



15 May 2024

[Redacted]
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Ref: OIA-2023/24-0837

Dear [Redacted]

Official Information Act request relating to review of the Intelligence and Security Act - options for the government response

Thank you for your Official Information Act 1982 (the Act) request received on 8 May 2024. You requested:

“Review of the Intelligence and Security Act - options for the government response Under section 16(2) of the OIA my preferences are (a) to receive a copy of the whole of each document (b) that the information is disclosed in a text searchable format, and (c) that it is sent to the email address from which the request is received. If it is decided that there is 'good reason' under the OIA to withhold any of the information I am requesting, then under section 19(a)(ii) of the OIA, I further request that I am provided with the grounds in support of each withholding reason cited for refusal, and what public interest factors favouring release were considered. If any part of the request is unclear, please don't hesitate to contact me via the address this request was received from.”

Information being released

I have decided to release parts of the document listed below, subject to information being withheld as noted. The relevant grounds under which information has been withheld are:

1. section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
2. section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion
3. section 9(2)(g)(ii), to prevent improper pressure or harassment
4. section (d) that the information is or will soon be publicly available.

Item	Date	Document description	Decision
1	23/02/2024	Review of the Intelligence and Security Act – options for the government’s response	Partial release

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. No public interest has been identified that would be sufficient to outweigh the reasons for withholding that information.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Bridget White
Executive Director, National Security

Briefing

Review of the Intelligence and Security Act – options for the government response

To: Rt Hon Christopher Luxon
Prime Minister, Minister for National Security and Intelligence

Date	23/02/2024	Security Level	RESTRICTED
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Purpose

1. This briefing seeks your decisions on the government response to the Review of the Intelligence and Security Act 2017. These decisions are:
 - a) confirming past Cabinet decisions on the government response;
 - b) s 9(2)(f)(iv)
 - c) discussing recommendations relating to the Intelligence and Security Committee (ISC) with the ISC; and
 - d) delegating joint responsibility for the response to the Minister Responsible for the GCSB and the NZSIS.

Key Points

2. The government response to *Taumarū: Protecting Aotearoa New Zealand as a Free, Open and Democratic Society: Review of the Intelligence and Security Act 2017* (the Review) is underway. The previous Cabinet agreed to the objectives for the government response and an approach to the first five recommendations. The remaining 47 recommendations have not yet been considered by Cabinet.

3. 9(2)(f)(iv), 9(2)(g)(i)

4. The previous government agreed to an approach which considered each of the recommendations in turn. This approach is resource intensive, especially in relation to the many recommendations that propose significant policy work to consider whether legislative change is needed. 9(2)(f)(iv), 9(2)(g)(i)

5. 9(2)(f)(iv), 9(2)(g)(i)

