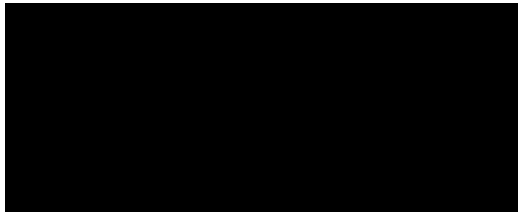




28 February 2025



Official information request for information about the Terms of Reference for the Royal Commission of Inquiry into the March 15 Terrorist Attack
Our Ref: OIA353/1

1. I refer to your official information request dated 6 January 2025 for “information about the Crown Law office’s role in forming the Terms of Reference for the Royal Commission of Inquiry into the March 15, 2019 terrorist attack.”
2. Specifically, you asked:
 - a) *Which government departments or public sector agencies contributed advice, guidance or worked alongside the Crown Law office?*
 - b) *How many Crown Law staff, or staff from other departments were involved (include approx. FTE) and what were their job descriptions?*
 - c) *Were there any external consultants, private sector agencies or elected members involved (please outline their involvement)*
 - d) *Please provide any meeting agendas, minutes from the meetings, or other relevant documentation.*
 - e) *Was there any advice given to cabinet prior to their decision to have a Royal Commission ie. between the dates March 15, 2019 and March 25, 2019 when the Prime Minister announced a Royal Commission? Please provide any relevant documentation.*
 - f) *Please provide a full description of the process for drafting and finalising the Order of Council.*
 - g) *Please provide any documents that outline the process of determining the Terms of Reference.*
3. On 13 February 2025, I advised you that we extended the due date for this response to 28 February 2025.
4. In order to provide you with further context in terms of the information you have

requested, please note that the process of developing the Terms of Reference for the Royal Commission of Inquiry into the March 15, 2019 terrorist attack (**Terms of Reference**) was conducted under urgency and at speed.

5. Crown Law's role in "forming" the Terms of Reference was undertaken to assist the Attorney-General in the performance of his functions as Senior Law Officer. From a technical point of view Crown Law's role was to provide drafting expertise and input into the Terms of Reference.

Requests (d) and (g)

6. Requests (d) and (g) concern information that relates to the Attorney-General's Law Officer functions.
7. In the performance of this constitutional role, the Ombudsmen have ruled that the Law Officer function falls outside of the Official Information Act (**OIA**).¹ Crown Law, when it is assisting the Law Officers, is not subject to the OIA.
8. Any information that falls within the scope of these aspects of your request is held by the Crown Law Office on behalf of the Attorney-General in the Law Officer capacity and falls outside the scope of the OIA. We do not consider that releasing this information to you would be justified in the public interest.
9. If the OIA did apply, the need to preserve legal professional privilege provides a basis for withholding this information. This is reflected in s 9(2)(h) of the OIA, meaning that if it did apply, there would be grounds to refuse these aspects of the request.

(d) Please provide any meeting agendas, minutes from the meetings, or other relevant documentation.

10. There are no relevant meeting agendas or minutes relating to the process of drafting the Terms of Reference.
11. Any draft iterations of the Terms of Reference, records of official input and meeting notes are held by the Crown Law Office on behalf of the Attorney-General in relation to the Law Officer functions. Therefore, these documents fall outside the scope of the OIA. We do not consider that releasing this information to you would be justified in the public interest. Even if the OIA did apply, there would be grounds to withhold these documents to maintain legal professional privilege, in accordance with s 9(2)(h) of the OIA.
12. The relevant documentation is the Terms of Reference themselves and the joint Cabinet papers of the Attorney-General and Minister of Internal Affairs establishing the Royal Commission. The Terms of Reference are publicly available on the New Zealand Legislation website, and the relevant joint Cabinet papers have been proactively released.

¹ This is set out in the case notes published here: [Request to Crown Law Office for legal advice given to Minister | Ombudsman New Zealand](#). Ombudsman Cases W41067, W44280 and W44062 and *Berryman v Solicitor-General* [2005] NZAR 512 (HC) support this position.

(g) Please provide any documents that outline the process of determining the Terms of Reference.

