

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 7
(THURSDAY 20 MAY 2021)

International Arbitration Centre
3rd floor Ritter House
Wickhams Cay II
Road Town, Tortola

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Sir Geoffrey Cox QC of Withers LLP (instructed by the Attorney General), Solicitor General Mrs Jo-Ann Williams-Roberts, Mr Hussein Haeri of Withers LLP, and Mr Niki Olympitis of Withers LLP appeared for various BVI Government Ministers and public officials.

Solicitor General Mrs Jo-Ann Williams-Roberts, Mr Hussein Haeri of Withers LLP and Ms Lauren Peaty of Withers LLP (instructed by the Attorney General) appeared for Mr Greg Romney and Mr Leslie Lettsome.

Mr Greg Romney gave evidence to the Commission.

Mr Leslie Lettsome gave evidence to the Commission.

Mr Michael Matthews gave evidence to the Commission.

Counsel to the Commission Mr Bilal Rawat also appeared.

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Those present:

Session 1

Sir Geoffrey Cox QC, Withers LLP (attending remotely)

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Hussein Haeri, Withers LLP

Mr Niki Olympitis, Withers LLP (attending remotely)

Mr Richard Rowe/Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Sessions 2 and 3

Mrs Jo-Ann Williams-Roberts, Solicitor General

Ms Lauren Peaty of Withers LLP (attending remotely)

Mr Greg Romney

Mr Leslie Lettsome

Mr Michael Matthews

Mr Bilal Rawat

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Good morning, everyone.

I know that the Secretary will have given out the various housekeeping notices, and in any event, I think everybody here and, indeed, online has been involved in these hearings before, so they know the procedure.

Just two initial points that I should deal with, if I may. Just about 45 minutes ago, the IRU, on behalf of the Attorney General, asked this hearing to be adjourned from 10:00 to 11:00 this morning because Sir Geoffrey Cox, unknown to me, has returned to the United Kingdom, and has literally only just landed.

Just in the--in line with the principle of transparency, let me just explain why I refused that. Firstly, we have three witnesses due at 11 o'clock; two are still in public service, and I have to take into account the inconvenience to them particularly bearing in mind the strains under which the public service here is currently working.

Secondly, the Attorney General has a large panel of counsel instructing in respect to the COI. There are no less than five counsel she has instructed this morning, and she chose Sir Geoffrey, as I understand it, to lead in relation to this hearing, as I understand it, when he was probably in mid-air. I can't think of any circumstances in which I would

1 be unkind to Sir Geoffrey, but any spot that he is in, I'm
2 afraid, it's not of my doing.

3 Thirdly, in any event, the Attorney General, as I've
4 said, has four other advocates here to support him, including
5 the Solicitor General.

6 And finally, we know because we have details of these
7 matters, an adjournment even for an hour would have cost the
8 BVI public purse thousands of dollars.

9 The second initial matter is that, this hearing is in
10 private. That's at the request of the Attorney General, and we
11 dealt with as all of the previous hearings have been dealt
12 with. We will--I will deal with it at the end of the hearing.

13 The COI wrote to the Attorney General on the 13th of
14 May, indicating that if there was any hearing which could be
15 made public, then she should let us know, and it would be made
16 public subject to my direction that that be so. This is, in my
17 view, precisely the sort of hearing that should be heard in
18 public. But, of course, the Attorney General is entitled to
19 reserve the rights of those she represents in terms of
20 privilege and confidentiality.

21 Now, Sir Geoffrey, are you--you're leading for the
22 Attorney General.

23 SIR GEOFFREY: Yes, I am.

24 And if I might initially make some remarks when
25 convenient to you on the matters that you've just made.

1 COMMISSIONER HICKINBOTTOM: Do so now, Sir Geoffrey.

2 SIR GEOFFREY: Yes. Well, Commissioner, while I
3 understand, as does the Attorney, the need to maintain an
4 important level of formality in your Commission--this is, we
5 have all agreed, certainly Mr Rawat and I, and I imagine you
6 would too, is not a court. And in my respectful submission,
7 the problem we have at the moment before you resembles two
8 trains rapidly heading towards each other with no proper
9 communication between them.

10 I've had a chance overnight, though in mid-air and
11 since arriving on the ground and travelling down to Devon, to
12 have a brief word with the Attorney General. I think part of
13 the problem, Mr Commissioner is that these kinds of sometimes
14 quite technically complex discussions are being held at arm's
15 length by form of correspondence. The Attorney instructs me
16 that she is anxious to help and to put you in a position in the
17 pos--that you would wish to be according to the timetable you
18 wish to observe; and so really, all that separates us is
19 matters of technical and practical operation of how it will be
20 done.

21 I think the concern is that there are serious
22 technical problems with what has been requested, and my
23 proposal to you, sir, is that there ought to be, before we get
24 into a position where we're inviting your adjudication, a
25 sensible and pragmatic roundtable discussion between those of

1 your team so that they can understand the complex technical
2 difficulties that these requests give rise to, and they can be
3 better informed as to the reason why the Attorney expressed her
4 concerns as she did in her letter. But those concerns are
5 subject and open to finding a constructive solution that puts
6 you in the position that you need to be.

7 And let me make plain that it is only because of
8 the--the practical difficulties that arise--and I have to tell
9 you that having tried to go into them this morning--and
10 overnight, they involve issues of document management and IT
11 platforms, sir, that, I am not fully equipped, I think, to
12 address you on this morning. But I think if Mr Rawat,
13 Mr Haeri, and those who've been actually on the frontline of
14 dealing with these documents management issues could meet, I
15 have a feeling that a constructive and perfectly acceptable way
16 forward could be found, and even if that weren't immediately
17 found, then at least the Inquiry would understand the practical
18 difficulties facing the Attorney.

19 And I repeat again, if I may, there is no intention
20 here whatsoever to frustrate or impede you. It is simply our
21 assessment overnight of the problems that the request would
22 give rise to. But if we can surmount them, there is a firm
23 will to do so, but that would require, I think, a little
24 discussion, and what I am inviting, sir, is that that
25 discussion should take place without entrenching positions,

1 without the--how shall I put it, sir?--it is essential between
2 a participant of the importance of the Ministries of your
3 Inquiry, there should be a level of trust. And I think it's
4 important that we should be transparent with you and your team
5 as to those difficulties. And once that technical discussion
6 has been able to be had, I hope that the problems will at least
7 admit of seeing a way forward.

8 COMMISSIONER HICKINBOTTOM: Well, Sir Geoffrey, that's
9 helpful. You'll appreciate that, after the last three weeks of
10 hearings, some of which you have attended and others of which
11 you will have been told of and read the Transcripts of, I am
12 currently not in the position that I would like to be, and I'm
13 not in the position that any Commissioner conducting such a
14 Commission of Inquiry as this would like to be.

15 SIR GEOFFREY: And I see that, sir, and we're
16 determined to try to help you to be.

17 I mean, we do face some real, practical difficulties.
18 This is not only intent. This is--I want to make it plain:
19 There is no intent here. There is a genuine issue over
20 document management, complexity, and volume. And what would
21 help us is a discussion, if I may say so, Commissioner, as to
22 precisely what would help you, and then we could explain the
23 difficulties that we face.

24 COMMISSIONER HICKINBOTTOM: I certainly, and I don't
25 think any of the COI team think for a moment that there is any

1 intent to frustrate the purposes of the COI, and I should make
2 that clear at the outset.

3 But I also have to make clear that the consequences of
4 the way in which things have been done have put the COI,
5 certainly the timetable of the COI, in serious jeopardy. And
6 the letter that the Attorney sent yesterday evening was very
7 disturbing to me, who have to bring this Inquiry to a
8 conclusion within a limited time.

9 And, Sir Geoffrey, I understand what you say, and with
10 respect, I think you're right, that some of the issues may be
11 technical, but what I want to make sure today is that there are
12 no issues of principle which I can determine. I don't want any
13 of those left undetermined before any technical discussion
14 takes place.

15 SIR GEOFFREY: Well, I have that point entirely. If
16 we could be told what the points of principle are, it may be
17 possible to agree with them without further argument. I don't
18 apprehend that there will be much that separates us. The truth
19 is that, as I've already indicated to you, the intention here
20 is to help. If we--I really don't want, if I may,
21 Mr Commissioner, to go into the history of these matters. The
22 truth is that I don't think it's going to be productive.
23 Beyond the idea that the Government, that part of it that I
24 have the honour of representing, should be chucking brick packs
25 at this Inquiry and those be returned in kind simply seems to

1 me to be wholly uncondusive to the outcome that all of us
2 desire, which is that you have an opportunity to reach a just,
3 objective, and fair conclusions and constructive and helpful
4 ones.

5 This is why I'm anxious about a hearing to now take
6 place when, in truth, pragmatic discussion is likely to mediate
7 most, if not all of the problems, and we can certainly return
8 to you if there are any principles, but my proposal would be,
9 if you think there are principles that separate us, why not let
10 us know them, and then we can indicate whether we agree or not.

11 COMMISSIONER HICKINBOTTOM: Well, that's what the
12 purpose of this hearing is for, Sir Geoffrey, and we will no
13 doubt identify them this morning. If, as you say, there are no
14 issues of principle to be determined, that's good. But what we
15 can't do, I don't think--

16 (Overlapping speakers.)

17 SIR GEOFFREY: Until I know.

18 COMMISSIONER HICKINBOTTOM: Well, several of them are
19 set out in the Attorney General's letter of yesterday evening,
20 which you'll have read. And as I say, some parts of that I
21 found deeply disturbing for the future of the COI. You say
22 that you will give me comfort, and I look forward to receiving
23 it.

24 It seems to me that the Attorney General's letter
25 raised four broad points mainly in the headings that she used.

1 The first was the role of the IRU. The IRU, so far as I am
2 concerned, has been to date something of an enigma, and the
3 role that's set out in the letter of yesterday evening is not
4 one that I had understood, and it will help me to understand
5 the nature of that role.

6 Secondly--and I think it's an associated point--there
7 are various issues concerning disclosure of documents. I would
8 imagine that it's common ground after the last three weeks of
9 hearings that the disclosure that has been made by the public
10 officers, usually on behalf of the request to a Minister, the
11 disclosure is both substantially incomplete and in substantial
12 disorder. I'm not saying why, the Attorney has set out in her
13 letter some reasons why that might be the case, but that's an
14 issue that has to be addressed so that the Commission of
15 Inquiry can move forward in as efficient a way as it possibly
16 can.

17 Thirdly, the Attorney raises a number of issues
18 concerning LPP and PII, including Cabinet minutes, and there
19 may be some issues of principle there that we can, and perhaps
20 should at some stage, determine; again, so that when we come
21 onto the what might be called the "more substantive hearings"
22 things will move forward without undue interruption or
23 disruption.

24 And the fourth matter referred to by the Attorney
25 General is the area of position statements, which we've

1 requested, which is as I understand her letter we are going to
2 get, but also more broadly the role of participants, which she
3 at the moment seems unsure of.

4 So it's really those four areas, Sir Geoffrey, that
5 I'd like to cover.

6 SIR GEOFFREY: That's very helpful, Sir Gary, because
7 I really do think that almost all of them are resolvable. The
8 first two seem to me, with respect, to be--really require a
9 discussion rather--

10 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, you've made
11 that point, but--and I agree, that some discussion on technical
12 issues may be necessary.

13 SIR GEOFFREY: Yes.

14 COMMISSIONER HICKINBOTTOM: What I'd like to do today
15 is to make sure when that discussion takes place, that the
16 principles are clear in everyone's mind.

17 SIR GEOFFREY: Yes.

18 COMMISSIONER HICKINBOTTOM: And each of these matter,
19 you say, may be resolvable. They are resolvable, and they will
20 be resolved, but what we need to do--what I need to do is to
21 make sure that they're resolved to enable the COI to progress
22 in the most efficient way possible, which is an aspiration that
23 I know you share.

24 SIR GEOFFREY: I do.

25 COMMISSIONER HICKINBOTTOM: I think the best way of

1 proceeding, as usual, is to ask Mr Rawat for any submissions he
2 has to make in respect of--or certainly the first of those
3 heads, the role of the IRU, and it may possibly go over into
4 the second because these two seem to be closely associated.

5 Yes, Mr Rawat.

6 MR RAWAT: Good morning, Commissioner, and thank you.

7 Can I try and take the first two heads that you've set
8 out together. I'll come on to disclosure in due course.

9 Before I do, can I make a preliminary observation.
10 Sir Geoffrey has expressed a hope that there be dialogue. May
11 I make clear that, on behalf of the COI team, we have right
12 from the very beginning made clear that we would be open to
13 that, but it does happen that sometimes that things are better
14 set out in a letter. What has sometimes happened is that what
15 becomes a dialogue becomes a sort of endless e-mail exchange
16 about what precisely do you mean by A and what do you mean by
17 B, which takes us into a sort of cul-de-sac that doesn't get us
18 anywhere.

