



**REPORT ON AN INVESTIGATION INTO THE
DEPARTMENT OF LABOUR'S MANAGEMENT
OF INFORMATION IN RELATION TO
MR AHMED ZAOUI**

**James Buwalda
Chief Executive
Department of Labour
28 August 2003**

1 SUMMARY

This report presents findings and conclusions from an investigation into allegations of lying by staff of the Department of Labour. The allegations were made by the *New Zealand Herald* on 29 and 30 July 2003. They related to the management of official information regarding the arrival, detention and processing of Mr Ahmed Zaoui – an Algerian seeking refugee status in New Zealand.

The allegations of lying against staff of the Department of Labour present a direct challenge to the extent to which the Department deserves and holds the respect of citizens. If not investigated, such allegations could seriously undermine the integrity of the Department of Labour and the wider public service. My investigation was initiated on 30 July 2003, to determine the facts of the matter and address any outstanding issues. I undertook to report – to the State Services Commissioner and the Minister of Immigration – by the end of August 2003.

My investigation addressed five questions:

- (i) Was there a conspiracy to deceive amongst officials in relation to the Zaoui case?
- (ii) Was information managed by the Department in relation to the Zaoui case in accordance with the Official Information Act? If not, why not?
- (iii) In the Zaoui case, were the Department's policies and systems for managing official information appropriate and effectively applied?
- (iv) In relation to the Zaoui case, were the Department's expectations of appropriate public service conduct and behaviour clear and upheld?
- (v) Are there implications from this situation for the Department's practices and policies relating to standards and behaviours expected of public servants?

The investigation involved interviews with Departmental staff involved in the management of official information related to the Zaoui case, scrutiny of relevant documents, and consideration of responsibilities for actions and events involved.

As a consequence of this investigation, I have initiated disciplinary action and am reviewing Departmental guidelines relating to the management of official information. I am carrying out these actions within my responsibilities under the State Sector Act 1988 for management of the Department of Labour. These actions are outside the direct scope of this investigation and therefore are not discussed in this report.

The key findings of my investigation include:

- *Conspiracy to deceive*
I found no evidence of a conspiracy to deceive. The "lie in unison" reference in a "media log" was the product of one person's actions. It

was intended as a sarcastic and humorous response to media criticism of Departmental staff failing to answer media questions about Mr Zaoui. The decision to withhold information sought through an official information request was based on a general conclusion about the need to maintain confidentiality about all aspects of Mr Zaoui's claim for refugee status. The subsequent failure to provide some official information to the Ombudsman resulted from instances of poor records management and the identification of official information.

- *Handling official information*
 The Department failed on several occasions to meet the requirements of the Official Information Act 1982, when managing information related to Mr Zaoui's claim for refugee status. A decision to decline release of any information related to Mr Zaoui in response to an official information request was made without fully scrutinising all of the relevant information. Instead, the decision to decline release was made after receiving general advice from Departmental solicitors about classes of information that may be withheld. Media logs containing annotated comments by Department staff were not treated as official information, and no formal record of this material was retained. As a consequence, an incomplete record of this information was provided to the Ombudsman.
- *Departmental policies and systems for official information*
 The Department of Labour has detailed guidelines for managing official information. The failure to apply these fully in relation to information regarding Mr Zaoui is very unfortunate. These guidelines provide user-friendly support for all staff who may be involved in managing official information, including responses to requests to release such information. Nevertheless, I believe these guidelines can be improved. I have initiated a review of them, in particular to improve clarity about legal review and management accountability.
- *Code of conduct*
 The Department of Labour has clear expectations of all staff for appropriate public service conduct and behaviour. These are highlighted in employment agreements and are available to all staff on the Departmental intranet. They outline explicit expectations about fulfilling lawful obligations with professionalism and integrity, and performing duties to the best of one's ability while respecting the rights of others and avoiding behaviour that might impair one's effectiveness. In relation to the "lie in unison" comment annotated to a "media log" and circulated to more than 300 people (including some people outside of the Department of Labour), I have initiated appropriate disciplinary processes to consider this matter further.
- *Implications for Departmental policies and practices*
 The investigation revealed several areas where Departmental practices can be improved. I have made my expectations of senior management (the "Management Board") clear with regard to their accountability for ensuring staff throughout the Department comply with requirements of the

Official Information Act 1982, and follow Departmental guidelines when responding to requests for official information. As noted above, I have also initiated a review of these guidelines to ensure they clearly describe required standards and accountabilities. I have also emphasised to senior management my expectations regarding their accountability for ensuring high standards of behaviour and conduct across the Department. I have also identified some specific areas where Departmental processes will need to be improved. These include records management and media relationships.

My overall conclusion is that the allegations of lying reported in the *New Zealand Herald* on 29 and 30 July 2003 cannot be substantiated. That said, my investigation has suggested various deficiencies in performance of Departmental staff and application of Departmental policies and processes. I am addressing these deficiencies as a matter of urgency. I am determined that the operations of the Department of Labour should demonstrate high standards at all times. Where breaches of the appropriate standards are alleged, I will ensure appropriate processes are initiated to deal with them. I will not tolerate unprofessional behaviour and standards that risk the extent to which the Department deserves and holds the respect of citizens.

2 INTRODUCTION

2.1 Context

On 30 July 2003, I undertook to carry out an investigation into the handling of official information relating to the detention and processing of Mr Ahmed Zaoui, by staff of the New Zealand Immigration Service (NZIS) – a division of the Department of Labour. My decision followed two serious allegations made in the media, on 29-30 July 2003:

- That Ian Smith (Media Adviser, New Zealand Immigration Service) claimed in an internal memorandum that officials agreed to “lie in unison” about the presence in New Zealand of a suspected terrorist – Ahmed Zaoui; and
- That officials lied to the Ombudsman about the existence of this internal memorandum.