13. Any documents of this nature would be Law Officer material and would therefore fall outside of the scope of the OIA. However, there are no documents that outline the process of determining the Terms of Reference. This information does not exist. If the OIA applied, this aspect of the request would therefore be refused pursuant to s 18(e) of the OIA.

Requests (a),(b),(c), (e) and (f)

14. These aspects of your request concern the process of forming the Terms of Reference. We consider that these aspects of your request do not seek Law Officer Information and are therefore within the scope of the OIA.

(a) Which government departments or public sector agencies contributed advice, guidance or worked alongside the Crown Law office?

15. Crown Law was initially responsible for drafting the Terms of Reference, in consultation with other government departments.
16. The following government departments were consulted, and provided feedback, on the Terms of Reference:
- 16.1 Department of Internal Affairs;
 - 16.2 Department of the Prime Minister and Cabinet;
 - 16.3 Parliamentary Counsel Office;
 - 16.4 Ministry of Business, Innovation and Employment (specifically Immigration New Zealand);
 - 16.5 Government Communications Security Bureau;
 - 16.6 New Zealand Security Intelligence Service;
 - 16.7 State Services Commission;
 - 16.8 New Zealand Police;
 - 16.9 New Zealand Customs Service; and
 - 16.10 Ministry of Justice.
17. We note that these and other agencies also had the opportunity for input into the Cabinet papers enclosing the draft terms.

(b) How many Crown Law staff, or staff from other departments were involved (include approx. FTE) and what were their job descriptions?

18. We have interpreted your request for information regarding staff “involved” as seeking information about the number of Crown Law staff involved in the process of determining the Terms of Reference.
19. Five Crown Law staff played a role in forming the Terms of Reference: the Solicitor

General, the Deputy Solicitor-General (Attorney-General Group), the Deputy Solicitor-General (Crown Legal Risk), the Deputy Solicitor-General (Criminal) and one Crown Counsel. The substantive drafting was undertaken by the Crown Counsel.

20. As noted, substantive input was received from other officials and departments in the course of the drafting process.

(c) Were there any external consultants, private sector agencies or elected members involved (please outline their involvement).

21. There were no external consultants or private sector agencies involved in forming the Terms of Reference. However, for completeness, we note that the draft Terms of Reference were provided to the Chairperson of the Royal Commission of Inquiry, Hon Sir William Young KNZM, for comment.
22. The Inspector-General of Intelligence and Security, an independent statutory officer appointed by the Governor-General upon recommendation from the House of Representatives, also had an opportunity to comment on the draft Terms of Reference.
23. We note that the Terms of Reference, alongside the relevant Cabinet papers, were also subject to ministerial consultation.

(e) Was there any advice given to cabinet prior to their decision to have a Royal Commission ie. between the dates March 15, 2019 and March 25, 2019 when the Prime Minister announced a Royal Commission? Please provide any relevant documentation

24. The Department of Prime Minister and Cabinet provided a document to Cabinet on 18 March 2019, setting out the possible options for conducting an inquiry into the events leading up to the terrorist attack on 15 March 2019. The document was provided to support the discussion at the Cabinet meeting.
25. The relevant document is enclosed. Part of the document has been redacted in accordance with s 9(2)(a) of the OIA, to protect the privacy of natural persons. Withholding this information is not outweighed by other considerations rendering it desirable, in the public interest, to release the information.
26. A joint Cabinet Paper of the Attorney-General and Minister of Internal Affairs, seeking direction on the desired type of Inquiry, was lodged on 22 March 2019 and provided to Cabinet on 25 March 2019. This paper has been proactively released, so we are refusing its release in accordance with s 18(e) of the OIA, on the basis that the information is publicly available. It can be accessed at: <https://www.dia.govt.nz/Proactive-Releases>.

(f) Please provide a full description of the process for drafting and finalising the Order of Council.

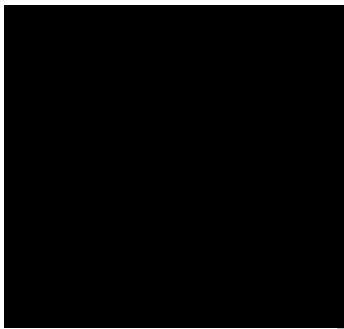
27. The Parliamentary Counsel Office was responsible for drafting and finalising the Order in Council.
28. Paragraphs 7.93-7.99 of the Cabinet Manual set out the process for developing secondary legislation to be made by Order in Council. The Cabinet Manual can be

accessed on the website of the Department of Prime Minister and Cabinet:
<https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>.

