



Media statement

Operation Burnham: Final Opinion released

9 April 2018

Chief Ombudsman Peter Boshier today released his Final Opinion on five complaints concerning the New Zealand Defence Force's withholding of information related to Operation Burnham in Afghanistan in 2010.

Peter Boshier found the NZDF was justified in withholding most of the requested information under sections 6(a) and 6(b) of the Official Information Act.

'Some of the withheld information was received from other countries who didn't wish to declassify or release it', Peter Boshier says, 'and for NZDF to do so would have gravely affected other nations' willingness to share information with us in future'.

'Much of the withheld information also contained sensitive details which, if released, could prejudice New Zealand's defence and security.'

'The OIA is intended to protect information that could risk national security or threaten our important international relationships. My role is to apply official information law correctly and impartially.'

Peter Boshier says his Office's investigation was lengthy and rigorous, involving much 'robust discussion' with NZDF officials.

'During the investigation, and after discussions with my Office, NZDF released some further information on its website. However, NZDF didn't tell requesters or my Office at the time, and the information wasn't put on a prominent part of the site', he says.

'NZDF could have been considerably more responsive in how it handled these information requests. It has given the appearance of reluctance on the part of NZDF and requesters have understandably developed some mistrust as a result.'

'In my Final Opinion I recommend release of a further four briefing papers with some redactions, and NZDF has agreed to this. I expect a prompt release.'

A high-level summary of the Chief Ombudsman's findings follows.

Rules of Engagement: decision to withhold upheld.

Location of Operation Burnham: following the Chief Ombudsman's provisional opinion, NZDF published further information about the location of Operation Burnham on its website on 6 March 2018. NZDF has now provided everything it held relevant to the requests on this issue.

Planning, execution and review of Operation Burnham: decision to withhold post-activity reports, related information, and video footage upheld. Following the Chief Ombudsman's provisional opinion, NZDF published a list of reports, dates and titles (with redactions) on 6 March 2018 on its website.

Civilian and insurgent casualties: decision to withhold International Security Assistance Force (ISAF) assessment report upheld. NZDF clarified its position on potential civilian casualties, and why its previous statements had been inconsistent with an earlier ISAF press release, in its information release of 6 March 2018. NZDF also wrote to one requester with a comprehensive explanation for these inconsistencies. In the Chief Ombudsman's Final Opinion he recommends that NZDF release the information it holds concerning the identification of insurgents killed during Operation Burnham.

NZAS treatment of a prisoner: Decision to withhold upheld. At the time of the request, release would likely have prejudiced NZDF's investigation into the allegations. NZDF released a summary of the outcome of its investigation in March 2018. If this information doesn't satisfy the requester, a fresh request can be made under the OIA now the investigation is concluded.

Government knowledge about the operation: In his Final Opinion, the Chief Ombudsman upheld NZDF's decision to withhold two legal opinions, but did not accept there was a basis for withholding other briefing material in full. He has recommended release of four briefing documents and appendices, with some redactions.

The full Final Opinion is available [here](#).

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