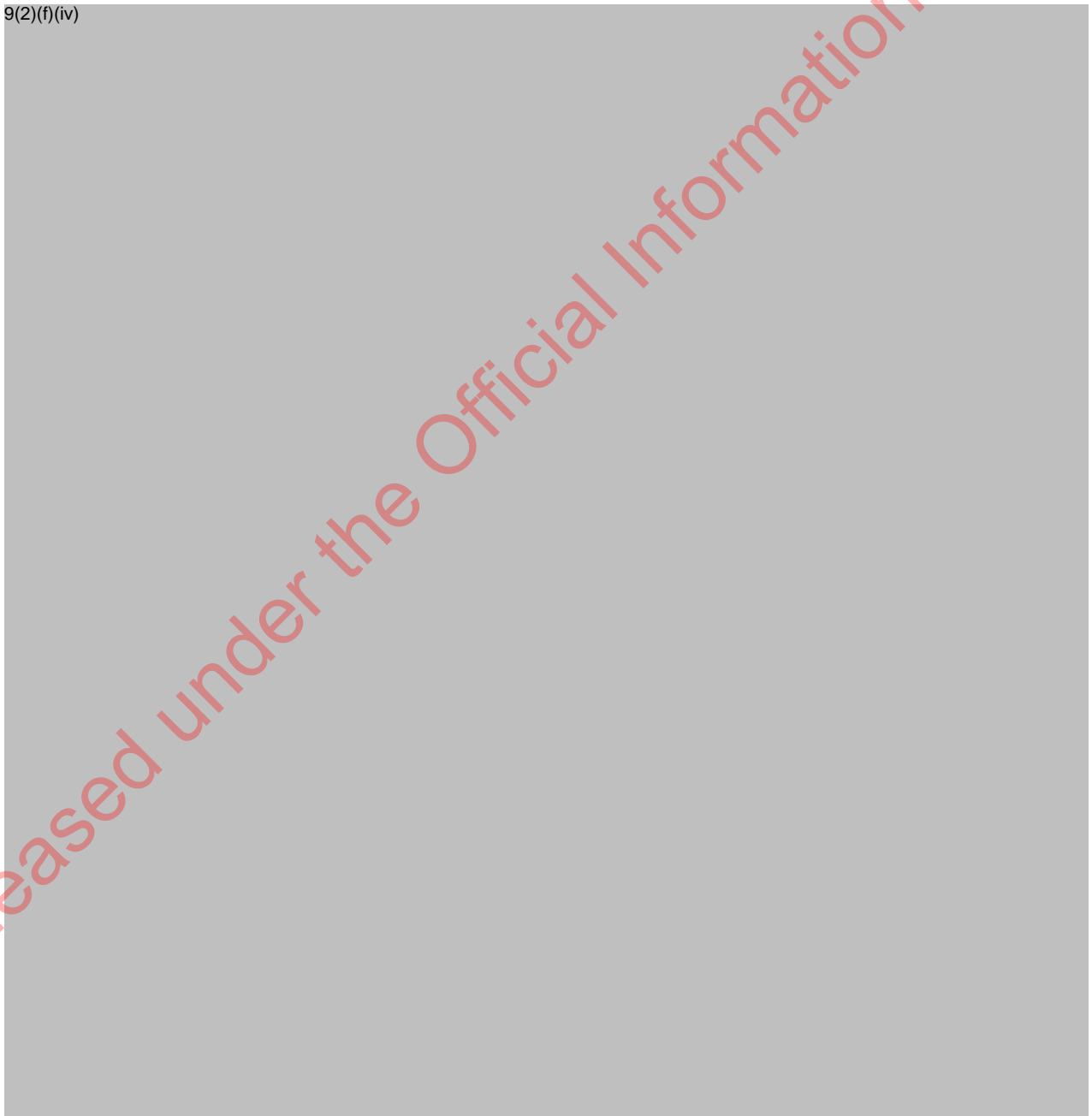
Recommendations

We recommend you:

1. **note** that the government response to the review of the Intelligence and Security Act 2017 (the Review) is underway;
2. **agree** that the objectives for the government response agreed by the previous Cabinet continue to apply to the response (see paragraph 10 and Cabinet External Relations and Security Committee Minute of Decision ERS-23-MIN-0045 at Attachment B);
3. **agree** to the following **proposed approach** to Cabinet's previous decisions relating to the government response to the Review (see Table 1 and Attachment B):

YES / NO

9(2)(f)(iv)



4. 9(2)(f)(iv)

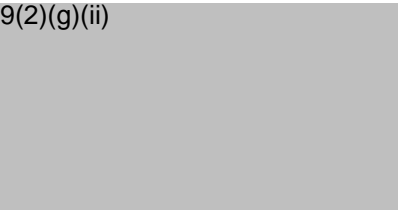


5. **agree** to discuss the recommendations the Review made about the Intelligence and Security Committee (ISC) with the ISC at a future meeting; YES / NO

6. **agree** to delegate joint responsibility for the response to the Review to the Minister Responsible for the GCSB and NZSIS; and YES / NO

7. **forward** this briefing to the Minister Responsible for the GCSB and NZSIS. YES / NO

9(2)(g)(ii)



Bridget White
Executive Director
National Security Group

23/02/2024

Rt Hon Christopher Luxon
Prime Minister
Minister for National Security and Intelligence

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The Review of the Intelligence and Security Act 2017