19 The Attorney's letter of the 19th of May was a
20 response to the Commission's letter of the 17th of May in which
21 the Commission sought to set out, by way of example, the
22 particular difficulties that exist with this disclosure, and
23 they are fundamental--I will come back to that--but also to set
24 out what the COI needs by way of assistance in order to
25 maintain its progress.

1 I know I'm going to sound like an old record, but it
2 always bears repetition that this is an inquisitorial process.
3 Nobody here represents a particular party or a particular
4 interest. (Unclear) COI can be conducted on the basis that a
5 case has to be cooked or the Commission has to put a case and
6 the Commissioner has to find a case before somebody has an
7 opportunity to respond. How a COI progresses and the 1880 Act
8 gives you that latitude is in a manner that is fair but
9 directed by you in order to fulfill your Terms of Reference.

10 If I turn to first head, the role of the IRU, we are
11 back, I think, in familiar territory in that, once again, it is
12 utterly unclear what the role of the IRU is. Now, we have very
13 swiftly--and I particularly thank those who sit behind me, put
14 together a bundle. It may be said that others have not had an
15 opportunity to read it, but it contains documents which they
16 will be very familiar with. They are documents that have been
17 exchanged between the COI, the IRU, and the Attorney General's
18 Chambers. And I can take you to particular documents, if it
19 will help, that show what our understanding of the IRU's role
20 in relation to disclosure is. I don't know whether, in light
21 of Sir Geoffrey, you need that assistance, but if it will help,
22 I can take you briefly to a few documents.

23 COMMISSIONER HICKINBOTTOM: I think that would help.
24 We probably don't need to go to all of these.

25 MR RAWAT: No.

1 Well, can I take you, first of all, to page 18. I
2 won't read out huge chunks of it, but this was the Attorney
3 General's memorandum of the 5th of February 2021, addressed to
4 essentially all public officials elected and appointed.

5 The bits to draw your attention to are firstly on
6 page 19.

7 And the third paragraph down, which begins "To assist
8 Ministers", and that speaks of the establishment of the Inquiry
9 Response Unit, the IRU, administered by with, as led by Sir
10 Geoffrey. And the role there is given as ensuring that
11 information is provided in a systematic, efficient, and
12 well-organised way without breaching any relevant legal
13 obligations. We may come back to the question of legal
14 obligations when we look at the third head, but that is a
15 mantra, "systematic, efficient, and well organised way" that is
16 repeated in subsequent correspondence from the IRU.

17 If you go to now 28, please, take you first of all to 27.
18 This is a letter now from Withers 15th of February 2021. If
19 you look at the bottom of the final paragraph on the page,
20 again we see that "the IRU will be responsible for assisting
21 and facilitating the Government's efficient and timely response
22 to requests for official information or material which has been
23 created or held in the course of conducting the business of
24 Ministries", et cetera.

25 If we go to 28 and look at the paragraph at the end,

1 "Withers and I have been instructed by the Attorney General on
2 behalf of the Government", what the letter makes clear is that
3 neither Sir Geoffrey nor Withers will be acting in any way on
4 behalf of any individual public officer, elected or otherwise,
5 but on behalf of the Government in support of the Attorney
6 General. It has, of course, now both through submissions
7 you've received subsequently and your ruling, been clarified
8 specifically who is being represented and who is not.

9 If we look at 29, the paragraph beginning "Finally", which
10 responds to observations you had made on the memorandum from
11 the AG that we looked at a few moments ago, essentially the
12 point is made that the default is that there would be--the IRU
13 will be advising in favor of disclosure.

14 Perhaps I'd like to ask you to turn to now 30; though
15 before I do, can I take you back to page 20. I neglected to
16 draw your attention to something in the page--

17 COMMISSIONER HICKINBOTTOM: 20?

18 MR RAWAT: Yes, please. This is the AG memorandum.

19 The memorandum set out four points, but I draw your
20 attention to three and four about the role of the IRU in
21 conjunction with Permanent Secretaries and public officers and
22 departments and other public functionaries as appropriate. The
23 IRU will be identifying relevant material for disclosure,
24 reviewing it for any issues of law, advising the Minister and
25 the Permanent Secretary accordingly and others and, when

1 necessary, engaging with COI, and the point is made there, as
2 in the letter we just looked at, the default would be to advise
3 in favour of disclosure.

4 If I go back to 30, this was a Guidance Note issued by
5 the AG, which the AG has kindly now provided the COI, I
6 believe, with all the Guidance Notes that she has issued. But
7 at the bottom we see what is the function of the IRU, and it
8 refers to the development of a protocol to ensure all requests
9 are carefully reviewed in order to ensure that responsive
10 information and documents can be collated and that any
11 information and documents received are processed in a secure,
12 respectful, organised and efficient manner.

13 The point is made--and I won't take it to you,
14 Commissioner, but the point is made that firstly all the
15 members of the IRU have undersigned what is described as an
16 "oath of confidentiality". The point is made that they will be
17 able to come on-site, if you like, and advise as to disclosure.

18 And if you look as 31, there is reference to a process
19 that those who use the services of the IRU expect to go
20 through, and that process begins, first of all, with a
21 questionnaire being completed. And once that questionnaire is
22 completed, it has to be submitted to the IRU, and then the IRU
23 may have questions on that process or--and it concludes at the
24 bottom: "We will work with you to provide the documents,
25 including hard copies, if needed".

1 COMMISSIONER HICKINBOTTOM: But, I mean, this is one
2 document which I remember very well, but steps 4 and 5, 4 is
3 IRU reviews the information received from the public officer
4 and the documents received from the public officer and may have
5 questions, and advise on information and documents to be
6 disclosed.

7 MR RAWAT: Yes. And we see more detail at page 32,
8 which is part of the whole process. Under questionnaire, the
9 purchase of filling out the questionnaire is to help the IRU
10 understand what assistance you need to answer the request as it
11 will enable the IRU to assess how the request can best be
12 answered and ascertain the format and location of any documents
13 you may have which are responsive to the request.

14 COMMISSIONER HICKINBOTTOM: But the note on page 33
15 that corresponds with step 4 is that the IRU will review the
16 relevant information and documents to ensure the Inquiry
17 receives all relevant material.

18 MR RAWAT: Yes.

19 And perhaps what I should also draw your attention to
20 is page 50, which is the first iteration of the COI's protocol.

21 Now, two protocols have been issued by the COI in
22 relating to provision of documents. The first is one about the
23 provision of documents and the second is a redaction. The
24 policy of the COI--and it is one that it is maintaining--is
25 that material is provided to you in the first instance as

1 Commissioner, and to you alone. Whether it needs to go further
2 is a matter then for further consideration.

3 But what the point also makes, both protocols make the
4 point that, if necessary, the Commission can depart from the
5 protocol. But the important part of this protocol which
6 relates to provision of documents--and it's the first iteration
7 of it which is dated the 5th of March--we find at
8 paragraph 16--that all documents, whether supplied voluntarily
9 or in response to a Letter of Request were in compliance must
10 be provided in their original form or, if not available in
11 their best available copies, complete, and unredacted".

12 What I would say, Commissioner, is that whilst I
13 maintain--and I have said this before--that we must always
14 remember you operate under a different statute, and this is not
15 a 2005 Inquiries Act inquiry as is found in England and Wales,
16 which operates in a different way and will have different
17 statutory obligations. Nonetheless, this redaction protocol is
18 one that one would see commonly across a range of inquiries.
19 It doesn't say anything new.

20 And what I would also submit is what it does. It
21 should be no surprise to any experienced lawyer. It should be
22 no surprise to any experienced lawyer that, when they are asked
23 to make disclosure, they ought to be providing the best copy of
24 a document. They ought to provide it in a form that doesn't
25 suggest it may have been manipulated in any way, however

1 inadvertent.

2 That, I think, brings me to what perhaps I could
3 summarise as what COI's understanding has been of what the
4 IRU's role in relation to disclosure, and that is that those
5 who make use of the IRU, and as is pointed out in
6 correspondence, the greater majority of the COI's request--and
7 it's a point that has been made by a member of the Witness
8 team--have been dealt with via the IRU. So they are
9 responsible for overseeing a great of the disclosures that has
10 been received.

11 But in my submission, when one looks at the document,
12 they are not merely a postbox. And if they were just merely a
13 postbox, then they are an unnecessary link in the chain.

14 What the documents that I have briefly taken you to
15 envisage is that the IRU play an important role in advising as
16 to the nature and extent of disclosure, as to whether it is
17 sufficiently made, as to whether it is necessary to look again.
18 They cannot fulfil that role, in my submission, without
19 actually inspecting the documents that are passing through
20 their hands.

21 And what is important is--and if I take you back to
22 page 34--and it's the last page of the IRU guidance No. 1 one
23 at the top, under 6, which begins: "Once the AG has authorised
24 the release of any information and documents to the Inquiry",
25 it is difficult, in my submission, to understand how the AG can

1 give such authority if those working, to her, are not in a
2 position to give her proper advice, and that advice must
3 encompass not only whether the material is relevant but also
4 whether there has been sufficient response to the Request, and
5 also whether any issues arise in relation to LPP or PII.

6 If--and I have no reason to doubt Sir Geoffrey's warm
7 words--but if the purpose of the IRU is to make sure that the
8 COI can do its work expeditiously, surely it is a sensible step
9 to identify very early on if there are issues going to arise
10 because the point I would make--and I'm slightly jumping
11 ahead--is that ultimately it is not within the gift of any
12 party to submit to you a redacted document and just say, "I'm
13 redacting it on this ground, take it or leave it." Ultimately,
14 whether the redaction is properly made out is a matter for you,
15 and that extends even to the question of LPP.

16 But one can see how, in a very real sense, that if we
17 had to have lengthy hearings or debates about redaction, that
18 would not only eat into the hearing time of the COI, but it
19 would also need an important discussion about how that would be
20 managed: Are there matters that would have to be dealt with in
21 a private hearing, are there matters that would need to be
22 dealt with or could be dealt with in a public hearing?

23 I would--again, in my submission, experienced lawyers
24 of the sort that the AG has thought necessary to instruct would
25 be well aware in anticipating these issues and would be ready

1 for them.

2 If I turn to disclosure now, I leave aside the issues
3 that have arisen and the debate that has gone on for--about the
4 fact that we, the COI has sometimes received documents that
5 have been labelled with a number or in a form that is not the
6 original form. I would observe--it is a surprise to me that
7 that has happened. I've never come across it that that
8 happens. But there are--I think what the recent hearings have
9 shown is that there is a much more fundamental issue here, and
10 you've identified two issues, and I would adopt them.

11 The first is that disclosure has been materially
12 deficient. It cannot be said by anybody that it hasn't. We
13 have had hearings with senior civil servants to whom a task has
14 been delegated and who time and time again has said, "I will
15 have to go back and check that."

16 COMMISSIONER HICKINBOTTOM: Or "I'll go back and find
17 those documents."

18 MR RAWAT: Yeah. It's difficult to understand how
19 that may have happened, given the procedure that was put in
20 place by the Attorney General.

21 And the second is that, the material is, as you've
22 said, it's just sometimes in complete disarray. The best, most
23 recent example of that is the material that was provided by the
24 Ministry of Finance. It is impossible to piece it together
25 because you cannot be certain whether or not--the first

1 question I put to Mr Frett was, I took him to page 162 in the
2 bundle and asked him to point me to the two attachments that
3 were referred to in a bundle, and his answer was "I will have
4 to go check that out." And it's just--if disclosure are
5 provided in that way, it just renders the COI unworkable. Time
6 is spent rather than actually progressing the work of the COI
7 in what I can best describe as an administrative task that
8 should be done properly by others.

9 But I would flag up an issue which arose directly from
10 the evidence of Mr Frett. The purpose of the Letters of
11 Request that have gone out and sometimes, as will have been
12 obvious, Letters of Request have gone out to different
13 Ministries on the same issue, and the reason for that is what
14 the Commission wanted to know is what documents do you hold on
15 this matter. Mr Frett's approach--and we saw that when I took
16 him to a sets of e-mails that were dated, all of them, the 11th
17 of March and were from Greg Romney, who is Deputy Commissioner
18 of Customs, because it was very difficult to understand what
19 those e-mails were about. And Mr Frett then volunteered that
20 what he'd done was to contact Mr Romney, once he'd been alerted
21 about this is a Letter of Request and seek information from
22 him.

23 Now, it is a fundamental problem, and it's a
24 fundamental problem because the Ministry of Finance is a
25 Ministry to whom a significant number of requests have been

1 sent. And if the Financial Secretary has adopted the approach
2 of deciding that he will fill in gaps in the material that he
3 cannot locate in his department by essentially sourcing them
4 from elsewhere, that leaves you in the position that you cannot
5 assess the basis on which a decision may have been made because
6 it could have been made without the necessary documents, but if
7 they have been found and disclosed to you without any
8 explanation, that might not become clear.

