information about the hacker but do not seek a production order.
22.09.14	An officer is instructed to prepare a production order for Mr Hager's telephone and online data. No such production order is sent.
24.09.14	Police send information requests to 16 bank contacts seeking personal information about Mr Hager.
25.09.14	The Police receive Mr Hager's private bank transaction records from Westpac Bank.
26.09.14	Police make an information request to Trade Me for information about Mr Hager, his contact details, links to other members, etc. Trade me ask the Police to obtain a production order. The Police do not do so before the search.
30.09.14	Police decide to contact NZ ISPs to see whether they can identify peak data flows that may have stemmed from the time of the hack. They do not do so before the search.
29.09.14	Police contact Air NZ seeking information about the travel revealed by Mr Hager's banking records. Air NZ asks for a written information request. None is sent until after the search.
29.09.14	Police send an information request to Westpac Bank seeking more of Mr Hager's bank transaction records.
29.09.14	Police decide to apply for a search warrant over Mr Hager's house.

Date	Event
30.09.14	<p>At 9am, Police receive legal advice that Mr Hager is not criminally liable and should be treated as a witness.</p> <p>Just before 1pm, Police receive further legal advice expressing satisfaction with the content of the warrant application and noting that if Mr Hager claims privilege, the material should be seized and secured for determination by a High Court judge.</p> <p>At 4pm, Police submit the warrant application to the District Court. The application is granted that day.</p>
30.09.14	<p>The Police receive further of Mr Hager's private bank transaction records from Westpac Bank.</p>
30.09.14	<p>Police have an initial brief conversation with [REDACTED] Mr Slater's IT consultant who helped Mr Slater set up his site and deal with the aftermath of the hack. Mr [REDACTED] notes that his technical skills were limited and difficult problems were outsourced to others, and that others had set up Mr Slater's personal home computer and email and social media accounts. Police do not ask him to identify those others. They do not contact him again until after the search.</p> <p>Police then contact Linode, Mr Slater's US webhost at the time of the denial of service attack. They are told the website access logs are no longer available. However, they do not ask Linode for a range of relevant data.</p>
01.10.14	<p>A Police media advisor notes that no appeal has been made to the public for information about Mr Hager's source and recommends one. None is made before the search.</p>

Date	Event
01.10.14	Police operation order records that Mr Hager is potentially expecting a search and is “very surveillance aware”. Police are prepared to force entry if necessary.
01.10.14	Webzilla, the host of Wikisend, responds to Police questions seeking information about the uploading of documents released by Whaledump. They suggest forwarding the request to Wikisend. Police agree.
02.10.14	Webzilla forward Wikisend’s response. Wikisend says all the information has been deleted or rewritten. It offered to provide the server access log. Police responded, asking for the log “as this will provide verification of access origin.” Police conducted the search before receiving the log.
02.10.14	Police execute the warrant at Mr Hager’s home.
7.45 am	Police arrive. Mr Hager is in Auckland. His daughter [REDACTED] answers the door.
8:06 am	[REDACTED] phones Mr Hager who says he would like to speak to DS Beal. Mr Hager tells DS Beal there is nothing in the house that will identify the Source, but says the search may interfere with other sensitive projects and confidential sources. DS Beal does not ask whether Mr Hager claims privilege.
8.19 am	The search commences.
8.33 am	Mr Hager calls to speak to DS Beal again. This time, DS Beal asks whether Mr Hager claims privilege. Mr Hager does. DS Beal explains that all material will be seized and sealed but not searched without permission from a judge.

Date	Event
XX	Mr Hager later informs the Police that some of his documents are also covered by legal professional privilege as well as journalistic source protection privilege.
9.32 am	Det Ferguson finds a mobile phone and a SIM card in Mr Hager's bedroom drawers. Police record the numbers. The phone had been used exclusively to contact another of Mr Hager's confidential sources.
10:13 am	Det Abbott finds a piece of paper containing two email addresses and a password relating to another of Mr Hager's confidential sources. Police use the information to try to access the accounts.
11.32 am	Det Abbott finds another piece of paper containing information about accessing an internet storage service. This contained information provided by another of Mr Hager's confidential sources. Two officers photograph the paper. One photo is sent to the National Cyber Crime Centre. Staff there point out that it will take a new warrant to access it. They then try to access it without obtaining a warrant.
1:36 pm	Det Abbott finds a printout of an email exchange between Mr Hager and a confidential source. Det Teo takes a photo of it and emails it to DC Smith, saying "can you do some inquiries please".
1:47-2:14 pm	DC Smith sends a series of five emails to Det Teo recording various aspects of searches she has made on the internet for information taken from the document she was sent by Det Teo.

Date	Event
XX	Police examine and seize 104 pages of documents. They also seize two computers, one laptop, four mobile phones and a charger, a sim card, an ipod, a Dictaphone, a cameral, two memory cards, a hard drive and more than a hundred CDs. In addition, they seize or clone 16 USB storage devices and clone a smart phone. The material seized contains information capable of identifying a range of other confidential sources and other sensitive information relating to Mr Hager's investigative projects. Seized and cloned material is taken to Auckland and stored at the Auckland High Court.
XX	Police record descriptions of the documents seized, including details of confidential sources. This record is not sent to the court but is put on the investigation file.
6.30pm	At the end of the search, Police agree to show the photos they have taken to Mr Hager's lawyer and daughter to examine them for privileged information. Police agree to delete some that are identified as containing such information. They do not reveal some of the photos they have taken, including photos containing privileged information.
10.25pm	Det Teo forwards to DS Beal two of the emails describing the results of the investigations conducted by Det Smith after Det Teo had sent her the photograph of Mr Hager's email correspondence.
03.10.14	Police send information requests to Vodafone, Spark, and Two Degrees in relation to the SIM card and mobile phone numbers they recorded during the search.
03.10.14+	Police continue to conduct investigations into the information DC Smith obtained from the document sent to her by Det Teo.

Date	Event
07.10.14	Lawyers for Mr Hager write to lawyers for the Police. The letter sets out Mr Hager's intention to launch these proceedings and seek documents from the Police necessary to do so.
07.10.14	The Police file a pre-proceeding memorandum with the Auckland High Court outlining proposed directions.
08.10.14	Mr Hager's counsel filed a memorandum in the Auckland High Court recording Mr Hager's intention to file these proceedings once documents necessary had been received from the Police.
10.10.14	Police make a written information request to Air NZ for information about Mr Hager's travel. Air NZ says a production order would be needed for some of the information.
13.10.14	Police contact Jetstar seeking information about Mr Hager's travel.
14.10.14	The Police provide Mr Hager with some, but not all, of the documents he requested on 07.10.14.
17.10.14	The Police file a proceeding in the Auckland High Court seeking leave to file an originating application for directions under the Search and Surveillance Act 2012.
21.10.14	Mr Hager files his opposition to the Police application.
22.10.14	Det Teo writes a job sheet describing the finding, during the search, of the piece of paper with the email exchange between Mr Hager and one of his confidential sources (the one he photographed and emailed to Det Smith for further investigation). The job sheet records the email address of the source, the name of his ISP, and the name of a company he is associated with.
30.10.14	These proceedings are filed.