1. The Intelligence and Security Act 2017 (the ISA) governs the activities of New Zealand's intelligence and security agencies (the New Zealand Security Intelligence Service, NZSIS and the Government Communications Security Bureau, GCSB) (the Agencies). It also governs the role of the Inspector-General of Intelligence and Security (IGIS), the Commissioners of Intelligence Warrants, the Intelligence and Security Committee (ISC) and the intelligence functions of the Chief Executive of the Department of the Prime Minister and Cabinet (DPMC). DPMC's National Security Group administers the ISA.
2. The ISA is required to be reviewed every five to seven years by two reviewers appointed by the Prime Minister. The first periodic review of the ISA started in March 2022, and was conducted by Hon Sir Terence Arnold KNZM KC and Matanuku Mahuika, and a special advisor, Dr Penelope Ridings MNZM.
3. The Review was not intended to be a first principles review of the ISA. The Terms of Reference stated its purpose was to:
 - determine whether improvements could be made to the ISA to ensure it continues to be effective, clear, and fit for purpose; and
 - consider the recommendations and issues related to the ISA that were raised in the Report of the *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (the Royal Commission Report).
4. Prior to the Review, DPMC, the Agencies, and the IGIS agreed that, while there are improvements that could be made, the ISA works well overall.
5. The reviewers did not identify any issues with the ISA that require urgent legislative change, nor did they consider there was anything fundamentally wrong with the Act that stops the agencies from doing their job. However, the reviewers believed '*several significant changes to the Act are required... to ensure the Act is fit for purpose and remains true to the guiding principle of protecting New Zealand as a free, open and democratic society*'.
6. The Review's recommendations are set out in full at **Attachment A**. The Review made 52 recommendations (33 main recommendations and 19 'routine improvements'), varying in significance and type. The Reviewers also considered the four recommendations on the ISA from the Royal Commission Report, which relate to the way the ISA operates in respect of the counter-terrorism effort.
7. The ISC concluded its consideration of the report in May 2023, at which time it was made public.

We seek confirmation of past Cabinet decisions on the government response

8. The previous government agreed to consider policy decisions on the 52 Review recommendations via a series of thematically-grouped Cabinet papers, addressing them all in turn.
9. In August 2023 Cabinet considered the first of these papers, setting out the overall approach to the response, a set of objectives for the response, and decisions on the first five recommendations. 9(2)(f)(iv)

We recommend the agreed objectives continue to guide the government response

10. The past Cabinet decisions included a set of objectives to guide the government response, which we propose continue to apply:

- Promote clear and fit for purpose legislation that enables effective intelligence and security agencies and the robust oversight of those agencies;
- Maintain New Zealand's long-standing commitment to te Tiriti o Waitangi/Treaty of Waitangi (the Treaty), human rights, democracy, accountability, and the rule of law for this multicultural country;
- Enhance public trust and confidence in the intelligence and security agencies that meets expectations of transparency, through a robust policy process, with effective engagement, as appropriate;
- Strengthen and promote a bi-partisan consensus on intelligence and security issues;
- Ensure legislation continues to facilitate effective engagement and cooperation with New Zealand's domestic agencies and international security partners;
- Ensure any resulting legislation is adaptable to changing circumstances and is technology-neutral;
- Ensure the intent of the recommendations is fully understood and the responses are well considered, and recognising that legislative change should only be recommended when it is the most appropriate means of achieving the policy objective.

9(2)(f)(iv)

9(2)(f)(iv)

Released under the Official Information Act 1982

9(2)(f)(iv)

9(2)(f)(iv)

15. The remaining 47 recommendations have not yet been considered by Cabinet. We have been working through these to understand their underlying intent, operational impacts, and implications for oversight. Many of the recommendations propose the government undertakes further policy work to form a view on whether legislative change is needed.

9(2)(f)(iv), 9(2)(g)(i)

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9(2)(f)(iv), 9(2)(g)(i)