9 And there is in addition to another aspect of
10 Mr Frett's evidence, which he explained was that not only does
11 he appear to have done this in relation to Letters of Requests,
12 but he appears to have acted in anticipation of a Letter of
13 Request that he has yet to receive. He gave evidence about
14 reaching out to Mr Skelton Cline to get documents from him.
15 And that just only compounds the problem. So--

16 COMMISSIONER HICKINBOTTOM: Mr Rawat, it compounds the
17 problems in two ways as I see it. One is the, as you call it
18 the "fundamental problem" because they don't actually what his
19 department actually held at the material or, indeed, at the
20 time of the request. But secondly, we've been told, and I
21 fully accept that public officers are under a huge burden of
22 work, and Mr Frett has increased the burden on him by doing
23 things which we did not ask him to do and he did not have to
24 do.

25 MR RAWAT: No, no.

1 COMMISSIONER HICKINBOTTOM: Well, yes.

2 MR RAWAT: And I think a point that should be made, of
3 course, is at the beginning when we--the Commission started
4 sending out its Letters of Request, it was actually asked to
5 send them to the IRU. A decision was made by you,
6 Commissioner, that that was not appropriate, and in my
7 submission it was the right one, and the reason was because you
8 have powers of sanction; and, therefore, it was appropriate
9 that the Letter of Requests go to the individual who might be
10 subject to such sanction if there wasn't voluntary compliance.

11 But bringing the two heads together, the Attorney
12 makes the point in her letter that asking her at this stage to
13 properly submit indexes that actually explain what has been
14 disclosed to make effort to ensure that disclosure is actually
15 in order, organised and is, to quote the words that we used
16 right at the beginning of this is "systematic, efficient, and
17 well-organised". Asking her to ask those that she instructs to
18 do the job they say they are doing is not, in my submission,
19 going to be a disproportionate exercise, and the reason is that
20 they must have done it in order to fulfil what they say their
21 task was.

22 And also, if, as the Attorney General has said that
23 the reason they can't do it because they are engaged intensely
24 in preparing to represent Government Ministries and entities in
25 the Inquiry, how are they going to do that without looking at

1 the disclosure? You cannot have a situation where a core
2 participant or a participant in this process decides that it
3 will conduct its own investigation without actually providing
4 the material it produces to the COI.

5 And Sir Geoffrey has made clear he did that on the
6 last occasion, and he's done it on more than one occasion, that
7 that is not the intention, that if something comes up that is
8 discovered, it will be provided and it will be swiftly so. But
9 it cannot--I just--I just--on the material that we have seen,
10 and the documents I have taken you to this morning, it is
11 difficult to accept that the IRU is, as they now seem to be
12 saying they are, just a postbox because they must be intensely
13 involved in the process of disclosure, and they must have
14 knowledge of it.

15 I would also add two things: The first is that the
16 IRU have an access that the COI team do not. You may remember
17 that on the 4th of May we raised, with the Cabinet Secretary,
18 whether members of the COI team could have access to ExcoTrack.
19 We have yet to receive an answer.

20 The other point that I make, and it goes to--you'll
21 see it at page 97, at the top of that page, the Attorney makes
22 the point that the--actually, it's not page 97. I'm sorry,
23 it's page 95--that the IRU has, to the extent possible,
24 followed up where they've noted missing documents but given the
25 need for expedition, the emphasis was on getting the documents

1 to COI would not have been possible in the time available to
2 identify all the missions.

3 With respect to the Attorney, that doesn't paint the
4 whole picture. The whole picture includes the fact that you
5 have yet to refuse an application for an extension of time. It
6 ignores the fact that very regularly, material comes in from
7 the IRU that relates to a request which purports to have
8 already been complied with and where--and after the deadline to
9 compliance, and all that comes in is an e-mail explaining there
10 are some more documents here, here they are. It is never
11 accompanied by an explanation as to why it was not discovered
12 earlier, as to how it was discovered now or in any way an
13 explanation for the delay.

14 That's perhaps all I would say at this moment.

15 It is, I conclude, reassuring that Sir Geoffrey wants
16 to find a way forward, but I do not think--in my submission, I
17 should say--that it is inappropriate for a Commission of
18 Inquiry to expect, from those given participant status, a level
19 of disclosure that allows a Commission of Inquiry, working
20 under the pressure of time that this one is, to be able to
21 swiftly move to a point where it can accept and it can
22 understand what material is being provided to it.

23 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

24 Sir Geoffrey, if we can just take--because Mr Rawat
25 made some observations in relation to LPP and PII, but just

1 taking the role of the IRU in disclosure of documents first, as
2 I said at the outset, they seem to me to be inextricably
3 linked. Mr Rawat said that the IRU must be reviewing the
4 documents to do the other work that they're doing. We don't
5 know what the IRU are doing, and it may well be privileged what
6 they're doing, but anyway, we simply don't know, and we haven't
7 been told.

8 But he submits that they must be reviewing the
9 documents to do that work, that they're either reviewing the
10 documents or they're not reviewing the documents.

11 The gist of the Attorney's letter from yesterday
12 evening was they're not reviewing the documents. The documents
13 are coming in, and they're being sent out. And if that's the
14 case, it's unsurprising that the public officials, doing the
15 best they can under difficult circumstances, have produced
16 disclosure which is wholly unacceptable.

17 SIR GEOFFREY: Forgive me, Commissioner, you're
18 inviting my response to these observations?

19 COMMISSIONER HICKINBOTTOM: Yes, and to all those that
20 Mr Rawat's made.

21 SIR GEOFFREY: Well, can I begin, Commissioner,, by
22 saying by just making clear a few things that I think may be a
23 bit misunderstood. The IRU's chief function was to try to
24 focus the minds of the Ministries, the Permanent Secretaries,
25 and the senior officials in them on the need to do the work

1 necessary to cooperate with the Inquiry, by which I mean,
2 having spoken to the Attorney, she is of the firm view that,
3 had she not set up a team to publish guidance, had the
4 Government not made it very clear that it expected prompt
5 cooperation, the likelihood of your receiving prompt attention
6 to the requests was slender. That's the Attorney's view.

7 So the first function of the IRU was to disseminate
8 throughout the Ministries and agencies of Government the
9 importance of giving this matter attention. It would not be
10 uncommon in any civil service for requests to sleep on desks,
11 and in a civil service under enormous strain, invariably in
12 offices that weren't their originals, with the kinds of
13 difficulties that this one has, the Attorney is of the view
14 that, had she not set this up with the publications, the
15 protocols, and the emphasis on service, it would have been
16 difficult to have advanced as far as we have now.

17 Now, I fully accept--and that is the fact, that is the
18 Attorney's view and I have to tell you it's a view of several
19 of the Permanent Secretaries, the truth is it's the
20 Government's intervention to make a clear and decisive edict
21 that there should be cooperation that had led to the service of
22 85,000 pages and over four-and-a-half thousand documents.

23 Now, I accept, sir, that this disclosure is not in the
24 order one would expect to see, for example, in a commercial
25 litigation in the United Kingdom, but the truth is that the

1 Government files, as you've also read the Attorney say, are in
2 severe disarray. The reasons for that you may wish to explore,
3 but they are; there is no doubt at all. It has been a
4 long-standing problem in the public service, I'm instructed,
5 one about which the Attorney mentioned to you in her letter.

6 And so, the truth is that these files are incomplete,
7 many of them have been affected by the hurricanes and by
8 relocations from the administrative complex building, some of
9 them stored, as you know, in archives to which access is not
10 even permitted because of the risks, the hazard of doing so.
11 So, there's no doubt that there has been a major problem with
12 the Government's files.

13 Now, the IRU's function was to ensure that there would
14 be an effort made to produce the documents, thereafter that the
15 IRU would, indeed, review them, though the main purpose of that
16 review on the instructions of the Attorney was to ensure that
17 there were no legal issues that arose in connection with them.
18 When we reviewed them, as I understand it, if documents are
19 immediately spotted as requiring attention, then they are
20 followed up. But the sheer speed and scale of the requests you
21 made, their volume, the fact that they invariably set a
22 seven-day, five-working-day limit has restricted, given the
23 resources available both to the Ministries and to those in the
24 Attorney's Chambers who support her, the ability to carry out
25 those reviews and to track down every document.

1 Now, we are, I'm afraid in a situation where what
2 you're asking just may not be possible, unless we devoted,
3 unless the Attorney devoted and sought approval for a
4 considerable extension of the resource that she has. You've
5 heard her--we haven't heard her, sir, but you read her letter.
6 It is an astonishing situation that she has fewer than a
7 quarter of the proper complement of counsel in her office,
8 shortly at least, since two of them are leaving. She has
9 eight. She has to draft legislation which, as you know, there
10 is an important priority within the Government to bring
11 forward. We're working on providing you with the details you
12 need in that connection, and indeed it was part of the work
13 with the Government has put on in train before, so we should be
14 ready fairly quickly with that for you.

15 But the problem here is simply one of practicality,
16 not of will. If we were to review every document, to track
17 down every appendix, to move towards ensuring that every
18 scanned document, it would have required massively more
19 resource than it has had, and we would never have been able to
20 achieve it, even the number we have achieved within those seven
21 days. And although I don't have statistics in front of me, I
22 think most have been achieved within the seven days. So--

23 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, in terms of
24 the resources, what the resources--what resources would be
25 required? Resources to look at the documents.

1 (Overlapping speakers.)

2 COMMISSIONER HICKINBOTTOM: But that each public
3 officer had produced to the IRU.

4 (Overlapping speakers.)

5 SIR GEOFFREY: No, sir. No, that's not the problem.
6 We can do that fairly easily. We can review what is on the
7 DISCO--I think you may have heard reference to the DISCO
8 platform. The difficulty is that as supplied to us, the IRU
9 and the Attorney's Chamber, they were in the order that you
10 have received.

11 Now, what happens, as I understand it--and this is why
12 I'm going to invite a technical discussion with counsel and
13 with your team so that you can understand precisely the steps
14 that are taken, what happens is the public officer concerned
15 takes the material, gives it to the Government IT service. It
16 is uploaded onto an IT platform within the Government. That IT
17 platform is then accessed by DISCO, and the material is
18 ingested into the DISCO platform for review by the IRU.

19 Now, the problem we have is that the Government
20 platform, that the documents have not been uploaded in
21 subfolders in some cases, possibly many. We're looking at
22 that, which means that you can't re-order the documents because
23 they've been supplied as a single document, if that makes
24 sense.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 SIR GEOFFREY: So, in order to comply with the request
2 in this connection, it will be necessary to return to the
3 Ministry, to get them to re-upload in separate files, which
4 will mean rescanning everything, re-upload it to the Government
5 IT platform, get DISCO to ingest it in respect of each request,
6 thus in a manner that the IRU could re-alter, could re-order
7 and ensure is complete, and of course, that would involve
8 documents--

9 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, the
10 fact that some public officials who are responding to requests
11 did not put the documents into a subfolder but, as you say, and
12 I understand this conceptually, that they simply supplied the
13 lot as one document.

14 SIR GEOFFREY: It appears some of them have. We don't
15 know that because we don't have access to the IT service.

16 (Overlapping speakers.)

17 COMMISSIONER HICKINBOTTOM: I'm sorry, but the
18 Attorney General and you, as head of the IRU, were responsible
19 for setting down the guidelines. Weren't public officials told
20 don't do it this way, do it that way, or were they left to
21 their own devices?

22 SIR GEOFFREY: Well, that I would have to discover by
23 taking instructions in these technical discussions that I
24 mentioned.

25 (Overlapping speakers.)

1 COMMISSIONER HICKINBOTTOM: That's not a very
2 difficult question.

3 SIR GEOFFREY: Well, I'm afraid I haven't--I mean, I
4 will need to take instruction on is all I can say about that
5 matter because I'm not aware of it. All I know is that
6 apparently some did, but some didn't. Now, I don't know
7 whether that was for lack of instruction or just that it was
8 done anyway, so I would have to check that.

9 What I think those who instruct me are troubled about,
10 Mr Commissioner, is that we've been supplying documents like
11 this since the beginning of March, and we've had a letter from
12 your Inquiry team saying that it was content with the format
13 with which they were being uploaded and sent. And it's only
14 now, midway through May and more than four months into your
15 Commission, that any word of this matter has been indicated to
16 the IRU.

17 If we had been told in the middle of March, well, now,
18 look, these documents are arriving and they're in no order, we
19 would no doubt have gone back to the down the chain and into
20 the Government IT and made perfectly certain that these things
21 could be properly put in order.

22 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, just one
23 moment. Firstly, you've made clear that the IRU did look at
24 these documents before they sent them across to us.