I was concerned that the allegations, if not investigated, could undermine confidence in the integrity of the Department of Labour and the wider public service. I undertook to ensure these allegations were investigated thoroughly and openly, and to deal with any outstanding issues. I advised the Minister of Immigration and the State Services Commissioner of my intention to investigate these allegations against NZIS officials. I undertook to complete the investigation by the end of August 2003.

My investigation focused on the standards and behaviours exhibited by Department of Labour staff, in relation to the management of official information regarding Mr Ahmed Zaoui – a refugee claimant in detention in New Zealand.

2.2 Background

New Zealand can generally be very proud of the high integrity demonstrated by public servants. Allegations of inappropriate or illegal behaviour by Government officials can therefore be very damaging. Any such allegations need to be investigated thoroughly, and any outstanding issues need to be addressed effectively, in order to maintain public confidence in the integrity of the public service. This is a responsibility I take seriously as a public service Chief Executive.

The code of conduct for the New Zealand public service recognises that the strength of any government system lies in the extent to which it deserves and holds the respect of its citizens. This in turn depends more than anything else on the integrity of its institutions, incorporating conventions and practices that attach the highest importance to lawful conduct, due process, fairness, probity and professionalism.

The New Zealand Immigration Service (NZIS) is one of several divisions within the Department of Labour. Its responsibilities include processing claims for refugee status. This involves maintaining a careful balance between protecting the rights of those claiming refugee status and ensuring fair, robust and transparent processes to meet the public interest of all New Zealanders. The Immigration Act (1987) defines processes and standards for upholding an appropriate balance. This includes in section 129T a requirement for confidentiality about all particulars related to a refugee claim, including identity and even the existence of such a claim, to protect the claimant and relatives.

Mr Ahmed Zaoui entered New Zealand on 4 December 2002, and immediately sought refugee status. Mr Zaoui is a former resident of Algeria, and is the subject of accusations of terrorism. About 12 December 2002, the *New Zealand Herald* became aware of the presence of Mr Zaoui in New Zealand. (I do not know how the media obtained information about Mr Zaoui's presence in New Zealand, and that is not the immediate concern of this investigation.)

The *New Zealand Herald* telephoned Ian Smith, seeking confirmation of the presence of an alleged terrorist in New Zealand who was seeking refugee status. This investigation considers events following that inquiry, focusing on the way the Department managed official information relating to Mr Zaoui. It also considers whether the Department has appropriate standards, systems and processes in place, and whether these were applied effectively in this instance.

2.3 Approach

I identified five questions for this investigation:

- (i) Was there a conspiracy to deceive amongst officials in relation to the Zaoui case?
- (ii) Was information managed by the Department in relation to the Zaoui case in accordance with the Official Information Act? If not, why not?
- (iii) In the Zaoui case, were the Department's policies and systems for managing official information appropriate and effectively applied?
- (iv) In relation to the Zaoui case, were the Department's expectations of appropriate public service conduct and behaviour clear and upheld?
- (v) Are there implications from this situation for the Department's practices and policies relating to standards and behaviours expected of public servants?

I enlisted the services of Vaughan Niven – the Auditor in the Office of the Chief Executive of the Department of Labour – to assist me with this investigation. Mr Niven reports directly to me. I authorised him to interview any staff within the Department of Labour connected to this issue, and also authorised access for him to all relevant Departmental documents.

My investigation focused on people and records in the NZIS. This included identifying and interviewing all NZIS officials involved in any way with the

management of information flows associated with Mr Zaoui. Key steps included:

- My auditor established the facts of the matter – who was involved, what happened, and why;
- I reviewed the my auditor's findings and formed views about whether his factual conclusions seemed reasonable and supportable;
- I formed conclusions about any possible breaches of official information law or the public service code of conduct; and
- I considered what further action seemed appropriate, whether by way of disciplinary investigation and/or review of Departmental practices or policies.

3 FINDINGS – FACTS AND CONCLUSIONS

3.1 *Was there a conspiracy to deceive amongst officials in relation to the Zaoui case?*

I found no evidence that officials conspired to deceive in relation to the Zaoui case. I considered three distinct areas where a conspiracy to deceive might have existed:

- In relation to Ian Smith’s annotation in the media log for 17 December 2002 (“*I was let down badly ... Everyone had agreed to lie in unison, but all the others caved in and I was the only one left singing the original song.*”);
- In relation to the Department’s refusal to release official information in response to a request received from the Office of the Leader of the Opposition (received on 24 December 2002); and
- In relation to the Department’s omission to provide official information requested by the Ombudsmen’s office (on 8 May 2003, 23 May 2003 and 24 June 2003), during the Ombudsman’s review of the Department’s refusal to release official information.

3.1.1 The “*Everyone agreed to lie in unison ...*” statement, in the media log for 17 December 2002

Taken at face value, Ian Smith’s annotation in the media log for 17 December 2002 suggests a conspiracy to deceive. The facts of the matter however point strongly to the absence of any such conspiracy. I formed this conclusion following an examination (by my Auditor) of information relating to Mr Zaoui between his arrival in New Zealand (on 4 December 2002) and the receipt of the official information request from the Office of the Leader of the Opposition (on 24 December 2002).

Chronological sequence of events:

- *4 December 2002*
Mr Zaoui arrived in New Zealand at Auckland International Airport on 4 December 2002. He was processed as a refugee claimant by staff of the New Zealand Immigration (NZIS) at the airport. This involved routine liaison between staff of the Border and Investigations Branch (B&I) and the Refugee Status Branch (RSB) of the NZIS, as well as officials from Police, Customs, Security Intelligence Service (SIS), and the United Nations High Commissioner for Refugees (UNHCR). The subsequent processing of Mr Zaoui has continued to involve routine liaison between officials from these agencies, as well as officials from the Department of Corrections, Mr Zaoui’s counsel, and the Howard League for Penal Reform. The Immigration Act required all officials involved to keep the identity and indeed the presence of Mr Zaoui confidential.

