

Rupert Ablett-Hampson

From: Rupert Ablett-Hampson
Sent: Friday, 30 November 2018 6:15 p.m.
To: Sarah Baddeley
Subject: RE: Definition of surveillance

Dear Sarah,

When we discussed the Inquiry's view of the *White* case on Wednesday, we agreed it might be wise to provide you with all the identified instances of the Ministry using external security consultants. (I do want to stress that our Chief Executive did go through the process of self-disclosure sought by Doug Martin in his letter of 23 July 2018, and we are of the view that the letter in response to that was a full and reasonable response having regard to the request.)

I acknowledge your definition of surveillance however we are still not sure which elements of the *White* instruction amounts to surveillance. Our understanding of the instructions on that matter (acknowledging that the primary engagement with ICIL was via the Crown Law Office rather than the Ministry directly) is that they were to support Crown Counsel and the Queens Counsel in finding and briefing witnesses.

One of the questions that you asked about the issue was the level of governance or oversight. In that case the Attorney-General was briefed by Crown Counsel regarding the use of investigators. As the instruction was to support the advancement of Crown proceedings the Ministry takes the view that the fact that a case is managed by Crown Counsel (and in this case a Queens Counsel) is sufficient to ensure that the case is conducted in accordance with the Crown's model litigant standards the Ministry does not establish governance processes to second-guess the individual case management of the Crown Law Office. In these circumstances we have responded via the Crown Law Office to the email you sent on 22 November on behalf of Mr Mount and Mr Martin.

By way of full disclosure (because we are not quite sure about what you regarded as surveillance in *White*) in November 2015 in preparation for other Historic Claims hearings (also instructed to Kristy McDonald QC via the Crown Law Office) ex-assistant police commissioner Nicholas Perry was instructed to do what we considered was the equivalent role that ICIL did in the *White* case

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I also outline the further instructions that we have identified:

1. MSD has paid ICIL for smaller items of work in the area of Historic Claims. In November 2008 we paid \$483.19 to locate the sister of one of our claimants, we were unsuccessful in locating her so ICIL were asked to assist. In February 2010 we paid ICIL \$174.83 to locate either the claimant or the witness.

We have also identified two further instructions on historic claims matters similar to the two above but we cannot find invoices for them. In each case ICIL were asked to locate witnesses; nothing indicates any greater instruction than the two brief matters above.

I cannot ascertain the level of governance on these instructions but they appear to involve both the Historic Claims social workers and the Legal Services who support them and carry a budget for professional fees. In terms of the nature of the investigative work, they appear to be "desk work" rather than active work, given the modest sums charged and the type of correspondence.

2. MSD also paid ICIL \$675 to run a training course for our Historic Claims team.

3. We have identified 3 specific instances of service of documents by Avon Investigations at a cost of \$201 (24 October 2014), \$104 (15 January 2015), and \$104 (8 February 2016). These appear to relate to work conducted by our fraud investigators. (It seemed odd that only three items appear over such a period of time and I considered that we serve many of our own documents and that service charges can be included in lawyers' invoices as disbursements, all of which may be true however I understand that further similar fees have been located and I can obtain those details if you wish.)
4. In November 2006 MSD retained the support of Paragon NZ to support surveillance on Wayne Patterson who was a suspect in a multi-million dollar fraud on the benefit system using false identifies. Mr Patterson was subsequently convicted of significant offending. The case involved surveillance activities which included watching Patterson's house and ATM machines which he used to access stole funds. The invoice is modest (\$1,158) but the Ministry deployed quite a number of its own staff and received police support. I mentioned on the phone that the Patterson investigation (and a similar case, on a lower scale) was overseen by an established Ministry group that met intensively over a period of time and was chaired either by the Chief Executive of MSD, Peter Hughes, or by the Director of his office, Doug Craig.

We also used the services of McCallum Petterson, forensic accountants, in the Patterson case (and in another fraud matter). We've interpreted their services as being out of scope (as we have the work of the Deloitte team in the last matter below).

5. Paragon also supported MSD in 2010 and 2011. MSD had a programme of work to "combat sharp and unfair lenders, including the predatory practices of back of the truck traders and finance companies using misleading, targeted advertising". As part of this work MSD had received information that some second hand retail outlets were allegedly exchanging credit notes from MSD for cash (minus a substantial commission) or other items, rather than the goods for which MSD had made the payment. MSD commissioned Paragon NZ to have mystery shoppers visit stores around New Zealand to verify this information. We recorded the following payments for this work \$704 (February 2010), \$5,796 & \$1,997 (May 2010), \$1,514 (August 2010), \$1,704 (September 2010), and \$1,775 (February 2011). Referrals appear to have been made to the Police at the conclusion of this work. The work was a project between Work and Income and Legal Services. I have identified an agenda for a meeting on 4 March 2010 called an "Unfair Traders Project Meeting" (in attendance was the Chief Legal Advisor and a General Manager in Work and Income), the first item of which was "Report back on Chief Executive's Focus" it is clear that this project was part of a larger piece of work that the Chief Executive had commissioned.
6. In June 2015 MSD paid \$11,485.03 to Scope Investigations Limited. The fees were paid as a disbursement to Deloitte and were paid out of our Social Service Accreditation team's budget. Deloitte were looking at financial irregularities for the Pacific Island Safety and Prevention Project. They identified concerns that parties could seek to destroy incriminating evidence over the course of a weekend. Scope Investigations Limited monitored the offices from approximately 5pm on Friday 19 June 2015 to approximately 730am Monday 22 June. The provider was referred to the Serious Fraud Office.

Please let me know if you need any further information.

Kind regards,

Rupert

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This email may include legal advice and be legally privileged.

From: Sarah Baddeley [mailto:sarah.baddeley@martinjenkins.co.nz]
Sent: Tuesday, 27 November 2018 11:54 a.m.
To: Rupert Ablett-Hampson
Cc: Doug Martin; Simon Mount; Danielle Kelly (danielle.kelly@bankside.co.nz)
Subject: Definition of surveillance

Hi Rupert

Thanks for the conversation just now. As I mentioned, the Inquiry has used the following to guide its definition of surveillance:

In general, surveillance involves close monitoring or observation of people, places, objects or information. However, the precise meaning of the term 'surveillance' can vary with context. In this Inquiry, the focus is on surveillance activities that have the potential to interfere with reasonable expectations of privacy and/or human rights. This may include:

- Surveillance using electronic devices, such as video cameras or audio recorders
- The use of tracking devices on people or property
- In-person observation, without the use of devices
- Covert activity of any sort.
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The Inquiry's broad interpretation of the concept of surveillance extends to include social media monitoring where this is done covertly or using false identities – for example where a closed group is joined under false pretences or an assumed identity.

Kind regards

Sarah

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