25 SIR GEOFFREY: Yes.

1 COMMISSIONER HICKINBOTTOM: So, they would have known
2 the order they were in.

3 SIR GEOFFREY: Yes.

4 COMMISSIONER HICKINBOTTOM: There is no doubt--there
5 is no doubt that parts of them are a complete shambles.

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: And if documents are
8 received as--if individual documents were received
9 electronically as a single document, why didn't the IRU go back
10 and say, well, this is not helpful. Do it this other way.

11 SIR GEOFFREY: Well again, that is a matter I will
12 need to check.

13 May I make plain that I haven't had an opportunity to
14 take full instructions. I've had a word with the Attorney this
15 morning, but I would like to understand these details.

16 Having said that, with respect, it was open to the
17 Inquiry at any stage in March from the beginning to say that
18 these documents were not in correct order. And of course, it
19 is dismaying.

20 Now, with respect, it is a fact--now I perfectly--

21 (Overlapping speakers.)

22 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey,
23 but it's not quite a fact.

24 SIR GEOFFREY: It wasn't done--

25 COMMISSIONER HICKINBOTTOM: I set up hearings, which

1 we've heard the last three weeks, on the basis of assurances
2 that the documents that we were being sent were well-organised,
3 et cetera. We have had these hearings. We have had these
4 hearings, and public official after public official have come
5 here to say not all the documents are there--that's something
6 that we couldn't have identified on our own--and it turns out
7 that some of the documents have simply been shuffled through
8 files. And that has become apparent during the course of the
9 hearings. That was the purpose of the hearings, to test the
10 proposition that disclosure was good disclosure.

11 SIR GEOFFREY: But forgive me, if the files are in
12 disarray anyway, we don't know yet whether these officials will
13 find any further documents. The Ministry of Finance
14 disclosure, for example, was in no order when it arrived.

15 (Overlapping speakers.)

16 COMMISSIONER HICKINBOTTOM: That doesn't come as any
17 comfort to me that they may or may not find other documents.
18 They don't know.

19 (Overlapping speakers.)

20 SIR GEOFFREY: You shouldn't assume, with respect,
21 that the IRU didn't ask. It did when it noted that there were
22 missing papers or there was a higgledy-piggledy arrangement of
23 them. Questions were asked. I'm not saying--I can't put--I
24 don't say in every case this was done but my instructions are
25 that the team would go back and ask for further detail, ask

1 where another document might be, ask why the documents were in
2 higgledy-piggledy order, and invariably the service was given
3 because we received no further assistance or because, when the
4 answer came back, well, that's how we got them.

5 Now, we could go back and ask the public servants to
6 take a Government file and put it in better order, but that
7 wasn't how they were preserved, and that wasn't how they were
8 served on us. They were served on us as they were found in the
9 files.

10 COMMISSIONER HICKINBOTTOM: And so, do I have the
11 comfort that the documents that we have got are all the
12 documents that a particular person--normally a Minister--had in
13 relation to the request, albeit they were not complete but the
14 parties got it not complete and they're not in good order
15 because the files he's got are not in good order?

16 SIR GEOFFREY: That is what I understand to be the
17 position.

18 Now, there may be exceptions to that, which is why the
19 public servants, out of an abundance of caution, that wanted to
20 go back and say, well, perhaps I can find an appendix, but my
21 instructions are that the appendix weren't with those documents
22 where the counsel, Mr Rawat, has pointed out that they are
23 missing. Now, that could be because they simply have been
24 overlooked, but my instructions are that when the IRU has asked
25 in the past, it's been because that Ministry doesn't have them

1 or they haven't accompanied the document in the file.

2 Now, of course, the public servants are bound to say
3 under questioning "I'll go back and have another look" or it
4 may be that I can find those documents, particularly in
5 Mr Frett's case because so obliging is he that he wants to find
6 them wherever he can find them. And perhaps that is a point,
7 sir, that is rightly raised; perhaps we need to issue clear
8 guidance, but this isn't the case of just helping you by
9 finding the documents wherever they've been. We thought and
10 hoped that that point was clear, but you want a snapshot--more
11 than a snapshot. You want a full picture of what is in the
12 file.

13 Now, all I would say, with the greatest of respect, is
14 that the IRU has worked under enormous pressure of time. It
15 isn't a large team. It consists of about six or eight people,
16 including myself. They are working flat out to try to get
17 documents to you, and the Attorney's belief is having been here
18 for a very long time and having been a Permanent Secretary,
19 herself, that frankly we wouldn't be as far forward if these
20 steps had not been taken.

21 Now, that's why we recognise, of course, that the
22 documents are difficult to understand. We have the same
23 problem, if I may say so. We're facing precisely the same
24 difficulty.

25 And may I also say to you that Mr Rawat is right. As

1 we uncover matters, we will be giving them to you. The whole
2 purpose of the preparation that was being made is partly to
3 ensure that you are apprised of all the facts that we can bring
4 to your attention in connection with the requests that you
5 made.

6 So, in a sense, we are carrying out a review and we
7 are trying to get to the bottom of it, but technically, I just
8 do not think--in fact, I know--it's not going to be feasible.
9 We can send what effectively this is going to require, your
10 request, is for us to go back to the Ministries and say, "Look,
11 those files that have been probably in disarray for years, you
12 need to put those files in order now." I assume, sir, you'd
13 chronological order, but we're interested in knowing what that
14 means, what, in fact, being an order means. If it means some
15 form of order, I see Mr Rawat smiling. It's an unattractive
16 facet of advocacy in my experience, to smile and to grin when
17 another counsel is making observations. I'd invite him to
18 remember he's on screen.

19 I think the point is, sir, that we're making these
20 submissions in all earnestness. We're wanting to find a way
21 forward that helps you. We're facing considerable difficulty
22 inside the Ministries. The IRU will do what it can under the
23 guidance and instruction of the Attorney, that what is being
24 asked over two weeks will require going back to the Ministries.
25 It may have to be re-uploaded in many cases for the reasons

1 I've given you.

2 And what I would invite so that Mr Rawat can
3 understand clearly and the Inquiry team the problems that are
4 being faced is a practical discussion so that those problems
5 can be fully on the table. That's all I would suggest.

6 COMMISSIONER HICKINBOTTOM: In respect of the
7 documents that the IRU now have, you say that they have been
8 reviewed, somebody has read them, identified any documents that
9 are obviously missing and requested those documents.

10 SIR GEOFFREY: Yes. They've been reviewed for the
11 various legal issues that have been set out in the protocols.
12 We're obviously missing documents that seem just inexplicable
13 as to why not there. There have been requests made to chase
14 them. And, of course, we are anxious to help where we can, but
15 what I want to find is a practical way forward, because
16 otherwise, if you impose something that's just not feasible, it
17 won't happen, with respect because you can't.

18 COMMISSIONER HICKINBOTTOM: So where, for example,
19 annexes to a document are missing, those have been requested
20 from the individual public office-holder where--

21 SIR GEOFFREY: My instruction are that we have
22 requested--

23 COMMISSIONER HICKINBOTTOM: Where Draft No. 4 of a
24 proposal has been disclosed, previous drafts, they've been
25 requested from the public office-holder.

1 SIR GEOFFREY: We've checked--we've checked where
2 there has been an obviously omitted document, but, of course,
3 the answer may have come back on those occasions. We have
4 none. I'm looking--for example, the Ministry of Finance, that
5 matter has been checked, and the appendices did not accompany
6 the document that they should have been appended to and as
7 you--

8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: Was that document a
10 Cabinet minute?

11 SIR GEOFFREY: I'll have to check that, sir, but
12 again, I haven't had much chance to discuss with those who are
13 dealing with these--

14 (Overlapping speakers.)

15 COMMISSIONER HICKINBOTTOM: I know, but we know from
16 the evidence, Sir Geoffrey, that appendices are not attached to
17 Cabinet minutes. We haven't actually got--

18 SIR GEOFFREY: (Unclear.)

19 COMMISSIONER HICKINBOTTOM: --very many Cabinet
20 minutes at all, but they're attached to the document that goes
21 to Cabinet, which we haven't got. I don't know whether we're
22 going to get those. That was apparently, according to the
23 Attorney's letter of yesterday--that was going to be discussed
24 in Cabinet yesterday.

25 SIR GEOFFREY: Yes, I believe it was.

1 MR RAWAT: Sir, may I say something?

2 COMMISSIONER HICKINBOTTOM: Mr Rawat has further
3 submissions, but so--

4 SIR GEOFFREY: You raised--the first point I wanted to
5 make, if I may, which I've addressed is that the IRU, working
6 under pressure of time, has done its best to get documents to
7 you. As we understand it, the main reason why they are in
8 disarray is because that is what was provided by the Ministries
9 from their files. And when questions have gone back, it's been
10 because that's how they were in the file.

11 The instruction has been not to alter what was in the
12 file, for the reasons that you've given. And apart from the
13 outward pending of a Bates number, which was cured when the
14 Inquiry did raise the issue and thereafter it was not appended,
15 they have not been altered as received because the instruction
16 was: We must not tamper or interfere with them. They must be
17 as they're found in your file.

18 COMMISSIONER HICKINBOTTOM: Okay. My own view, Sir
19 Geoffrey, is that the formatting issue and the numbering issue
20 is not the core issue here.

21 SIR GEOFFREY: I agree.

22 COMMISSIONER HICKINBOTTOM: The issue is the fact that
23 the disclosure that has been made, apparently to you and
24 onwards to the COI, is not in an order for which anybody can
25 make any sense. Today, we're entering a fourth day of evidence

1 in respect of EZ Shipping. I think this is true, but I'll be
2 corrected if I'm wrong, in respect of all of the witnesses to
3 date, they have accepted that documents are missing. None on
4 the documents we have has been able to explain the transaction,
5 and today we're entering a fourth day of witnesses, not dealing
6 with anything substantive, just trying to work out on the
7 documents that we've been provided under Letters of Request
8 what was going on. Nobody has been able to--has been able yet
9 to assist us. This is on one contract.

10 And if the instructions that you have is that the
11 manner of record-keeping in the public service is in the state
12 as disclosed by the disclosure, then there we are.

13 SIR GEOFFREY: Well, sir, I mean that is my
14 instruction at the moment, as the Attorney made clear in
15 writing. Now, that isn't to say that oversights and other
16 inadvertent omissions have been made.

17 COMMISSIONER HICKINBOTTOM: We're not here talking
18 about the odd pages missing.

19 SIR GEOFFREY: Right.

20 COMMISSIONER HICKINBOTTOM: We're talking about the
21 fundamental difficulties with the documents that have been
22 disclosed.

23 SIR GEOFFREY: Yes. And I think--I really submit it's
24 a matter no doubt that your Inquiry will need to examine with
25 the relevant civil servants, but I really submit that it is

1 highly likely that what you are seeing is a function of the
2 disarray of record-keeping inside the public service.

3 The IRU has not sought to interfere. The purpose of
4 the disclosure was to preserve the file and to upload it as it
5 was. It has not sought now--there were obvious mistakes.
6 Mr Rawat, do you remember, pointed out or to Mr Frett that
7 every other page in one document the Ministry of Finance
8 provided had been omitted. It seems likely that that was an
9 omission in the scanning. So that kind of error, where it
10 doesn't print the reverse side of the page may very well be
11 remediable.

12 But the preponderance of the position, I would submit
13 at the moment--and we are facing the same problem, so we have
14 no advantage over you, sir, and let me say if I found any set
15 of files that manifestly reproduced in coherent order, I would
16 ensure you had them within five minutes. I mean, if I found
17 something that helped me explain it, I would want to explain it
18 to you, and ensure that you had the position, but the truth is
19 it would appear that that is the way these files in many cases
20 have been kept.

21 COMMISSIONER HICKINBOTTOM: That's both frank and
22 helpful.

23 Mr Rawat, anything you'd like to say in response to
24 those observations?

25 MR RAWAT: The first point is Sir Geoffrey makes a

1 point about working under pressure of time. As I said earlier,
2 extensions have always been granted.

3 The second point is that most of the requests that the
4 COI sends out require information in the last three years, and
5 the information that has been given is usually held
6 electronically.

7 To give the example--I mean, it's not just about
8 hard-copy files being in disarray and in no order. If I give
9 the example I gave earlier was of an e-mail and the fact that
10 the attachments were missing, and the point is that the
11 attachments must be there if the e-mail is there. It's either
12 that they haven't been provided or they would have been
13 provided but nobody has bothered to order it properly.

14 And I return to the point I made earlier that for the
15 IRU to undertake tasks that they say that the guidance says
16 they will do on behalf of the Attorney, which is to review for
17 certain legal issues, you cannot properly do that without
18 looking at the documents in the their proper order, and you
19 cannot properly do that without looking at all the documents.