- *5 December 2002*

An Intelligence Adviser in the NZIS Intelligence Unit (NZIS National Office, in Wellington) received advice from Police (National Headquarters) requesting procedures and interview notes relating to Mr Zaoui. This was the first information received in NZIS National Office regarding Mr Zaoui. The request was forwarded to the Service Leader (B&I, Auckland), who confirmed the presence of Mr Zaoui.
- *6 December 2002*

The Manager, B&I Auckland, advised Andrew Lockhart (Chief Operations Officer, and General Manager Designate, NZIS National Office Wellington) of Mr Zaoui's circumstances. Mr Lockhart immediately informed Chris Hampton (General Manager, NZIS) and the Minister of Immigration. Mr Lockhart also briefed the Intelligence Adviser, NZIS National Office. When interviewed during the current investigation, the manager B&I, Mr Lockhart and the Intelligence Adviser all recall giving consideration to security implications associated with the detention and processing of Mr Zaoui, and (independently) deciding not to advise Ian Smith. They did not confer on this. The rationale for their (independent) decisions on this matter was an awareness of the security implications and their knowledge that Mr Smith does not have a sufficiently high security clearance for dealing with matters involving confidential information.
- *12 December*

Mr Smith started receiving media enquiries regarding Mr Zaoui. These enquiries sought confirmation that a suspected terrorist had been detained upon arrival in New Zealand. Mr Smith recalls thinking that the media enquiries suggested "something was going on", but also assumed that if he had not been briefed then there must be a reason for confidentiality. He concluded that the issue was most likely being dealt with at a higher level.
- *13 December*

The *New Zealand Herald* publicised the presence of Mr Zaoui in New Zealand. The Intelligence Adviser, NZIS, recalls discussing Mr Zaoui with Mr Smith at about this time, specifically in order to advise Mr Smith of the name of the Police media spokesperson fielding enquiries relating to Mr Zaoui. Mr Smith cannot recall this conversation, and his notebook includes no details of this conversation. (The Minister of Immigration confirmed the presence of Mr Zaoui in New Zealand at this time.) Whilst media enquiries to Mr Smith continued through the following week, he consistently denied that he had any knowledge of such a detention. Mr Smith recorded details of these contacts in his notebook.
- *17 December*

The *New Zealand Herald* published an editorial commenting on aspects of Mr Zaoui's arrival in New Zealand, including an assertion that the public had a right to know about the presence of a suspected terrorist in New Zealand seeking refugee status. The editorial included the

observation that *“The difference between saying nothing and telling untruths is clearly an elusive concept for some.”* Within the context of the complete editorial, it seems fair to conclude that this is a direct reference to Mr Smith’s repeated denials of any knowledge of Mr Zaoui.

Media logs:

The NZIS “media log” is an in-house email information sheet containing direct quotes and summaries of newspaper, radio and television reports on issues related to immigration. Ian Smith prepares a media log on most working days to alert NZIS staff (within New Zealand and internationally) of immigration issues receiving media attention. Mr Smith says that he also uses the media log to elicit feedback from staff and occasionally to inject humour into what is often a negative media portrayal of immigration activity and issues.

The media log is distributed electronically to approximately 300 NZIS staff. The distribution list also includes officials in the Refugee Status Appeals Authority, the Ministry of Foreign Affairs and Trade, and other parts of the Department of Labour (Employment Relations Service, Office of the Chief Executive).

References to Mr Zaoui appear in the media logs for 13, 16, 17, 18 and 19 December 2002. Complete copies of these media logs are attached (Annex 1). Relevant extracts, with annotations by Mr Smith in italics, follow:

- *13 December 2002*
Records a summary of *New Zealand Herald* and *The Press* reports of that date. Records, under the by-line “Media Issues and Inquiries”, details of a number of approaches Mr Smith received from a range of media. Mr Smith’s personal annotation: *“(and all handing out liberal doses of abuse when no information was forthcoming. One of the many fringe benefits that go with this job is that it allows you to learn all about your pedigree without actually having to undertake your own family history research.)”*
- *16 December 2002*
Records summary of *New Zealand Herald*, *Dominion Post*, *The Press*, *Sunday News* reports relating to Mr Zaoui. Mr Smith inserted the personal annotation *“(And now to the last paragraph of the story ...)”*, in relation to a comment and information about Mr Zaoui from an overseas associate of Zaoui.
- *17 December 2002*
Records summary of *New Zealand Herald* and *Dominion Post* reports relating to Mr Zaoui. Among these is a paraphrased summary of a *New Zealand Herald* editorial noting that an NZIS spokesperson had denied knowledge of Mr Zaoui on two separate occasions despite confirmation of his presence in New Zealand from the Minister of Immigration. The editorial went on to comment, “The difference between saying nothing and telling untruths is clearly an elusive concept to some.” A personal

annotation from Mr Smith followed: “*(I was let down badly ... Everyone had agreed to lie in unison, but all the others caved in and I was the only one left singing the original song.)*”

- *18 December 2002*
Records a summary of *Dominion Post* and *The Press* reports relating to Mr Zaoui.
- *19 December 2002*
Records a summary of *Dominion Post* and *New Zealand Herald* news reports relating to Mr Zaoui.

During this investigation, Mr Smith was questioned extensively about his personal annotations on the media log for 17 December 2002. He stated that this annotation was intended to make two distinct points:

- (i) “*I was let down badly ...*” was made “tongue in cheek” and was directed at NZIS staff. Whilst he had not been briefed on the Zaoui case, the *New Zealand Herald* was inferring that he was deliberately trying to dismiss their questions. He felt “let down” by his NZIS colleagues, who had allowed him to be in that position.
- (ii) “*Everyone had agreed to lie in unison, but all the others caved in and I was the only one left singing the original song*” was intended as an ironic response to the *New Zealand Herald* inference that he was telling untruths. His intention was to highlight how preposterous it would be for people involved in an issue like this to actually lie about it, especially when the *New Zealand Herald* appeared to have comprehensive information about Mr Zaoui from other sources.

