

Failures by NZDF undermined Ombudsman's investigation

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The Chief Ombudsman says failures by the New Zealand Defence Force to share all crucial information had a major impact on his ability to fully investigate earlier Operation Burnham complaints and undermined the fundamental purposes of the OIA.

Peter Boshier has just released the findings of his investigation into whether he was misled by the defence force when he investigated complaints about NZDF's refusal to release information related to Operation Burnham.

"While there was no evidence that the NZDF deliberately misled me, I believe a combination of circumstances including its very poor record keeping and inadequate processes meant I simply didn't have all the facts," Mr Boshier says.

"This serious information gap undermined my initial investigation and meant the NZDF avoided being accountable.

"It is crucial that agencies give me a balanced and complete picture when I am investigating, especially on topics like New Zealand's security and international relations. This includes putting effective processes in place to record, retrieve and consider information.

"My job is to make sure the OIA operates effectively as intended by Parliament. This is a key constitutional measure and a cornerstone of our democracy. I cannot allow it to be undermined, either deliberately or inadvertently by an agency.

"A case of this nature also has an impact on the effective operation of the OIA generally, and harms the ability of the Ombudsman, as an Officer of Parliament, to provide effective review and remedy for aggrieved requesters. It also harms the perception of New Zealand as one of the most transparent countries in the world. It follows I will closely investigate any such allegations, as I did here."

Peter Boshier first investigated the case in 2018 following complaints from a number of people.

They were unhappy with the NZDF's decision not to release material under the Official Information Act that related to claims made in the Nicky Hager and Jon Stephenson book, *Hit*

and Run, about New Zealand's Special Air Service's involvement in a 2010 Operation in Afghanistan.

The NZDF argued that releasing the information about Operation Burnham would seriously harm New Zealand's international relations.

On the strength of the NZDF's argument, the Ombudsman originally came to the view that most of the information was appropriately withheld and recommended that the NZDF release a summary.

However, the Ombudsman received another complaint after a large amount of information was declassified and publicly released during the government's inquiry into Operation Burnham which reported back in 2020.

"I decided to initiate my own investigation into the actions of the NZDF when engaging with me as required by law, and I found that the evidence presented at the Burnham inquiry confirmed I wasn't given access to all information relevant to the OIA requests in 2018. This included important documents relating to civilian casualties," Mr Boshier says.

"In addition, the summary the NZDF released under the OIA was incomplete and significantly underplayed the nature and scope of Operation Burnham.

"My investigation also uncovered poor record-keeping practices and processes at the NZDF for retrieving information for OIA requests. This resulted in relevant information not being made available to me.

"It transpired that despite exhaustive efforts to locate all relevant documents, I didn't receive everything I should have. Relevant material held elsewhere within Defence should have been provided. My investigation found that the defence force staff who were tasked with finding that information didn't even know it existed and so didn't ask for it. Incredibly, there were no formal ways of checking this.

"For all these reasons, I formed the opinion that the NZDF acted unreasonably in relation to my earlier OIA investigation.

"A fundamental purpose of the OIA is to promote the accountability of officials and ministers. NZDF's response to the OIA investigation had the reverse effect, meaning the NZDF was unaccountable for the full extent of its actions until the Burnham Inquiry. This undermined the very purpose of the OIA."

The Ombudsman did not make any recommendations as he was satisfied that a programme to improve information management systems and practices at the NZDF was underway.

Peter Boshier has requested a further update in six months on progress the NZDF has made on the recommendations of the Expert Review Group set up as a result of Operation Burnham, and implementing any improvements and changes which it highlights.

Ends

[Read the full case note](#)

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Please note the Chief Ombudsman is making no further comment.