20 If somebody is tasked with reviewing attachments to an
21 e-mail for--or an e-mail for, let's say, legal profession
22 privilege that has two attachments to it, you cannot properly
23 conduct that exercise without identifying those attachments and
24 reviewing them because it's likely that they're the ones that
25 are more likely to engage that issue than the e-mail itself.

1 Sir Geoffrey pointed out that, in the past, the
2 Inquiry has accepted the format. There is a long dialogue over
3 all of these issues, but it's not the format that particularly
4 matters. The importance of--as our protocol said, and I hope
5 that protocol was communicated to those who were responsible
6 for disclosure--the importance of looking at things in native
7 form is because it allows a Commission of Inquiry to understand
8 exactly what was on the document. If you take an Excel
9 spreadsheet, for example, if it's turned into a PDF, inevitably
10 text in the cells is cut off.

11 And I really do struggle to understand why these
12 points which are--Sir Geoffrey has used the example of
13 commercial litigation in the UK, but let's use the example of
14 every Inquiry that is going on in the UK which would be perhaps
15 a better example. These are just standard practices. They are
16 nothing new.

17 And if questions were asked, what would have been
18 helpful is if the outcome was communicated to us. Mr Frett did
19 not say last week or earlier--or on Tuesday that he--this was
20 followed up with him and he couldn't find any further
21 documents. His answer repeatedly was I will need to go and
22 check this. And what he couldn't do was guide you through the
23 disclosure he had provided.

24 What is important is that the issues, the fundamental
25 issues, which is an absence of documents and that those

1 documents that are often provided are in no order, what's
2 really critical is that if you go back to the point that
3 they're requesting the last three years, this is material that
4 should be more likely held in electronic form, and we are not
5 asking--the point is made in the AG's letter about mouldy files
6 being held, and we'd asked Minister Wheatley and Dr Potter to
7 go and look at files that were held in some sort of poor
8 condition. But that pointed out at the time to them. It was
9 drawn to their attention that the request was going three years
10 back, and both of them agreed that more than likely the
11 documents would be held electronically. Both of them said,
12 well, it's likely to be held on ExcoTrack, so it wouldn't be a
13 problem. There wouldn't be a health issue about retrieving it.

14 Those are all submissions I'd have to say by way of
15 addition.

16 COMMISSIONER HICKINBOTTOM: No, thank you very much,
17 Mr Rawat.

18 And, Sir Geoffrey, anything on those short
19 submissions?

20 SIR GEOFFREY: Well, I would only say this, sir, that
21 I'm not entirely certain quite what the point of belabouring
22 the IRU and the public servants who have done their best to
23 produce the documents, which as the Attorney General has told
24 you and has produced a great deal.

25 Now, I understand it is frustrating because the order

1 makes coherent understanding very difficult, but the Attorney
2 General has told that you public service is under great strain,
3 and documents are in disarray.

4 Now, we will--I want to find, the Attorney has
5 instructed that she wishes to find a practical solution, and to
6 make--allow us to do all that we can do. I think the concern
7 the Attorney has is that it needs to be realistic because it
8 will require the public officers to do--I mean, in terms of
9 time--to do a great deal further work. We don't have the
10 documents, so we're going to--on the DISCO platform that are
11 missing, so we're going to have to go back to the Ministries,
12 track down each document where there is a missing document,
13 raise it with the public servants concerned, ascertain whether
14 the documents there, re-upload them to the Government interface
15 platform, IT service, and then the same with DISCO, and that
16 will take time in relation to each request.

17 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, my
18 understanding of what you said is that the documents that have
19 come through to the IRU, which we know are the same as the
20 documents that you've sent on to us, they have been reviewed by
21 the IRU. Where there have been documents that are clearly
22 missing, such as appendices or previous drafts, requests have
23 been raised and the answer came is that these are the files,
24 there are nothing else.

25 SIR GEOFFREY: Not in every case because you've had

1 further documents, and generally where you've had further
2 documents, those follow-ups are as often as the result of the
3 IRU's inquiries.

4 COMMISSIONER HICKINBOTTOM: I perfectly understand
5 that. So some of the requests have resulted in further
6 documents, which you've sent through, so that task has been
7 done. What you're saying--I mean, there are technical issues
8 which technical people may have to discuss and resolve, but in
9 terms of the principle, you have given the comfort that I
10 certainly am seeking, not I don't think everything that
11 Mr Rawat wants or would like; but if that's right, my concern
12 is that we get to what I might call "substantive hearings"
13 because the hearings to date have been focused on the
14 production of information and documents.

15 SIR GEOFFREY: (Unclear.)

16 COMMISSIONER HICKINBOTTOM: And when we come to these
17 hearings, a particular witness will say, well, these documents
18 are in a file behind a cupboard or on my shelf or whatever, or
19 as Dr O'Neal Morton said this week at a hearing--you were here,
20 Sir Geoffrey--she said, well, this request to the Premier, that
21 wasn't sent to the Premier's Office. They've got documents.
22 It just wasn't--they weren't engaged at all. And we were
23 concerned that that would disrupt--I was concerned that that
24 would disrupt the substantive hearings, which it will.

25 But if you're saying that all of that has been done,

1 then what I would like to see, contrary to the Attorney
2 General's letter, now this is something where a statement by
3 someone in the IRU would help, a statement saying, "Look, we've
4 been through these documents, we've raised requests, and we've
5 sent the documents that have resulted through. That includes
6 checks on electronic form documents, and that will then give me
7 comfort that we're not going to have these difficulties during
8 substantive hearings.

9 SIR GEOFFREY: Well, sir, may I suggest this may be a
10 way forward. What I'm anxious to do because my instructions
11 are that the IRU can't be certain that it has followed up every
12 omission. And let me be quite candid. They have done their
13 best to follow up requests and often with--and details of
14 documents that appeared to them to have been missing or some
15 obvious inexplicable omission like, for example, the attachment
16 to an e-mail.

17 Now, what I would like--what the Attorney has
18 suggested is that she, through her counsel team, which consists
19 not only of other lawyers but also members of her chambers, to
20 reproach the Ministries, and we will seek, because I think this
21 will concentrate minds, a disclosure statement to be made by
22 each responsible public officer as to the extent of their
23 disclosure and its accuracy to the IRU and to the Inquiry.
24 And, in doing that, if I may, we will go back to the
25 Ministries--this is one possible solution. We will go back to

1 the Ministries with examples such as those Mr Rawat has
2 identified, with a view to pointing out that further checks and
3 searches ought to be made. And I hope that we can get that
4 exercise done, at least, by focusing minds on the need so that
5 I need to be content that what I have submitted to you is
6 completely accurate.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 SIR GEOFFREY: Those are my instructions, but it's
9 very important for you to have a proper picture of the
10 file-keeping in the civil service.

11 COMMISSIONER HICKINBOTTOM: Yes. I have to say, Sir
12 Geoffrey, that I'm getting a pretty clear picture from this
13 morning as to file keeping is like, but it's--this is
14 important. And how long will that exercise take?

15 SIR GEOFFREY: Well, you've indicated you'd like to
16 resume substantive hearings, I think the letter mentioned,
17 after the 31st of May. We're going to try to do it by the 31st
18 of May. So we will come--we will go to each Ministry, but it
19 will require us to do that. It may even be that we look at
20 sample files because we haven't, I think, done that. We've
21 done a few in recent days, and I have to tell you they looked
22 very much like what you've got.

23 But I think I--what I'm anxious is that you get no
24 misleading impression. What we need to give you--if this is
25 the state of the files, and I believe it to be, and that's the

1 Attorney's instruction to me--then we need to be able to put
2 you in a position where you can securely reach that conclusion
3 because no doubt it will be of some considerable relevance to
4 your Commission.

5 COMMISSIONER HICKINBOTTOM: That is helpful, Sir
6 Geoffrey, and I will make a direction to that effect.

7 But I also want a statement from the Attorney General,
8 or you as the leader of the IRU, to set out what steps--you
9 told me what the steps that are going to be taken--what steps
10 will be taken which will give me comfort that the public
11 servants who are bearing the burden of work in all of this have
12 done the best job that can be done to disclose the documents
13 that exist. I can't--I have very wide powers, but I can't ask
14 for disclosure of documents which aren't there, but I want
15 comfort that all of the documents that are there have been
16 disclosed to the COI.

17 And if the Ministers, if those to whom the requests
18 are directed, can make the declarations and we can work out an
19 appropriate declaration to be made by them, together with an
20 affidavit by the AG or you or some other appropriate person as
21 to the steps that have been taken so that I have assurance that
22 the state of the documents is as they have been disclosed.

23 There will be technical issues, Sir Geoffrey, because
24 if and when further documents are found that there will be
25 issues as to how those can best be dealt with from a technical

1 point of view, that given we have all it this stuff uploaded
2 now here, what seems very clear to me is that I, the COI team,
3 need to review very carefully--if really the documents are
4 going to be in this shambolic state, review very
5 carefully--about the document-management system and search
6 engine that will deal with documents in this particular state
7 because that is a task beyond--I was going it say
8 "human"--beyond manual ability, but we can do that. We can do
9 that.

10 SIR GEOFFREY: Could I ask one further question, sir,
11 and in the letter written from your Inquiry Solicitor, it
12 indicated that the document should be put in order. If we
13 are--if we find further documents--let us say we came across a
14 file, whether it be electronic or otherwise--that is different
15 from that which has been disclosed, but is it--when it is said
16 "put in order," I assume it simply means if we can make up a
17 legitimate and proper judgment that certain attachments, if we
18 find them, went with a particular e-mail, that is what is
19 meant, but it would help to know what exactly is meant by
20 "putting in proper order." That's all I would ask.

21 COMMISSIONER HICKINBOTTOM: It's a very good question,
22 and it's a particularly good question following the evidence of
23 Mr Frett, who has, in his words, reached out, got documents
24 which he did not previously have, to--

25 (Overlapping speakers.)

1 COMMISSIONER HICKINBOTTOM: --make good the files that
2 he had.

3 Mr Rawat, what do you say about that?

4 MR RAWAT: Well, it has been--what public officers
5 shouldn't be doing is seeking to plug gaps that isn't--let's
6 say, for example, there is a file, be it in electronic folder
7 or a hard-copy file on a particular topic, and the--for
8 whatever reason the officer decides to send a circular around
9 saying has anybody got bits of paper on this and adds to that,
10 that's not what they should be doing. The request should be
11 directed to what's in their possession or control.

12 To answer Sir Geoffrey's question about "put in
13 order," it is what he's just described. If you take a look at
14 the Ministry of Finance disclosure, it might be possible if we
15 had the will power and endless time for us to sit either in a
16 private hearing or in a room or in a public hearing with
17 Mr Frett and go through and say, "Right, let's try and identify
18 the attachments to an e-mail," that does not seem to be a
19 productive use of time. It isn't--it is simply a question of
20 the public officer who is responsible for disclosure, and
21 ultimately it seems to devolve to Mr Frett, if we take the
22 Ministry of Finance as their example. I don't think it's a
23 huge task to be able to say, "This is the e-mail, here are the
24 two attachments." It might just be a simpler task to just--and
25 why our letter was written in the way it was, to just

1 reconstitute the disclosure because what may happen is that you
2 could, in a file, have an e-mail--different e-mails at
3 different dates have the same document for good reason, but
4 simply just printing things out and then scanning them a
5 haphazard manner as appears to have happened with the Ministry
6 of Finance disclosure doesn't help either the IRU or the COI to
7 understand what's going on.

8 Before I leave, Sir Geoffrey, can I just make one
9 question--ask one question, which I hope is not too technical.
10 As I understand the process, material is--goes from the
11 Ministry to the Government IT Department, who then uploads it
12 on to a platform that DISCO can then access. In that
13 process--I mean, Mr Frett explained that what his Department
14 did was to scan everything and, therefore, that turned
15 everything into a PDF anyway. But does the act of uploading
16 onto the Government IT platform turn everything into a PDF?
17 That's the technical question I might ask Sir Geoffrey to
18 assist on.

19 SIR GEOFFREY: Well, I think it would be wrong of me
20 now to give an off-the-cuff answer, so again, what I would
21 invite is Mr Rawat and Mr Haeri or one other or two others from
22 the Withers team should get together in a room in the
23 arbitration building and just discuss it because I think that's
24 the position.

25 The problem we have is we don't have access to the

1 Government IT platform. We only have--DISCO does, but the IRU
2 doesn't, so we just can't go onto the Government IT platform
3 and look at it, and this is the arrangements the Government has
4 reached. So, that's our difficulty. We would need to take
5 some amount and look at that or it may be one of the team
6 dealing with it so it could give Mr Rawat an answer quickly
7 when they discuss it.