Mr Smith expressed astonishment at the reaction to his “flippant, sarcastic remarks”. He suggested that, if there had been some conspiracy to “control” the flow of information relating to Mr Zaoui, it would be most unlikely that he would broadcast this using the media log when he had no control over its distribution.

Mr Smith acknowledges his annotations in the media log for 17 December 2002 were inappropriate, and has expressed deep regret at causing embarrassment and difficulty for the Department following what he now regards as a “stupid decision” in making those annotations.

Other matters:

It is worth noting that the NZIS was going through significant change during the period between the arrival and detention of Mr Zaoui (4 December 2002) and the receipt of the request for official information (24 December 2002).

Mr Chris Hampton retired on Friday 6 December 2002, after serving as General Manager of NZIS for nine years. Mr Andrew Lockhart commenced as

General Manager of NZIS on Monday 9 December 2002. He was previously Chief Operating Officer of NZIS.

Mr Lockhart was on sick leave from 13 December 2002 to 10 January 2003. In his absence, Ms Debbie Tse was Acting General Manager from 13-20 December 2002 and from 6-13 January 2003, while Mr Brendan Quirk was Acting General Manager from 21 December 2002 to 5 January 2003.

Conclusion

None of the information in documents examined or gained during interviews points to a conspiracy to deceive or any intention to deceive, in relation to annotations made on the media log for 17 December 2002 by Ian Smith. I concur with Mr Smith's view that the media log is an unlikely vehicle for recording or communicating details of a conspiracy, as it is distributed to a relatively large number of people (more than 300). Rather, I have drawn the following main conclusions:

- On the face of it, the annotation made by Mr Smith seems to display poor judgement, a lack of professionalism, and a lack of respect for the media. Mr Smith himself acknowledges the annotation was inappropriate.
- I consider senior staff within NZIS should have taken a more proactive approach for responding to media questions regarding the arrival, detention and processing of Mr Zaoui.

3.1.2 The Department's refusal to release official information

On 22 January 2003, Andrew Lockhart (General Manager, NZIS) responded to the request for official information received from the Office of the Leader of the Opposition on 24 December 2002, with a refusal to release any information. Copies of the original request (Annex 2) and the Department's response (Annex 3) are attached.

The official information request sought a wide range of information. This included:

- All communications relating to Mr Zaoui's detention in December 2002;
- Information about Mr Zaoui received by NZIS from any other party prior to Mr Zaoui's detention; and
- Copies of all letters, memoranda, emails and other communications, including internal communications between Immigration officials and any other person in relation to this case.

The response to this request for official information stated that all information held by NZIS in relation to Mr Zaoui was withheld under section 18(a) of the Official Information Act by virtue of section 6(a) and section 6(d). It was further stated that under section 18(c) any release of information may be in breach of section 129T of the Immigration Act 1987. Mr Lockhart emphasised that whilst it was public knowledge that Mr Zaoui had lodged a claim for refugee status in New Zealand, the circumstances and details of his claim

were not, and that he was required to maintain confidentiality with regard to those matters.

How was the request for official information managed?

The request for official information was passed to an Operations Adviser within NZIS, on 6 January 2003 for his attention. Note that NZIS National Office was closed between 24 December 2002 and 6 January 2003, for statutory and Departmental holidays during the Christmas/New Year break.

The Operations Adviser immediately contacted (by email) several NZIS staff who may have been involved with Mr Zaoui; the Intelligence Adviser, the manager B&I, Andrew Lockhart, Brendan Quirk, an NZIS manager, the Market Manager, Refugee Services and Ian Smith. He also contacted a Senior Solicitor in the Office of the Chief Executive of the Department of Labour – as he is routinely involved in advising on official information requests across the Department of Labour. The Operations Adviser identified these individuals, without direction, as being those most likely to hold information about Mr Zaoui or otherwise have an interest in the case. He specifically sought their advice about any relevant information they might be holding, and asked them to forward copies of such information to him by 15 January.

It is worth noting that the Operations Adviser specifically referred people he contacted to the media log for that day, to ensure they were all aware of the Zaoui case referred to in the official information request. He stated that he had noticed the reference to Mr Zaoui in the media log for that day by chance, and included it as an *aide memoire*. The included excerpt, with italicised annotation from Mr Smith, was:

The Press (4/1/03) “High security at Zaoui hearing” “Algerian Ahmed Zaoui, who has been held at Paremoro Prison since arriving in New Zealand a month ago, could wait another six weeks for a decision on alleged terrorist links. Zaoui appeared briefly in the Manukau District Court for an extension of the 28 day warrant under which he is being held. Two guards searched bags and swept detection devices over anybody entering the main courtroom. Zaoui arrived at Auckland Airport from Malaysia on December 4 with false South African documents, some destroyed on the flight.” (*Good to see the Immigration Daily starting the year with some more fine writing: a person arriving with documents he destroyed on the flight.*)

When interviewed during this investigation, the Operations Adviser stated that, while including the media log excerpt in his email on 6 January 2003, he did not make any “mental connection” that the media log might constitute official information in respect of Mr Zaoui.

On the following day (7 January 2003), the Operations Adviser contacted the same group of people, pointing out that the official information request included information received by NZIS from any other party prior to Mr Zaoui’s detention. He added that this request referred to “*the NZIS line at the time*

that the NZIS had no knowledge of the matter” – reflecting comments made by Mr Smith in response to media enquiries. Several NZIS officials (including the Intelligence Adviser, an officer from RSB, and the Service Leader B & I subsequently responded saying they had no knowledge of Mr Zaoui before his arrival and detention.

