

OMB-2018-0087
Ombudsman Ref: 479493

14 March 2019

[REDACTED]

cc: [REDACTED] [@ombudsman.parliament.nz](mailto:[REDACTED]@ombudsman.parliament.nz)

Dear [REDACTED]

Following discussions with the Ombudsman's office, and with reference to the responses of 3 May 2018 and 5 June 2018, New Zealand Defence Force (NZDF) communications with partner nations when developing, or part-adopting, operation-specific Rules of Engagement (ROE) applicable to Defence Force personnel in Afghanistan did not require Ministerial approval. The NZDF communicated as required with those nations that formed part of Operation Enduring Freedom and the International Security Assistance Force, such as Australia and the United States.

With respect to your request for advice given to Ministers regarding any collaboration with other nations, I reiterate that this is not how the ROE for Afghanistan were constructed. As explained in the response of 3 May 2018, once developed ROE are submitted for Minister of Defence endorsement and Prime Ministerial approval.

On 21 December 2018, the Government Inquiry into Operation Burnham (the Inquiry) made a non-publication order under section 15 of the Inquiries Act in respect of all classified material provided to the Inquiry. The effect of this is that information subject to the order is no longer 'official information' as defined by paragraph (ha) of section 2 of the Official Information Act 1982 (OIA). That states that official information does not include *any matter subject to an order under section 15(1)(a) of the Inquiries Act 2013*.

As the advice given to Ministers regarding Afghanistan ROE for NZDF personnel is classified material that has been provided to the Inquiry, it cannot now be provided to you.

The Inquiry may vary or cancel its order in relation to certain material following its review process. Any corresponding cancellation or variation may impact on whether the material concerned will again become 'official information' for the purposes of the OIA. The NZDF will reconsider and respond to any request relating to such information, as required by the OIA.

Yours sincerely



A.J. WOODS
Air Commodore
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