8 But thank you for your clarification on "order." What
9 I would propose, if I may, just so it's clear what I'm going to
10 subject to your direction and of giving of direction will do is
11 that we will return to the Ministries with any obvious examples
12 of omitted documents, like the ones, for example, raised with
13 Mr Frett, and we will use those as a means of not just the
14 Ministry of Finance but across your requests by way of sampling
15 to ensure that what I've submitted to you is correct and the
16 public's office is concerned they are going to be able to make
17 the relevant statements because I can't make a statement that
18 I'm not confident is correct, and I need to have some process
19 of ascertaining and verifying that what I have been instructed
20 is correct.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 SIR GEOFFREY: We propose, so to speak, not random
23 sample but dip sample in various of the requests to make sure
24 the documents, as uploaded to us, are indeed, what has been in
25 the files of the Government.

1 COMMISSIONER HICKINBOTTOM: And, Sir Geoffrey, you
2 mentioned the electron--the computer framework. The
3 request--your request to the public officers will obviously
4 have to include that they check on documents in electronic
5 form.

6 SIR GEOFFREY: Yes.

7 (Overlapping speakers.)

8 COMMISSIONER HICKINBOTTOM: Most of these documents
9 are in electronic form and must be really easy to find, but
10 apparently you do not have access to that.

11 SIR GEOFFREY: No, we don't.

12 MR RAWAT: The reason I mentioned that material being
13 turned into PDF is that, if you have material held in
14 electronic form, if you just have the e-mail, providing the
15 e-mail itself as an electronic document means that if there
16 is--there are attachments, they are there embedded in the
17 e-mail. But the process that seems to have been adopted is to
18 turn everything into a PDF, that might be that because of the
19 process that it has to go through, which seems to be a
20 three-stage process, that might be a requirement, but it
21 actually introduces difficulties, but that's the reason for the
22 question. I appreciate Sir Geoffrey can't answer at the
23 moment.

24 SIR GEOFFREY: I can't, and it would be wrong of me to
25 do so, but I understand the point Mr Rawat is making,

1 Commissioner, and we will certainly look at that. It's
2 possible, but one would have expected (drop in audio) is that
3 the attachments would have been also separately--separately
4 produced and then, as Mr Rawat rightly would expect, associated
5 with the scan of the e-mail itself.

6 COMMISSIONER HICKINBOTTOM: Good. And that's the link
7 that is not always made.

8 Sir Geoffrey, I think that's probably dealt with the
9 main disclosure point, and what I'll direct is that the
10 recipients of the requests make a--make an affidavit as to the
11 completeness of the response. And what I suggest, Sir
12 Geoffrey, is that the COI team do liaise with you as to the
13 form of that so that you know the form that we will expect but
14 can raise any issues in relation to the form, but also an
15 affidavit by the Attorney or you or someone in the IRU setting
16 out what steps have been taken to ensure full compliance so
17 that I have that comfort when it comes to later hearings.

18 SIR GEOFFREY: Well, Mr Commissioner, thank you. I
19 will take the steps that I've indicated to you, and it may be
20 that in further discussions there are other things that also
21 could be done if they can be agreed between your team and those
22 I lead.

23 COMMISSIONER HICKINBOTTOM: That may be so, but it's
24 useful--it has been a useful discussion this morning as to the
25 difficulties and the difficulties because of the state of the,

1 if I am to put it this way, the original files that we're
2 dealing with, and that has been particularly helpful.

3 Moving on to the third heading, which is LPP and PII,
4 the Attorney's letter says that we have changed our minds on
5 this. I'm anxious again, when we come to the substantive
6 hearings, that they're not interrupted by issues which pop up
7 with regard to privilege or PII or, indeed, confidentiality.
8 And I'm anxious to do what we can now to limit the scope for of
9 those difficulties because otherwise what's going to happen is
10 that the Attorney--I'm sure it will be IRU--will get bundles of
11 documents before at each hearing and possibly quite close to
12 the Hearing and will then have to come back to us quickly with
13 regard to potential redactions in some way, and that is going
14 to put a great burden on her and you.

15 There are, I think, possibly some categories of
16 documents where the Attorney at least at the moment reserves
17 her position either with regard to disclosing them to the COI
18 or, if they're disclosed to the COI, with their public
19 disclosure. And those--if those--I mean, Cabinet minutes may
20 be one--we don't know because we don't know what the Cabinet
21 decided yesterday, and somebody at some stage may tell us--but
22 Cabinet minutes may be one. Cabinet documents may be one
23 category of documents where the Attorney says that we can't
24 have them. And that is an issue which could be dealt with in a
25 preliminary hearing and dealt with to a conclusion, as a matter

1 of principle.

2 SIR GEOFFREY: But as a class but not necessarily
3 individually.

4 COMMISSIONER HICKINBOTTOM: Of course, yes.

5 SIR GEOFFREY: And so there may be--there may be
6 distinctions to be drawn between particular minutes.

7 COMMISSIONER HICKINBOTTOM: Of course, but at the
8 moment, as I understand it, the Attorney's reserving her right
9 in relation to Cabinet minutes as a class.

10 SIR GEOFFREY: Yes.

11 COMMISSIONER HICKINBOTTOM: We asked for documents,
12 but we can't have any of them. If that--if she maintains that
13 stance after the Cabinet meeting of yesterday, that is
14 something which could resolve as an issue of principle.

15 SIR GEOFFREY: No, no, forgive me. That's not quite
16 accurate. The Attorney has disclosed to you, sir, many Cabinet
17 minutes as I understand it, if I'm wrong about that, I will
18 check it, but that was certainly the intention. The ones that
19 were under discussion yesterday and possibly again this morning
20 are draft minutes. Those raise slightly different questions
21 which the Attorney simply wanted the Cabinet's view on, but I
22 don't think there has been any desire to hold back from you
23 minutes to you, sir. The question of subsequent publication is
24 different.

25 COMMISSIONER HICKINBOTTOM: Well, that's good to know

1 because we are lacking in Cabinet minutes.

2 SIR GEOFFREY: I didn't know that.

3 COMMISSIONER HICKINBOTTOM: Mr Rawat can make
4 submissions on this. What have been disclosed to us are
5 expedited extracts which are simply the action points that
6 needs to be actioned by someone.

7 SIR GEOFFREY: Yes. Well, in that case, that is not
8 the Attorney's intention, nor is it the Cabinet's. There has
9 been an absolute clear decision that Cabinet minutes, finalised
10 minutes, should be disclosed to you.

11 Now, it's conceivable, sir, that hazards you may learn
12 in the course of your Inquiry be something of a change of
13 practice in the way in which Cabinet discussions are recorded.
14 I understand that the Cabinet Handbook--indeed, I don't
15 understand it; I've read it--says that the Cabinet minutes
16 should not include, for some inexplicable reason, discussion.
17 If you consult it, you may see it. You may have seen it
18 already, and shall only record the decisions. It's an odd way
19 of indicating to a Cabinet Secretary how you should capture a
20 Cabinet decision, but nevertheless it is what the Handbook
21 says.

22 So, it's possible that for some time that practice was
23 followed. My understanding is that that practice may have
24 changed some time ago within the last two years. But again,
25 it's certainly not the intention to deprive you of finalised

1 Cabinet minutes.

2 COMMISSIONER HICKINBOTTOM: Or presumably Cabinet
3 documents which went to Cabinet.

4 SIR GEOFFREY: Or any documents that went to Cabinet
5 in the Cabinet paper.

6 You've had many Cabinet papers. What it seems that
7 you haven't had, because I understand ExcoTrack doesn't have
8 them, is the documents that accompanied them.

9 COMMISSIONER HICKINBOTTOM: Accompanied the papers?

10 SIR GEOFFREY: A paper, yes. The Cabinet paper.

11 COMMISSIONER HICKINBOTTOM: Well, yes. Well, again,
12 my understanding but from evidence is that all of the
13 documents, including the attachments, have to go on Exco.

14 SIR GEOFFREY: Well, I'm not sure. I have to
15 say--well, let me--let us look into because I repeat: There is
16 absolutely no desire to withhold from you finalised minutes or
17 any Cabinet paper that went into Cabinet or any accompanying
18 documents that went alongside it.

19 COMMISSIONER HICKINBOTTOM: Good. That's helpful.
20 That leaves to one side at the moment draft Cabinet minutes,
21 but we may have to deal with those.

22 Mr Rawat, any observations about--

23 MR RAWAT: Just in relation to Cabinet minutes, I
24 mean, I take Sir Geoffrey's point about the fact that the
25 position is that all finalised Cabinet minutes would be

1 disclosed. What--it is frankly a bit of a mess. What we have
2 received are expedited extracts and regular extracts, and the
3 evidence from civil servants has been that those are issued
4 without the appendices. What we have received are material
5 that has been compiled to be put on ExcoTrack, and that then
6 sometimes comes with the appendices. The evidence of
7 Mr Wheatley was that--and Dr Potter was that's how that's done.

8 But in relation to Cabinet minutes themselves, I
9 cannot remember one example of a complete Cabinet minute that
10 the Inquiry has received. What it does sometime receive--and
11 that prompts its own concern--is--and this was canvassed with
12 the Premier when he gave evidence--you receive what appears to
13 be a partial Cabinet minute where--I'm looking at one at the
14 moment, which is actually in the main bundle at page 813--you
15 don't have to bring it up, but the point of that is it starts
16 at Paragraph 59, and it means that paragraphs 1 to 58 of
17 deliberations have been extracted, and they have not been
18 extracted in the conventional way that you might see with the
19 redaction document where they have been blanked out. It's just
20 simply a new document which has been created, so it is not, in
21 fact, the minute. It's a brand new document created for the
22 purpose of the Inquiry.

23 So, those are the forms that we're doing. So,
24 certainly from the perspective of the COI team, we have not had
25 any finalised minutes at all.

1 (Overlapping speakers.)

2 MR RAWAT: --for Ms Ward, the reason for raising it
3 was that we assumed that the reason for it because there was
4 correspondence about this early on, and we made plain that we
5 wanted the whole document, and we assume that one reason from
6 her evidence because she didn't raise that she needed to take
7 further advice from the AG, was that because they were only
8 draft minutes available, and she had not wanted to provide a
9 draft minute. She had wanted to provide a finalised minute in
10 respect of a certain cohort of meetings she she's behind on
11 finalising the minutes. The point that was made to her at the
12 time by the Commissioner was that those draft minutes do
13 represent the best record of a discussion that may have
14 happened many months ago, and the finalised minutes may not do
15 that. It may be very difficult for people to remember what was
16 said one way or the other if the conversation happened many
17 meetings ago.

18 But I think in looking at the Attorney General's
19 letter, she said there that she's going to follow up the matter
20 of provision of finalised Cabinet minutes with the Cabinet
21 Secretary, and so hopefully there will be a swift answer from
22 the Cabinet Secretary as which minutes will be forthcoming in
23 relation to which requests. But if the Cabinet does not come
24 back with a certain view or comes back with a certain view in
25 relation to draft minutes, there may need to be a hearing in

1 relation to provision of those documents.

2 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I'm sorry, I
3 will let you say what you want to say, Sir Geoffrey, but
4 firstly, what you said about Cabinet papers is helpful. It--I
5 don't think that it reflects what has been disclosed to date,
6 but what you said is helpful.

7 Secondly, with regard to draft minutes, there may be
8 an issue; we don't know if there is an issue yet. But the
9 point I was making at the start of this part of the hearing is
10 that there may be other categories over and above draft Cabinet
11 minutes where the Attorney wishes to maintain a privilege or
12 PII or confidentiality or whatever, and it may be that we can
13 deal with those in a preliminary hearing rather than deal with
14 them on the hoof during substantive hearings when we have
15 witnesses hanging around.

16 SIR GEOFFREY: Yes, it may be, sir. I do think it
17 would help, however, if we solved this Cabinet minute problem
18 first because I sense that that is a pretty serious issue for
19 this Inquiry. Manifestly, you need to look at those things.
20 I'm surprised that you haven't had finalised minutes since I
21 understood that to be a big decision. Let me, if I may, look
22 into the reasons for this.

23 And may I say generally that it would be very helpful
24 if, even on an informal basis, if the Inquiry were to be able
25 to refer to us freely any examples of these kind of

1 difficulties it's had, it would also assist both sides because
2 we can set about trying to resolve them.

3 COMMISSIONER HICKINBOTTOM: Well, Sir Geoffrey, I'm
4 afraid I don't see us on different sides.

5 SIR GEOFFREY: Well, you know what I mean, both
6 Parties, both--I mean no suggestion that there is any
7 divergence of interests here. I simply mean, unfortunately, if
8 I may so, there has been in the correspondence from time to
9 time a tone not only from the Commission but sadly it would
10 appear in correspondence between the Commission and the
11 Government's representatives that I have to say I found
12 surprising because it doesn't seem to partake of that trusting
13 and happy relationship that ought to exist between two sides,
14 two parties--two whatever you want to call them--that are bent
15 upon the same interest. And that may be because, sir, you have
16 concluded that Ministers are only interested in defending
17 suboptimal practices, but I assure you that is not the case.