Subsequent email communication between various NZIS officials (on 13 January 2003) reveals a discussion about whether or not it was appropriate to release various types of information, referring to possible restrictions under the Immigration Act and the Privacy Act. It appears that at no time was all the relevant material actually scrutinised by Departmental solicitors. Rather, officials considering the request for official information sought legal advice about whether the following types of information should be released:

- 89 cited items of country information (some over 50 pages long)
- Refugee Status claim form
- Written statement in Arabic and English translation
- Statutory declaration
- 21 RSAA decisions on exclusion
- Handwritten interview notes (RSO and interpreter)
- Interview report
- Security and identity update for B&I
- Allocation of RSB information
- Interview booking information
- Request for legal services for representation
- B&I airport assessment and infringement notice
- Several faxed submissions (including letters of support, documents and country information) from Mr Zaoui’s representative – before and after interview
- General emails around contacting SIS, library requests, updates on progress to B&I and RSAA and many surrounding the OIA request itself.

Responses from Departmental solicitors pointed out that it was difficult to be entirely certain about deciding whether or not to release such information without actually viewing the documents in question. However their responses went on to suggest that there could be good reasons to withhold much of the information referred to, citing various sections of the Official Information Act and section 129T of the Immigration Act. They added a recommendation that a decision to decline release of official information should be accompanied by advice that the requestor has the right to have that decision reviewed by the Ombudsman. They also noted that information already in the public domain should not be withheld. The letter sent by Mr Lockhart notifying the requestor of his decision to decline the release of official information appears to draw heavily on these responses from the Departmental solicitors.

Conclusion

My investigation suggests that the manner in which Department of Labour officials addressed the initial request for official information regarding Mr Zaoui

may not have been consistent with Departmental policies and guidelines in relation to the Official Information Act, but I found no evidence of a conspiracy amongst officials to deceive. Rather, I have drawn the following main conclusions:

- Formal scrutiny of the requested material, prior to making the decision to decline release, was inadequate. Rather, judgements made about the appropriateness of releasing were based on general advice from Departmental solicitors about types of information. Furthermore, there was no thorough follow-through with all those officials contacted initially. Rather, the general advice was accepted as a basis for a general decision to decline.
- NZIS officials involved in responding to this request for official information shared a common view about the importance of confidentiality regarding all information about individuals seeking refugee status. There is no evidence however, that these individuals colluded to prevent release of information in this particular case.

I will comment in a later section on the appropriateness and effectiveness of the Department's policies for managing official information.

3.1.3 The Department's omission to provide official information requested by the Ombudsmen's Office

We now know that Department of Labour officials omitted to provide all the information sought by the Ombudsman during his review of the Department's earlier decision to decline the release of this information. The *New Zealand Herald* published a transcript of Mr Smith's personal annotation on the media log for 17 December 2003, noting that this had not been provided to the Ombudsman and claiming Departmental officials had "lied" about its existence. Clearly, officials failed to provide this document to the Ombudsman, but was it a consequence of a conspiracy to deceive?

The nature and progress of the request

The Ombudsman wrote to the Department of Labour on 10 March 2003 (received 12 March 2003) seeking copies of the information that the Department had declined to provide to the Office of Leader of the Opposition, as well as a report on the Department's essential concerns with release of this information (copy of letter attached as Annex 4). Andrew Lockhart responded to the Ombudsman on 10 April 2003, including a copy of information and papers relevant to NZIS's consideration of the original request.

The Ombudsmen's office apparently checked with the Office of the Leader of the Opposition to determine whether the information received by the Ombudsman included that sought by the requestor. Sarah Boyle, from the Office of the Leader of the Opposition responded to the Ombudsmen's Office (by email, on 8 May 2003) stating that the information specifically sought was:

... the daily media logs and associated commentary or remarks from employees regarding the Ahmed Zaoui case.

This clarification specifically referred to “media logs” for the first time. The Ombudsmen’s Office immediately referred this clarification to a Departmental official, the OI Act Co-ordinator in NZIS, requesting that she check whether the NZIS holds such information. The OI Act Co-ordinator then immediately contacted Mr Smith, asking if he had copies of the daily media logs that mention Zaoui, and copies of any associated commentary/remarks from employees regarding the Ahmed Zaoui case.

The following day (9 May 2003), the OI Act Co-ordinator contacted the Ombudsmen’s Office (by email), pointing out that substantial research might be needed to provide the information sought, and suggesting that such a request might even be considered frivolous or vexatious or that the information requested might be considered to be trivial. Following some further communication (by telephone) between the Co-ordinator and the Ombudsmen’s Office, the Co-ordinator agreed to forward relevant media logs from the month of December 2002.

Neither the OI Act Co-ordinator nor Mr Smith held a full set of media logs as distributed by Mr Smith most working days. The Co-ordinator routinely deleted the personal annotations of Mr Smith as soon as she received the (daily) media log, before saving a copy for her records. Mr Smith does not formally save a copy of every media log he distributes. Mr Smith forwarded to the OI Act Co-ordinator the media logs for 16, 18 and 19 December 2002. She added her edited media logs (i.e. with the personal annotations from Mr Smith deleted) for 13 and 17 December 2002. This set of information was forwarded to the Ombudsmen’s Office on 16 May 2003.

A further exchange of emails took place on 23 May 2003 between the OI Act Co-ordinator and the Ombudsmen’s Office, during which the content of an email from Ms Boyle refining and focusing her request was referred to the Department:

“I would like [the Ombudsmen’s] office to review all emails or other correspondence or memoranda circulated within NZIS which comments on the Zaoui case, including comments from NZIS staff on information contained within media logs.”

