



INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

File Ref: 2000/65

2004/113

Senator the Hon Robert Hill
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister

On 15 April 2004 I received from Major General P J Cosgrove copies of correspondence concerning Lieutenant Colonel L Collins "for consideration and any appropriate action".

As you are aware, many of Lt Col Collins' concerns relate to the activities and functions of the Defence Intelligence Organisation (DIO).

Under the *Inspector-General of Intelligence and Security Act 1986* (the IGIS Act) I can only conduct a formal inquiry into the activities of the DIO if requested to do so by you or by the Prime Minister.

However, one of the stated objectives of the Act is to assist Ministers in the oversight and review of the Australian intelligence and security agencies. I therefore considered it appropriate to undertake a review of the available, relevant papers and advise you on matters possibly related to my jurisdiction. I should note that I have had no prior involvement in these matters.

This letter and its attachments provide the outcome of my review of those papers.

General Cosgrove provided me with Lt Col Collins' redress of grievance, the instrument of appointment and terms of reference for the subsequent inquiry by Captain M J Toohey into the grievance, Capt Toohey's report, the opinions on that report by Colonel R A Brown and Colonel R R S Tracey QC, and General Cosgrove's decision on Capt Toohey's report.

I also had access to the files in this office on my predecessor's inquiry, completed in May 2003, into concerns raised by Lt Col Collins in December 2000. In addition, the office holds files concerning the IGIS inquiry completed in October 2000, concerning the investigation into alleged security breaches by the late Mervyn Jenkins.

I requested and was readily given access by the Department of Defence to the evidence attached to Capt Toohey's report and by the Department of the Prime Minister and

Cabinet to Lt Col Collins' letter to the Prime Minister dated 18 March 2004. Furthermore, I requested some additional material from DIO and this was supplied.

For the purposes of my examination, I posed the following questions:

1. Is there additional material from the inquiry by Capt Toohey or in Lt Col Collins' letter to the Prime Minister dated 18 March 2004, which mean the inquiry by the IGIS completed in May 2003 should be re-opened?
2. Are the procedural criticisms by Lt Col Collins and Capt Toohey of that IGIS inquiry correct and significant?
3. Are the concerns of Lt Col Collins about the Jenkins case and alleged comments and actions by a senior officer in 1998 relevant to my jurisdiction?
4. Are there other issues contained in those documents which might appropriately be the subject of an inquiry by me?

My detailed consideration of these is set out in Attachments A – D. A summary is set out below.

Question 1

The previous IGIS, Mr W J Blick, considered three issues:

- (a) Whether DIO had acted in mid-1998 to quash early warning, included in an assessment prepared by Lt Col Collins, of problems developing in East Timor which would require ADF deployment.
- (b) Whether DIO assessments were relatively soft on Indonesia, reflecting a DIO view that related more to its perception of an Australian policy line than a professional assessment of the situation.
- (c) Whether access to an intelligence database had been deliberately cut by DIO in December 1999.

On the first of these Mr Blick concluded that what Lt Col Collins interpreted as an attempt to quash contrary views appear to be legitimate expressions of concern about parts of the content of his assessment and about his wide distribution of assessments and comments. I think this is a correct reading of the written evidence. There is no new material on this in Capt Toohey's report or the attached evidence.

I therefore cannot see a case for re-opening this issue.

The second issue is one on which Mr Blick and Capt Toohey reached very different conclusions. Capt Toohey relies on oral evidence from several people he interviewed to find that a "pro-Jakarta lobby" exists in DIO, reporting "what the Government wants to hear". I examined the transcripts of the relevant interviews by Capt Toohey and found that four support the specific notion of a pro-Jakarta lobby in DIO.

I then read carefully all the available relevant DIO material. I looked in particular for the sort of features said by Lt Col Collins and some others to evidence a pro-Jakarta / policy driven approach to assessments by DIO.

The assessments do not uniformly or generally have the characteristics criticised by Lt Col Collins and others (although it must be acknowledged that some are present in a small number). The allegation of a pro-Jakarta lobby in DIO is not supported by the body of written assessments.

While not all of the people who commented to Capt Toohey and Mr Blick support the notion of a pro-Jakarta lobby in DIO, there are some blunt criticisms of the quality of DIO assessments for other reasons. I am not in a position to resolve whether these criticisms of quality including utility to ADF operations, are justified. I note that the current Inquiry into Australian Intelligence Agencies by Mr Philip Flood AO is considering issues such as DIO's performance.

In my view there is no basis for re-opening this aspect of Mr Blick's inquiry.

The available evidence in respect of item (c) supports Mr Blick's conclusion that the loss of access to an intelligence database resulted from technical problems rather than a deliberate decision by DIO. Mr Blick examined the written records, including available e-mails, and had statutory declarations from five people. Capt Toohey concluded access was deliberately cut, but I can see nothing specific in his report and attached material which would cast into doubt Mr Blick's conclusion.

However, I must point out while Mr Blick's investigation was comprehensive it was not exhaustive, in that evidence was not obtained from three people with some involvement in the events. Nor did Capt Toohey have evidence available to him from these people. Given their immediate involvement it would seem desirable to attempt to obtain evidence from them.

You could, should you wish, request me to inquire into the issue pursuant to Section 8 (3)(a)(ii) of the IGIS Act.

Question 2

After careful examination, I do not agree with comments that there were procedural defects and incorrect weighing up of the evidence by Mr Blick's inquiry. Capt Toohey concluded that there was a procedural defect in not allowing Lt Col Collins to have a legal representative at a meeting. However, Lt Col Collins is apparently articulate and not afraid to express his point of view. He did not stand accused of anything. The files indicate that Lt Col Collins was given adequate opportunity to express his views and produce material relevant to the issues being considered by Mr Blick.

I cannot see that there was any disadvantage to Lt Col Collins or limitation effected on the inquiry by the absence of a legal representative at that meeting.

Question 3

Two issues raised by Lt Col Collins in December 2000 were referred to the Department of Defence rather than being dealt with by Mr Blick. One of these related to the inquiry by Mr A S Blunn AO on behalf of my predecessor concerning the investigation into alleged security breaches by the late Mervyn Jenkins. None of the material I have examined justifies further pursuit of that matter by my office.

The other issue is not within my jurisdiction and any advice you require on it will no doubt be available from the Department of Defence.

Question 4

I have examined the allegations of malicious actions by the Director of DIO towards Lt Col Collins. The transcripts of evidence of key witnesses to Capt Toohey's inquiry do not support the specific allegations made in the redress of grievance. Indeed, one speaks of the Director's intention to "play the ball, not the man". Capt Toohey has commented publicly that he had the advantage of observing the demeanour and body language of those he interviewed. However, a finding of malicious action is very serious and I have cannot agree with reaching such a conclusion in the absence of some specific evidence on the record.

I cannot see any basis on the available material for a formal inquiry by me into allegations of malicious actions by the Director of DIO.

Lt Col Collins also has grievances about his career management and support by the Army. I understand that the Army is dealing with these.

I would be happy to discuss any of these issues with you, if you feel that would be helpful.

I have copied this letter and attachments to General Cosgrove, for his information.

Yours sincerely



Ian Carnell
Inspector-General of
Intelligence and Security

3 May 2004