18 COMMISSIONER HICKINBOTTOM: That's certainly very
19 good--very good to hear.

20 SIR GEOFFREY: Well, the Premier told you just the day
21 before yesterday, and respect--with respect I see no basis
22 though I see why you concluded it in any of the words I have
23 spoken or anybody representing the Ministers to conclude other
24 than they wish to have a full picture before you, and a proper
25 picture, an objective one.

1 COMMISSIONER HICKINBOTTOM: I know, Sir Geoffrey, but
2 from a position where we had understood that we were going to
3 get documents in a systematic and well-ordered way, you have
4 explained this morning why we haven't got them, and we've dealt
5 with that--I'll make directions in respect of that--but I
6 certainly, speaking entirely for myself, hadn't appreciated
7 that the reason the documents we were getting were in a
8 shambolic state was because they are in a shambolic state in
9 the hands of the public officers. That's what your
10 instructions are, and you're going to check it.

11 SIR GEOFFREY: (Unclear.)

12 (Overlapping speakers.)

13 COMMISSIONER HICKINBOTTOM: Dealing with the Cabinet
14 minutes, you dealt with those, and we can--we will make sure
15 that we get those. You will make sure that we get those.

16 But with respect to the possible draft Cabinet minutes
17 and other categories of documents, could the Attorney let us
18 know by, I don't know, the middle of next week, any categories
19 of document where she proposes to maintain privilege, et
20 cetera, so that we can deal with that as a matter of principle?

21 SIR GEOFFREY: May I take instructions on the matter?

22 I think the Attorney simply was--have expected
23 possibly in this expectation was an assumption rather than an
24 expectation, that what the process would be is you would
25 indicate which documents you felt it necessary to put into the

1 public domain, and the Attorney would respond. But if--if you
2 feel that the other way around is appropriate--and I see why
3 you say that it would be helpful--may I take instructions on
4 how we might go as far as we can to possibly help you?

5 COMMISSIONER HICKINBOTTOM: Yes.

6 (Overlapping speakers.)

7 SIR GEOFFREY: --under the strain of resource. That's
8 all the worry is.

9 COMMISSIONER HICKINBOTTOM: But it's not putting the
10 other things around because there may be individual documents
11 that are put into a bundle which the Attorney takes exception
12 to, and she will have to notify us when the bundles are
13 prepared, but there may be classes of documents, categories--

14 SIR GEOFFREY: Yes.

15 COMMISSIONER HICKINBOTTOM: --of documents which we
16 will deal with now.

17 (Overlapping speakers.)

18 COMMISSIONER HICKINBOTTOM: Anything else on that, Mr
19 Rawat?

20 MR RAWAT: Just--I mean, in relation to the last
21 point, the distinction as being classes of documents and
22 individual documents in which we're talking about the former,
23 but I think just looking at the timetable, it may be helpful if
24 the Attorney could revert by close of business on Tuesday.

25 COMMISSIONER HICKINBOTTOM: With relation to which

1 categories of documents?

2 MR RAWAT: Which categories of document may engage
3 legal arguments because that's something we can try and
4 schedule as a preliminary hearing.

5 COMMISSIONER HICKINBOTTOM: We want to schedule it as
6 preliminary hearing.

7 Sir Geoffrey, next Tuesday, is that a good date?

8 SIR GEOFFREY: Yes, we will do our very best do that.
9 As you could probably guess, I'm back in England. I thought Mr
10 Rawat and I had that discussion, but it didn't reach you. I
11 will do my very, very best because I suspect on these matters
12 the Attorney will ask for my view, and so we'll do our best to
13 reach a concerted position by then.

14 COMMISSIONER HICKINBOTTOM: That's very good, Sir
15 Geoffrey. Thank you very much.

16 The final point in the Attorney's letter was about
17 Ruling No. 5, but I think it had two strands. One concerned
18 the position statements. My understanding from--the Attorney
19 has written quite a lot on this, but my understanding from what
20 she's written is that we are getting the position statements.

21 SIR GEOFFREY: Yes.

22 COMMISSIONER HICKINBOTTOM: When--by when we ask for
23 them.

24 SIR GEOFFREY: Yes, that's the intention. It is--it
25 is going to take a degree of organisation, but that's what

1 we're working on now.

2 May I say that we will probably, if this will be
3 acceptable to you, we want to concert your recent request on
4 legislation with the submission on governance because it was
5 always--that is what we have been preparing. And, of course,
6 there is a significant role or a significant relevance of that
7 legislation.

8 COMMISSIONER HICKINBOTTOM: No, Sir Geoffrey,
9 absolutely, not only acceptable but it would be helpful, and
10 that's why the letter on the legislation, the proposed
11 legislation, came to the AG so quickly after--you were here.
12 The Premier referred to these measures. Others have referred
13 to them, it would be helpful to have them in a comprehensive
14 form.

15 SIR GEOFFREY: Well, that's our aim.

16 COMMISSIONER HICKINBOTTOM: The only other point, I
17 think, subject to Mr Rawat, in the letter concerned how elected
18 institutions and officers that the Attorney represents are to
19 be afforded fair opportunities to participate meaningfully in
20 the Inquiry so they may understand how they can prepare to take
21 full and proper advantage of them.

22 I mean, Sir Geoffrey, you're an experienced public
23 lawyer, so you will be well-aware that, in terms of procedural
24 fairness, one cannot take a view in the middle of something.
25 You can only take a view at the end looking backwards, and I

1 will ensure that everybody's dealt with with procedural
2 fairness. And it may be that later on, when I have made some
3 provisional conclusions on one of the paragraphs in the Terms
4 of Reference that those will be shared with participants in
5 some way or another because they would have to be to enable
6 fair participation.

7 But at the moment, that's completely premature. I
8 can't come to provisional conclusions without having some
9 evidence, and that evidence I'm now obtaining. The position
10 statements will be very, very important with regard to that
11 evidence.

12 And this is paraphrasing, but you were there--I
13 haven't seen the Transcript; it hasn't been produced yet--but
14 the Premier suggested that it's his view that governance in
15 this territory is very, very poor--indeed, shockingly poor. I
16 think he used more robust terms than that, but he's doing
17 something about it. As I say, that puts what he said very
18 elegantly, very inelegantly.

19 But if that's the case, and if that is the general
20 view, then my focus so far as governance is concerned will be
21 different from what it might be if some concern with
22 governance, say that everything is absolutely fine, and some
23 say that it's very poor because I will then have to make some
24 findings. But until I get some evidence, I can't even come to
25 the provisional conclusions that the Attorney seeks before

1 making representations.

2 All I can say is that, overall, those who she and,
3 through her, you represent will have more than adequate
4 opportunity to make representations on all of the issues raised
5 in the Terms of Reference, but this, my letter of the 17th of
6 May, concerning position statements is an important part of
7 that opportunity, which I think you've well grasped.

8 SIR GEOFFREY: If I may say so, those words will, I
9 think, be considerably helpful in alleviating any anxieties
10 which exist.

11 COMMISSIONER HICKINBOTTOM: Good.

12 SIR GEOFFREY: And all I think the Attorney was
13 seeking is such outline as you just made. It might have been
14 helpful if you give some, without tying to it a rough timetable
15 or even a rough idea of the sort of structure that you might
16 have had by which you will enable, as you put it, a fair
17 opportunity to participate. But that may well be something
18 you're giving thought to and, as you say, that you feel unable
19 to say at the moment. I mean, time is obviously a matter that
20 no doubt is pressing on your mind because, indeed, Mr Rawat has
21 eloquently put today.

22 So, thank you for those observations; they will be
23 helpful, I think.

24 Can I just address this question of governance so that
25 there is no doubt about it. We, from a very early stage,

1 identified the need to put before you the elected institutions'
2 view of the state of governance in this territory. That's why
3 we regarded with some consternation and alarm your conclusion
4 Ministers or rather--how shall I put it?--your observation that
5 it seemed that Ministers were only interested in defending
6 themselves. That is, as you're heard from everybody, just so
7 far from the facts, as the Premier put it, because the truth is
8 the opposite. I think you will find that there is a fairly
9 united view amongst those the Attorney currently represents
10 that governance does need significant improvement, and that
11 your recommendations are seen as a genuine opportunity.

12 And so we are anxious in a detailed way to put before
13 you in as helpful and thorough a manner as possible everything
14 on that subject that could possibly be expected of the elected
15 institutions, and we endeavour by--I think the end of May might
16 have been your date--it might have been the 2nd of June--to
17 give you what we can by then, but I think it may be necessary
18 to follow that up because there are some detailed issues of
19 which we think you may need to be made aware before you reach
20 your final conclusions.

21 COMMISSIONER HICKINBOTTOM: Well, that's very helpful
22 and very comforting because, in terms of governance--and this
23 is why those you represent, Sir Geoffrey, are participants--in
24 terms of governance, the Ministers, et cetera, have a key
25 position, and they are key in giving evidence, and it's a great

1 comfort that they're going to give positive evidence on
2 governance--the state of governance now and on steps that they
3 think can and should be taken to put right anything that they
4 consider is less than optimal.

5 SIR GEOFFREY: Yes.

6 And might I also say that because the second limb of
7 your Commission deals with the conditions, if you find that
8 there is a basis for concluding that there may have been
9 wrongdoing of the stipulated kind--and you sought submissions
10 on that, and we will be providing those--then plainly what
11 conducted to conduct of that kind will also be an important
12 feature of the analysis. And again, the Government--if I could
13 use that expression with the caveats that I rented in
14 connection with it and the Attorney does--would wish plainly to
15 address those in the light of your views as made known to us.

16 COMMISSIONER HICKINBOTTOM: Of course. And they will
17 have that opportunity.

18 SIR GEOFFREY: Thank you. Thank you.

19 COMMISSIONER HICKINBOTTOM: Now, let me just make sure
20 there is nothing else to be dealt with.

21 Mr Rawat, is there anything else that needs to be
22 dealt with?

23 MR RAWAT: Can I just make a brief request. Sir
24 Geoffrey indicated that the position statement will also take
25 in the requests in respect of the legislation, which is subject

1 to a separate letter. Can I ask that--I mean, if that is going
2 to be done, then the answer needs to be as complete as possible
3 and address every part of that letter so it will be helpful
4 obviously having it one document.

5 As you've indicated, sir, the position statements are
6 critical. They are an opportunity for those who have been
7 given participant status to set out their views on key
8 questions that go to the Inquiry, and it is appropriate that
9 they be asked to do it before the substantive hearing, because
10 otherwise it can't--or it will be less able to inform the
11 course of the Inquiry.

12 Similarly, a trickle of representations at different
13 points in time will have less force than if those who have
14 participated--and in my submission, those who have been given
15 that status are well-placed now to answer the questions that
16 you've posed. But if they--I would encourage them to take the
17 opportunity and give us full a position statement as possible.

18 COMMISSIONER HICKINBOTTOM: My understanding, Sir
19 Geoffrey, is they're going to take that opportunity. They're
20 going to take it as full as they possibly can. They're going
21 to give us as much as they can by the 31st of May.

22 SIR GEOFFREY: Yes.

23 COMMISSIONER HICKINBOTTOM: Sir Geoffrey said there
24 may be things they can't do by then, but they can identify what
25 those things are and when they are going to return to us.

1 Mr Rawat's right--and I think, Sir Geoffrey, you well
2 understand this--these are the sort of good foundations for the
3 more substantive hearings that are to come.

4 SIR GEOFFREY: Yes, I do see that. I do, and that's
5 why our intention is to do, as you put it, as much as we can by
6 the whatever date, forgive me, was the 31st or 2nd of June, but
7 we will do as much as we can. That will be, I hope, pretty
8 thorough. It will address the legislative schedule of this
9 Government and what has been done about it, and the
10 difficulties that the Government has faced in connection with
11 some of those pieces of legislation, all of which we need to
12 know.

13 COMMISSIONER HICKINBOTTOM: Yes. Absolutely. That's
14 exactly what I do need to know.

15 SIR GEOFFREY: So, I think we're on the same page,
16 Commissioner, but the only difficulty is we're all working--I
17 know you are working under considerable burdens of time. We
18 really are going to do our best, and if we can't do as much as
19 we like, we will get it to you as soon as we can, the point
20 being that it is, I hope, going to be pretty comprehensive when
21 we got all of the materials.

22 COMMISSIONER HICKINBOTTOM: And then we can move on to
23 the next stage of the hearings.

24 Sir Geoffrey, is there anything else you have?

25 SIR GEOFFREY: No. I will return to on the question,

1 if I may, of draft minutes. I know the matter is under active
2 consideration, but I don't wish to, at this stage, define any
3 position to you until I have taken further instructions.

4 COMMISSIONER HICKINBOTTOM: I mean, that must be
5 right, and we will return to you on the form of the direction,
6 but particularly in relation to the form of the affidavits for
7 the individual public office-holders and disclosure. They need
8 to give us comfort, but you can--we can make sure that the
9 statements that they make is an appropriate one.