The Ombudsmen’s Office pointed out that Ms Boyle believes there may be some relevant information held by NZIS that had not yet been provided to the Ombudsmen’s Office. The Co-ordinator then asked if the Ombudsmen’s Office wished her to contact the approximately 600 staff in NZIS to see if any of them had such information. The Ombudsmen’s Office replied saying that it would be sufficient at this stage “... simply to ask Ian Smith if he is aware of the existence of any such info, or whether he has a record of any communications of this nature (given that it is fairly specific)”.

On 28 May 2003, Ian Smith advised the OI Act Co-ordinator (by email) that he had “ ... *looked through the clippings folder I have, and, if the media reports did trigger any responses, I never kept them. I can’t actually recall any feedback on this issue.*” The Co-ordinator immediately forwarded this response to the Ombudsmen’s Office.

On 24 June 2003, the Ombudsman spoke directly with Mr Lockhart, seeking his confirmation that relevant information as requested by Ms Boyle was not held by the NZIS. The Ombudsman has since advised me that, in the absence of any response from Mr Lockhart to the effect that such information had been identified, he assumed that none was held. Mr Lockhart subsequently advised the Ombudsman, on 30 June 2003, that he believed there was no more relevant information held.

On 27 June 2003, the Ombudsman wrote to Ms Boyle in response to her Official Information Complaint, advising her that “*Mr Ian Smith of the NZIS ... has no record of any such information, nor he is he able to recall any information of this nature.*” The Ombudsman further advised that he had discontinued his investigation.

Why did officials not forward Mr Smith’s annotation on the media log for 17 December 2002 to the Ombudsman?

Only two Departmental officials were involved in responding to requests from the Ombudsmen’s Office during May 2003 – the OI Act Co-ordinator and Ian Smith. The Co-ordinator was actually responsible for collating and forwarding information to the Ombudsmen’s Office. She communicated by email with Mr Smith to identify and obtain such information.

Both the Co-ordinator and Mr Smith state that they did not discuss whether complete media logs or extracts from the media logs should be sent. They both recollect forming the view, independently and separately, that the information sought was the actual media references relating to Mr Zaoui. Neither the Co-ordinator nor Mr Smith gave any thought to referring the request or information collated to Departmental solicitors for comment before responding to the Ombudsmen’s Office.

When interviewed during this investigation, the OI Act Co-ordinator and Mr Smith independently state that, when requests from the Ombudsmen’s Office specifically sought “*comments from NZIS staff on information contained within media logs*”, they independently concluded that they regarded that this related to responses made by other staff to the media logs, rather than the media logs themselves. The Co-ordinator and Mr Smith deny colluding to delete potentially embarrassing information. Mr Smith states that he was unaware until late July 2003, when the issue under investigation first appeared in the media, that the Co-ordinator’s personal collection of media logs was incomplete.

I did not find evidence, in the email communication between the OI Act Co-ordinator and Mr Smith during May 2003, of collusion or conspiracy to deceive

between these two officials. Nor did I find evidence that suggests Mr Smith, who would have had the most to gain from concealing a potentially embarrassing personal comment from the Ombudsman, attempted to prevent the Co-ordinator obtaining a complete record of the media logs from any other source. The Co-ordinator does not appear to have had any reason or incentive to aid Mr Smith in a deliberate concealment.

The content and tenor of emails exchanged between the OI Act Co-ordinator and the Ombudsmen's Office, and between the Co-ordinator and Mr Smith, between 8 -16 May 2003 suggest that the focus of her attention was on identifying the media articles reporting on Mr Zaoui, rather than on the media logs themselves. The content and tenor of the later exchange of emails, on 23 May 2003, between these same individuals, suggest that her focus had shifted to identifying information generated from other staff in response to the media logs.

The telephone conversation between Mr Lockhart and the Ombudsman (on 24 June 2003) appears to have resulted in them talking at cross-purposes. Mr Lockhart presumed that the Ombudsman was enquiring about issues around Mr Zaoui's detention and processing, while subsequent communication from the Ombudsman confirms that he was enquiring specifically about the media logs. During the current investigation, Mr Lockhart has stated that he was not aware at the time that the media logs had become an issue, because it appears neither the OI Act Co-ordinator nor Mr Smith had informed him about correspondence with the Ombudsmen's office.

Conclusion

I have concluded that the omission to provide official information regarding Mr Zaoui sought by the Ombudsmen's Office was not the result of a conspiracy to deceive. I have further concluded that the omission – not providing the annotation on the media log for 17 December 2002 to the Ombudsman – resulted primarily from the Department's failure to treat media logs and any comments annotated to these as official information. This primary failure in turn contributed to the following incidents where the Department's guidelines were not applied appropriately :

- No complete official record of the annotated media logs was held within the department.
- Officials submitting official information to the Ombudsman did not include a full record of the annotated media logs.
- Officials failed to seek legal advice from Departmental solicitors regarding the Ombudsman's request for "*daily media logs and associated commentary or remarks from employees*" to ensure compliance with the Ombudsman's request.
- Officials did not inform the General Manager of NZIS about correspondence with the Ombudsmen's office regarding further requests for further information during the Ombudsman's review of the original decision to decline release of all official information.

3.2 Was information managed by the Department in relation to the Zaoui case in accordance with the Official Information Act? If not, why not?

I find that the Department failed to manage information in relation to the Zaoui case in accordance with the Official Information Act, 1982. In considering this matter, I have restricted my investigation to Part II, III and V only of the Official Information Act. Parts I, IV, VI and VII of the Official Information Act do not have any direct relationship to the Department's management of information relating to the Zaoui case.