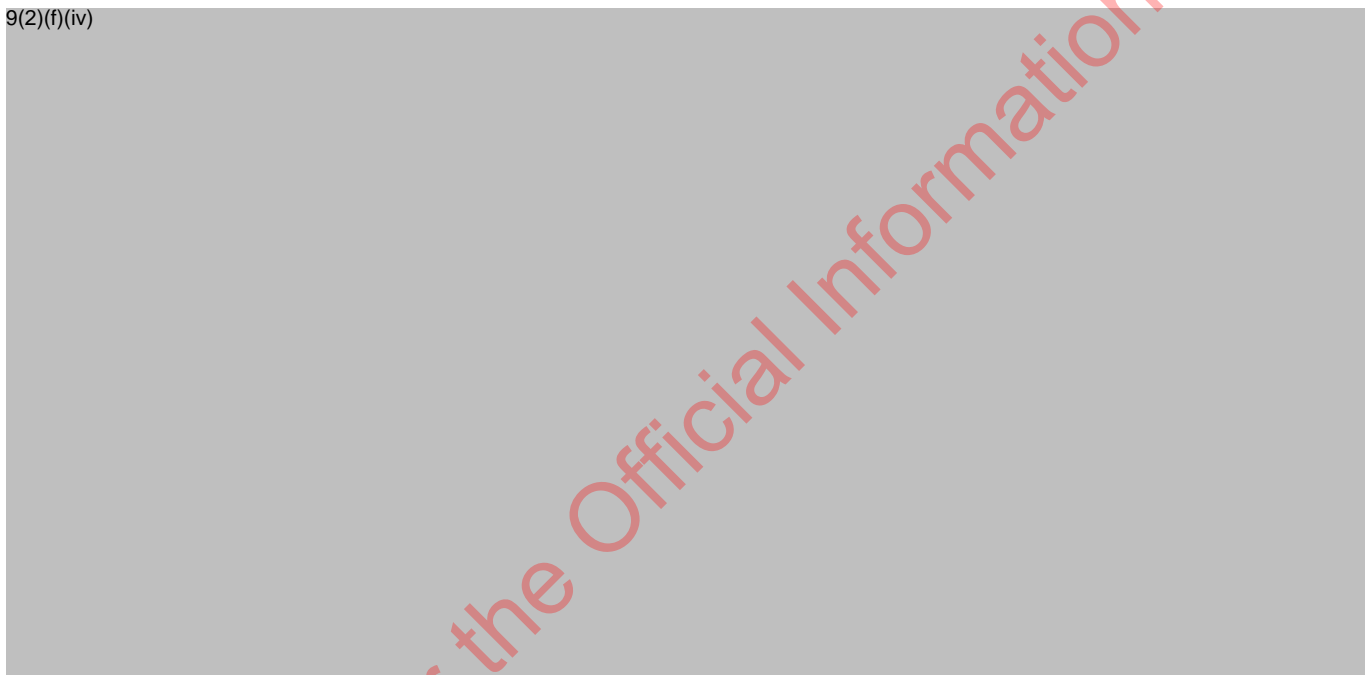
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You may wish to delegate joint responsibility for the response to the Review

26. The Minister for National Security and Intelligence is responsible for the legislative framework for the intelligence and security agencies. Due to this portfolio being held to date by the Prime Minister, for practical reasons the responsibility for the legislative process has previously been delegated to, or shared with, another Minister.²
27. **You may wish to discuss with Hon Judith Collins, Minister Responsible for the GCSB and NZSIS, the option of her jointly leading the response to the Review.** We consider it is appropriate for you to retain joint responsibility, given your Ministerial responsibility for oversight of the national security and intelligence system and for setting the overall policy for that system. This responsibility can be confirmed in the form of a letter from you to Minister Collins, which we can draft with the Cabinet Office for your signature.

Consultation

9(2)(f)(iv)



Next steps

32. The next steps for this work are set out in the table below.

Action	Details
NSI meeting discussion	We have scheduled a discussion of the ISA Review at the NSI officials' meeting on 6(a)

9(2)(f)(iv)



² For example, when the ISA was developed in 2016, the Minister for National Security and Intelligence and the Minister Responsible for the GCSB and NZSIS jointly led the policy development phase, and the Minister Responsible for the GCSB and NZSIS led the legislative process once policy decisions were taken.

9(2)(f)(iv)

Previous Cabinet decisions and proposed approach	Once you have decided your preferred approach, we will prepare a draft Cabinet paper for your consideration setting out your decisions in relation to previous Cabinet decisions and the revised approach to the remaining recommendations.
Discussion with ISC	If you would like to discuss the Review's ISC recommendations with the ISC, we will work with your office and the Clerk of the ISC to set a time for the ISC to meet and prepare a briefing to support the discussion.
Delegating joint responsibility for progressing the response	If you agree to delegate joint responsibility for the response to the Review to the Minister responsible for the GCSB and NZSIS, you may wish to discuss this with Hon Judith Collins and forward this briefing to her. We can prepare a letter from you to her outlining your decision, in conjunction with the Cabinet Office.

Attachments:	Title	Security classification
Attachment A:	Recommendations in the Review	UNCLASSIFIED
Attachment B:	9(2)(f)(iv)	
Attachment C	9(2)(f)(iv), 9(2)(g)(i)	

Attachment A withheld in full under section 18(d). Document is publicly available on page 247 at:

www.dpmc.govt.nz/sites/default/files/2023-05/Taumaru%20-%20Protecting%20Aotearoa%20New%20Zealand.PDF

Attachment B withheld under section 9(2)(f)(iv)

Attachment C withheld under sections 9(2)(f)(iv) and 9(2)(g)(i)

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