29. Accordingly, this part of your request is refused pursuant to s 18(d) of the Official Information Act 1982, on the basis that the information you seek is publicly available.

Proactive release

30. Please note that we may publish this response (with your personal details redacted), and any related documents, on Crown Law's website if we decide proactive release of this information is or may be in the public interest. If you have any concerns about this, please let us know within 10 working days of the date of this letter.
31. You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.
32. If you wish to discuss this decision with us, please feel free to contact OIA@crownlaw.govt.nz.



Encl Possible Options for an Inquiry into Events Leading Up to the Terrorist Attack of 15 March 2019

POSSIBLE OPTIONS FOR AN INQUIRY INTO EVENTS LEADING UP TO THE TERRORIST ATTACK OF 15 MARCH 2019

Risks

- Announcing an inquiry before the ToRs have been finalised and the lead inquirer announced – undermine the purpose of the inquiry and be poorly received
- Limited agency consultation at this stage on the potential inquiry – failure to identify all relevant factors

Scope of Inquiry

- The inquiry would be to look at the circumstances leading up to, but not including, the events of 15 March 2019. This will include Mr Tarrant's travel movements to and from New Zealand and internationally, his activities in New Zealand, his use of social media and his connections to others
- The purpose of this inquiry would be to consider what the relevant agencies knew or should have known about Mr Tarrant and his activities (including his access to weapons) and therefore been in a position to prevent the attack. Whether there were any impediments (legislative settings or other factors such as the sharing of intelligence) to obtaining that information. The inquiry would report on what happened in this case and lessons that can be learned
- The key agencies are NZSIS, GCSB, Police, Customs and Immigration
- The inquiry would not consider the events of 15 March 2019, the Police and emergency response, matters concerning firearm control or any matter that is the subject of criminal proceedings
- The Terms of Reference would require careful drafting

Potential Heads

Sole or combination, listed alphabetically
Due diligence on each still required

- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]
- s 9(2)(a) [REDACTED]

Choice of Inquiry

There are a number of considerations to balance:

- The need for public reassurance re independence of the Inquiry (relevant issues: choice of Inquiry head, open hearings, published findings, who the Inquiry reports to)

Access to and management of classified information:

- regardless of option it will need to receive classified information, constraining media & public access
- Can cause delay due to process issues for handling classified information

Recommendation:

Inquiry under the Inquiries Act 2013

- Whichever form of inquiry is chosen (Royal commission, public inquiry or government inquiry), all have similar coercive powers in relation to evidence and immunity from liability
- The difference between all three concern the way the inquiry is appointed & reports. All are intended to consider matters of importance

Royal Commission

- Established under the Letters Patent constituting the office of the Governor-General
- The Inquiries Act applies as if it was a public inquiry
- The final report is presented to the Governor-General, and to the House
- Reserved for the most serious or significant matters (eg Pike River)

Pros

- Most serious response available to Government
- Able to investigate matters of great complexity
- Process and findings are seen to be politically independent and credible

Cons

- Reporting obligation to the House causes issue for classified findings
- Without tight constraints, can be expensive and lengthy

Public Inquiry

- Established under the Inquiries Act by the Governor-General by Order in Council
- The final report is presented to the Governor-General, and to the House
- Used for significant or wide-reaching issues that cause a high level of concern to the public and Ministers
- The Inquiry into EQC is a public inquiry

Pros

- Same as Royal Commission

Cons

- Same as Royal Commission

Government Inquiry

- Established under the Inquiries Act by one or more Ministers by notice in the Gazette
- The final report is presented to the appointing Minister/s
- We would recommend the Attorney-General, as Senior Law Officer, to be the appointing Minister for this option

Pros

- Usually deals with smaller and more immediate issues where a quick and authoritative answer is required from an independent inquirer (note however Op Burnham – used this option due to classified information)

- Reporting directly to a Minister allows for management of classified report

Cons

- Reporting directly to a Minister can reduce perception of independence

Next steps

Report back to Cabinet on:

- Appointment/s of inquiry head
- ToR
- Budget
- Timing of report tbc