3.2.1 Part II – Requests for access to official information

I have reviewed the department's management of information in relation to the following obligations:

- *Section 13: To provide reasonable assistance to persons wishing to make, or making a request.*
The Operations Adviser responsible for processing the official information request made reasonable efforts to assist. He identified all potential holders of information and informed them of the nature of the information being sought. On advice from Departmental solicitors, he approached the requestor to clarify the information being sought and conveyed this information to all potential holders of this information.
- *Section 15: An obligation to make a decision within 20 working days of receiving a request*
The Department met its obligation.
- *Section 17: Allows for deletion of information from documents in certain cases and requires the Department to give reasons why such information has been deleted.*
The Department decided to withhold all relevant information, so there was no direct need to delete information from documents. However, there was no attempt to differentiate material that was already in the public domain and provide this to the requestor, in spite of advice regarding this from Departmental solicitors. This reflects the failure to scrutinise all the relevant information before a decision regarding release was made.
- *Section 18: Reasons why a request may be refused.*
The Department provided reasons for withholding information, in its response to the requestor. However, the reasons given were based on general advice from Departmental solicitors, without a detailed scrutiny of all the relevant information.

- *Section 19: The obligation for the Department to give reasons why it has withheld information and inform the requestor of their right to seek a review of the refusal by way of a complaint to the Ombudsman.*
The Department met its obligation.

3.2.2 Part III – Publication of, and access to certain documents and information

None of Part III is directly relevant to the Zaoui case. However, section 20 places an obligation on the Department to provide a range of information for publication in what is known as the Directory of Official Information.

Media logs are not specifically listed within the range of information specified in section 20. The Directory conforms with the requirements of section 20.

3.2.3 Part V – Review of Decisions

I have reviewed the department's management of information in relation to the following obligation:

- *Section 29A: The obligation for the Department to provide the Ombudsman with any information relating to any investigation undertaken by the Ombudsman within 20 working days.*
The Department failed to meet its obligations in this regard. The Ombudsmen's Office specifically sought "*daily media logs ... regarding the Ahmed Zaoui case.*" These were not provided. Instead edited extracts were provided. As discussed earlier, I believe this omission was the consequence of a failure to apply the Department's guidelines fully. I found no evidence of a conspiracy to deceive.

3.3 In the Zaoui case, were the Department's policies and systems for managing official information appropriate and effectively applied?

The Department of Labour has clear policies about complying with the law as well as detailed guidelines for managing official information requests.

3.3.1 The guidelines

The Department's procedural guidelines for managing official information requests are contained within the "DoL Guide To Handling Official Information Requests", available to all Departmental staff on the Departmental intranet ("e-Lab"). In addition, the NZIS Operating Manual has a chapter outlining the requirements of the Official Information Act 1982. Copies of both are attached, as Annex 5.

The Departmental and NZIS guidelines are, in general terms, comprehensive and detailed. They provide extensive guidance, including flowcharts,

guidance on risk assessment and numerous tips and key messages, on all aspects of administering and processing an official information request, including reviews of refusals undertaken by an Ombudsman. These guidelines are also regularly updated; the Department of Labour Guide was last reviewed in April 2002, and the NZIS operating procedures were last reviewed in October 2002.

I have concluded that the Department's guidelines for managing official information requests should be reviewed. This review should ensure that the guidelines clearly state responsibilities for seeking legal advice from Departmental solicitors regarding decisions about declining release of official information and in ensuring compliance with reviews of any such decision by the Ombudsman. This review should also ensure responsibilities and accountabilities are clearly stated, particularly in relation to General Managers for each of the Department's Service units.

3.3.2 The application of the guidelines

Officials handling the request for information and the subsequent review by the Ombudsman of the decision to decline release failed to effectively apply Departmental policies and guidelines in three key areas:

- Failing to identify media logs as official information;
- Deciding to withhold information without thoroughly scrutinising all relevant information; and
- Failing to forward complete information relating to media logs to the Ombudsman.

Officials interviewed during this investigation all conceded that they did not specifically refer to Departmental guidelines about managing official information as they processed the requests relating to Mr Zaoui. In relation to the initial request, I do not regard this necessarily as unusual or significant, as the request was to all intents and purposes routine and the officials concerned were all experienced in handling such requests. However, I am surprised that officials did not check carefully that they were following appropriate procedures during the rather less common process of responding to the Ombudsman's review of the decision to decline release of information.

3.4 In relation to the Zaoui case, were the Department's expectations of appropriate public service conduct and behaviour clear and upheld?

I have concluded that the Department has very clear expectations of appropriate public service conduct and behaviour. I believe, however, that certain actions in relation to the Zaoui case raise concerns about whether these expectations were met. I am addressing these concerns through appropriate disciplinary processes.

The Department's expectations of appropriate public service conduct and behaviour are set out in:

- The New Zealand Public Service Code of Conduct;
- The Department's human resources policies and standards; and
- The NZIS Code of Conduct (incorporating the Department of Labour values).

These statements all clearly express the behaviour and conduct expected of officials. For the purposes of this investigation, I have focused principally on the NZIS code of conduct. This code reflects the standards expected in the New Zealand Public Service Code of Conduct, and in some areas expands significantly on these to reflect the specific operating environment of the NZIS. A copy of the NZIS Code of Conduct is attached as Annex 6.

3.4.1 NZIS Code of Conduct - Guiding Principles

I believe the Zaoui case raises concerns under the first guiding principle:

- *Fulfil your lawful obligations to the Government with professionalism and integrity*
Mr Smith acknowledges the annotation made on the media log for 17 December 2002 was inappropriate. I have initiated appropriate disciplinary processes to consider this matter further.

3.4.2 NZIS Code of Conduct – Performance of Duties

The code of conduct points out that all employees have a responsibility to carry out their duties to the best of their ability, respecting the rights of others and avoiding behaviour that might impair their effectiveness. There are three areas where possible breaches might be considered:

- *Obey the law, including the laws and regulations of any country in which I am working.*
The evidence shows that the Department breached section 29A of the Official Information Act, by failing to provide information requested by the Ombudsman (the media logs). I believe this resulted from poor application of the Department's guidelines, rather than a deliberate breach by Departmental staff.
- *Be honest, fair, impartial, competent and efficient in the performance of my assigned duties*
The Department failed to apply defined systems for identifying and managing risk while processing information requested during the Ombudsman's review. Again, I believe this resulted from poor application of the Department's guidelines, rather than a deliberate breach by Departmental staff.
- *Act with integrity in all matters, and show respect and courtesy to all colleagues and customers*

As noted above, I have initiated appropriate disciplinary processes to consider further Mr Smith's annotation on the media log for 17 December 2002, which he himself acknowledges was inappropriate.

3.5 Are there any implications from this situation for the Department's practices and policies relating to standards and behaviours expected of public servants?

This situation has revealed several areas where the standards and behaviours demonstrated by Department of Labour staff seem to fall short of the levels that could reasonably be expected of public servants. My principal concern in this regard is that the Department must consistently demonstrate high standards and behaviours in order to deserve and hold the public confidence needed for it to conduct its operations effectively. The Department must therefore address the standards and behaviour issues considered here as a matter of urgency.

3.5.1 Conduct and behaviour

I am currently engaged in disciplinary action related to possible breaches of acceptable conduct and behaviour outlined in this report. This disciplinary action must follow due process, so any public comment by me on this will be made separate to this report.

I will reinforce the standards of conduct and behaviour expected in a direct communication to all staff of the Department of Labour. I will emphasise my expectation that all staff must take personal responsibility for familiarising themselves with the code of conduct, and discuss this with their managers in order to clarify and confirm the standards expected of them.

3.5.2 Records management

The Department must improve its record management practices. This investigation indicated that several staff (including some in senior positions) did not appreciate the official status of material such as annotated media logs. I consider that management practices in this area need to be strengthened. I note that the Ombudsman alerted the Department to the status of media logs as official information as long ago as 1997, yet the lessons from that correspondence appear not to have been taken.

Processes for establishing and maintaining official databases or repositories of such material will need to be improved and effectively applied. I will reinforce my expectations that all staff must respect their records management obligations. I will confirm this expectation explicitly with all members of the Department's Management Board. I have already written to all members of the Management Board emphasising that I am holding them personally accountable for ensuring records management is improved. I will not tolerate breaches of required standards.

3.5.3 Official Information Act

This investigation provides a timely reminder to the Department of our obligations under the Official Information Act 1982. The Department must improve its performance in terms of honouring and complying with its requirements in this regard. Again, I consider that management practices in this area need to be strengthened.

I have advised all members of the Department's Management Board that they must move quickly to ensure the Department meets its full obligations in relation to the Official Information Act 1982. In particular, I have:

- Initiated an internal review of the Department's guidelines for responding to requests for official information, to ensure these clearly state expectations and responsibilities;
- Instructed members of the Department's Management Board that they must ensure that the Department's guidelines for responding to requests for official information are followed at all times; and
- Instructed members of the Department's Management Board that they must ensure all staff understand their personal responsibilities in relation to the Official Information Act.

3.5.4 Media relations

This investigation suggested some possible inappropriate interactions with the media. The disciplinary processes that I have initiated will consider this issue also. The Department's failure to develop a clear media strategy in relation to the Zaoui case is unfortunate. Notwithstanding the security concerns relating to Mr Zaoui, staff involved should have developed a media management plan to be implemented as and when interaction with the media might be necessary. Mr Smith did not have a sufficiently high security clearance to be briefed fully on the arrival, detention and processing of Mr Zaoui. But this should not have prevented proactive development of a media strategy somewhere within NZIS.

I have advised all members of the Department's Management Board that they must ensure the Department establishes more effective processes for engaging with the media, having regard for the balance between upholding legal requirements (e.g. ensuring confidentiality in areas like refugee claims) and respecting the public interest.

4 OVERALL CONCLUSIONS

Allegations of “lying” by public servants are very serious. As noted at the outset, if not investigated, such allegations can undermine confidence and integrity in the Department of Labour and the wider public service.

I believe my investigation has found no evidence that Department of Labour officials involved in handling official information related to the Zaoui case lied. My overall conclusion in relation to the original allegations is as follows:

- *Officials agreeing to “lie in unison”*
I found no evidence to suggest that officials colluded or conspired to “lie in unison”. The comments made by one individual do not appear to have been the result of any agreement amongst officials on this matter.
- *Officials lied to the Ombudsman about the existence of the “lie in unison” memorandum*
I found no evidence that officials deliberately misled the Ombudsman regarding the existence of the “lie in unison” memorandum. The Department’s response to the initial request for official information and the subsequent review of this response do not appear to have been managed in accordance with Departmental guidelines for dealing with official information. These failures reflect a combination of poor records management, inadequate consultation, and failure to fully scrutinise information.

I will not tolerate breaches of the code of conduct or failures to comply with the Department’s legal obligations. I have identified two key issues for attention following my investigation:

- *Code of conduct – upholding standards of behaviour and conduct*
Individuals who appear to have breached the Department’s code of conduct will be the subject of disciplinary investigation and, if those breaches are sustained, appropriate disciplinary action. The public must have confidence that such breaches will not be tolerated.
- *Policies and procedures – complying with formally defined requirements*
Managers in any organisation must be held accountable for the proper application of formally defined policies and procedures within their area of responsibility. All staff need to be given clear direction and expectations about compliance with such policies and procedures.

I am taking disciplinary and management action to address the issues identified in this investigation. Through this action, I am articulating clearly to all staff my expectations about standards of behaviour and conduct, and compliance with formally defined policies and procedures. I am determined that the Department of Labour should deserve and hold the respect of citizens, to enable it to carry out its operations effectively.