10 SIR GEOFFREY: Yes, thank you.

11 And I would--would you forgive me for just making this
12 clear once again, the process I intend to adopt is a form of
13 sampling of the requests. It will not be possible for us to
14 revisit every single request between now and the end of May,
15 but if the Inquiry were to feel able to point us by simply way
16 of informal assistance to anywhere where that they had found a
17 difficulty would enable us to make that sampling more thorough
18 and reliable.

19 COMMISSIONER HICKINBOTTOM: Well, I need to have
20 comfort that we have all of the documents that we're going to
21 get.

22 SIR GEOFFREY: Yes, but you see my point. The point
23 is what I want to make certain is that I'm confident when I
24 submit to you that what you've received actually is a
25 reflection of what is there.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 SIR GEOFFREY: Not that there are just massive
3 oversights, massive failures in the process of scanning or
4 uploading or whatever.

5 COMMISSIONER HICKINBOTTOM: Quite, yes.

6 Sir Geoffrey, thank you--

7 MR RAWAT: May I add?

8 COMMISSIONER HICKINBOTTOM: Yes.

9 MR RAWAT: If Sir Geoffrey wants some guidance, we can
10 point him in the direction of the annex to the letter so that
11 our letter of the 17th of May had asked for a number of Letters
12 of Requests to be prioritised.

13 (Overlapping speakers.)

14 MR RAWAT: So, can I suggest that they be prioritised,
15 they be taken as the samples and reviewed by the IRU both from
16 the perspective of whether there is missing documents and
17 whether the documents that have been provided are in an order
18 that makes sense or not.

19 SIR GEOFFREY: We will take those as the first port of
20 call.

21 MR RAWAT: Thank you very much.

22 COMMISSIONER HICKINBOTTOM: That will be very helpful.
23 Good.

24 SIR GEOFFREY: Thank you.

25 COMMISSIONER HICKINBOTTOM: Unless there is anything

1 else, what I'll do is I will rise because everything has to be
2 sanitised for the Witnesses. Thank you, Sir Geoffrey.

3 Solicitor General, I think you're staying?

4 SOLICITOR GENERAL: I'm staying.

5 COMMISSIONER HICKINBOTTOM: You're staying, so we will
6 see you in five minutes.

7 (End of Session 1)

1 Session 2

2 COMMISSIONER HICKINBOTTOM: (Start of audio) It took
3 longer than we had hoped and expected, but thank you for your
4 patience.

5 What we propose to do is we propose to take your
6 evidence together in the sense that we're going to swear you
7 both in, and then Mr Rawat, in particular, will ask you
8 questions, but you're covering much the same area, so it will
9 be convenient just to--for him to be able to ask you questions
10 on particular documents, particular areas in any particular
11 order.

12 It's half past 12:00. What I'll say to Mr Rawat now
13 is that we'll break for lunch at some time around quarter past
14 1:00, 1 o'clock, for a half an hour when he comes to a
15 convenient point in the questions.

16 Could the gentlemen be sworn. Thank you.

17 COMMISSION SECRETARY: Yes. First of all, welcome to
18 the Hearing. If you're contemplating taking off your masks,
19 you may do so while you're seated, but when we're moving around
20 the room, we'd like you to replace it. Thank you very much.

21 Can I start with you, Mr Romney.

22 THE WITNESS: (Mr Romney) Sure.

23 MR RAWAT: Would you make to swear an oath or make an
24 affirmation?

25 THE WITNESS: (Mr Romney) Make an affirmation.

1 COMMISSION SECRETARY: Would you like to take the
2 white sheet just there and turn it over and repeat the words on
3 the sheet, please.

4 THE WITNESS: (Mr Romney) I do solemnly, sincerely
5 and truly declare and affirm that the evidence I shall give
6 shall be the truth, the whole truth, and nothing but the truth.

7 COMMISSION SECRETARY: Thank you, sir.

8 Mr Lettsome, would you like to swear an oath or make
9 an affirmation?

10 THE WITNESS: (Mr Lettsome) I'll do the same.

11 COMMISSION SECRETARY: Same. Read the words on the
12 sheet in front of you.

13 THE WITNESS: (Mr Lettsome) I do solemnly--solemnly
14 and sincerely truly declare and confirm that the evidence I
15 shall give shall be the truth--the truth, the whole truth, and
16 nothing but the truth.

17 COMMISSION SECRETARY: Thank you, sir.

18 COMMISSIONER HICKINBOTTOM: Mr Rawat.

19 MR RAWAT: Thank you, sir.

20 BY MR RAWAT:

21 Q. Gentlemen, thank you for giving evidence. What I'm
22 going to do is take you each in turn just to deal with some
23 formalities. So, Mr Romney, could you first--start first and
24 can you give the Commissioner your full name, please.

25 A. (Mr Romney) Clinton Gregory Romney.

1 Q. And your professional address?

2 A. (Mr Romney) Where I work? Richard Stoutt Building,
3 Wickhams Cay, Road Town, Tortola, British Virgin Islands.

4 Q. Mr Lettsome, if you could do the same, your full
5 name, please.

6 A. (Mr Lettsome) Leslie Harmon Lettsome.

7 Q. And your professional address, the place where you
8 work?

9 A. (Mr Lettsome) Richard Stoutt Building, Road Town,
10 Tortola, British Virgin Islands.

11 Q. Thank you.

12 If I could explain to you both, I will try to keep my
13 questions short and simple. If at any time you have any
14 difficulty understanding the question or if you need me to
15 repeat it or rephrase it, please don't hesitate to ask me, and
16 I'll do so.

17 Each of you should have a bundle of documents in the
18 lever-arch file in front of you. There's no need to look at it
19 now, but we will be going to it in due course.

20 I don't think in your case this will be a problem,
21 but it does happen with witnesses, but can you remember,
22 please, just to keep your voices up and try to and speak
23 slowly. The reason is that we are making a Transcript of this
24 hearing, and your answers obviously need to be clearly and
25 accurately recorded.

1 Before I go on, what I'd like to explain to you both
2 is the reason that we've asked you to come today to assist the
3 Commission, and that is we believe that there are some matters
4 that you may be able to help the Commissioner further. In
5 particular, I'll be asking you questions about a contract that
6 the Government entered into with EZ Shipping. The reason for
7 asking you both to come is because the disclosure that the
8 Commission has received from various Government departments is
9 not entirely clear, and it's particularly not entirely clear
10 how it fits together, and because you both had some involvement
11 in it, we're hoping that you might be able to give some insight
12 into what was going on at a particular time.

13 What I would also explain, though, however, is you're
14 both here as witnesses. You do have legal representation, but
15 I want to make clear that I'm not going through my questions
16 today to put to either of you a criticism or an allegation that
17 you have to answer.

18 What I'd like--how I'd like to do it, if I may, is if
19 I could put my questions first to Mr Romney.

20 Mr Romney, if at any time the answer to the question
21 is that's got nothing to do with me or it's a matter for
22 Mr Lettsome, then we can pass it over to Mr Lettsome. I'll
23 also give you an option, Mr Lettsome, on certain questions if
24 you can add detail, that will be helpful.

25 Similarly, if there's a question put to you and you

1 think it's for somebody else or somebody was involved, then
2 please do let me know, all right?

3 A. (Mr Lettsome) All right.

4 Q. I'd like, however, just to start with professional
5 background.

6 Mr Romney, if we take you first.

7 Yes, Mr Lettsome.

8 A. (Mr Lettsome) How do we address you? (Unclear.)

9 Q. You don't need to address me in any way.

10 A. (Mr Lettsome) Um-hmm.

11 Q. But if feel like it, you can call me Mr Rawat but the
12 Commissioner is--

13 (Overlapping speakers.)

14 Q. --Rawat.

15 A. Rawat.

16 (Overlapping speakers.)

17 Q. (Unclear.)

18 COMMISSIONER HICKINBOTTOM: And just call me
19 "Commissioner" if you have any cause to call me anything.

20 THE WITNESS: (Mr Lettsome) Sure.

21 BY MR RAWAT:

22 Q. Let's kick off with Mr Romney first. Could you just
23 give a brief outline of your professional history. Or when did
24 you join the Customs Department?

25 A. (Mr Romney) I joined the Customs Department December

1 1990.

2 Q. And is it right you then worked your way up through
3 the ranks to reach--is it Deputy Commissioner?

4 A. (Mr Romney) Yes, sir.

5 Q. And when were you appointed to that role?

6 A. (Mr Romney) I don't have the exact date sir - that is
7 something I could get for you.

8 Q. It's all right. A range of dates. I mean, you were
9 certainly in post by 2020.

10 A. (Mr Romney) Yes, sir.

11 Q. How long had you been--

12 A. (Mr Romney) About seven years.

13 Q. Thank you. That's more than enough for us.

14 Can I ask you this. When you applied for a senior
15 position within the Customs Department--and I'm assuming you
16 had to apply for that post or were you appointed to it?

17 A. (Mr Romney) I had to send in my paperwork to be
18 appointed to the post.

19 Q. When you are appointed to it--do you have--is there
20 an obligation on your requirement to declare any interest that
21 might affect your ability to perform your role?

22 A. (Mr Romney) No, sir.

23 Q. As we'll find out very shortly, part of your job as a
24 Deputy Commissioner involves liaising with other agencies, and
25 sometimes you're involved with joint bodies. When you are

1 involved, are you given any guidance about circumstances in
2 which you have to declare an interest?

3 A. (Mr Romney) Never was.

4 Q. I'll pause there and I'll turn to Mr Lettsome. Let's
5 cover your professional history.

6 When did you join the Customs Department, sir?

7 A. (Mr Lettsome) Sir, I was appointed Customs Trainee on
8 the 26th of September 1977. First day on the job was the 4th
9 of September 1977.

10 Q. And you too have worked your way up the ranks. And
11 it's right, isn't it, that at least in 2020, for a time you
12 were acting up to be the Customs Commissioner?

13 A. (Mr Lettsome) I was Acting Commissioner from
14 December 7, 2008--2018, upon--

15 (Overlapping speakers.)

16 Q. Sorry. (Unclear.)

17 A. (Mr Lettsome) Up until July--until July--until
18 August 7, 2020.

19 Q. And was that the period that Mr Smith was away from
20 his job?

21 A. (Mr Lettsome) Correct.

22 Q. And what role do you occupy now? What's your job
23 title?

24 A. (Mr Lettsome) I report to Deputy Commissioner of
25 Customs.

1 Q. If I again ask you this question that I put to
2 Mr Romney, when you're appointed to a role, be it a Deputy
3 Commissioner or the Acting Customs Commissioner, were you ever
4 asked to declare any interest that might affect your ability to
5 carry out that role?

6 A. (Mr Lettsome) Not that I can recall, no.

7 Q. And again, when you're involved on a--sitting on a
8 joint body with other agencies, are you given any guidance as
9 to when you should declare a conflict of interest?

10 A. (Mr Lettsome) I can't recall.

11 Q. Thank you. Let's switch back to Mr Romney.

12 We've heard evidence that--and this was--you may--you
13 will both know this--Wade Smith came along and gave evidence to
14 us and so has Ian Penn.

15 A. (Mr Romney) Right.

16 Q. And he's explained--or they explained that a Joint
17 Task Force was established, which was Customs, Immigration, and
18 the Police.

19 Do you remember when the Joint Task Force was set up?

20 A. (Mr Romney) That was about in March of 2020.

21 Q. Was it a response to the pandemic?

22 A. (Mr Romney) Yes, it was.

23 Q. When was it decided that it--the lead agency would be
24 Customs?

25 A. (Mr Romney) That was probably in--later in April.

1 Q. And yourself, then as the Deputy Commissioner, what
2 role did you play in the Joint Task Force?

3 A. (Mr Romney) My duties entail enforcement, so I would
4 lead under enforcement side of this operation with my team.

5 Q. And, Mr Lettsome, then obviously at that time you
6 were Acting Customs Commissioner.

7 A. (Mr Lettsome) Yes, yes.

8 Q. So were you the person who was, in effect, chairing
9 the Joint Task Force?

10 A. After--there was a meeting--there was a meeting with
11 the NSC and we discussed that the leader role should be
12 Customs, and then when I take over as Chair of the Joint Task
13 Force, which was (unclear) early April.

14 Q. So, you remained Chair from April until Mr Smith
15 returned into his role.

16 A. (Mr Lettsome) Correct.

17 Q. At the beginning of August.

18 A. (Mr Lettsome) Correct.

19 Q. How often did the Joint Task Force meet, Mr Romney?

20 A. (Mr Romney) Every week, sometimes twice a week,
21 especially at this time of this pandemic.

22 A. (Mr Lettsome) Yeah.

23 Q. And did the--did the meeting take minutes?

24 A. (Mr Romney) No, sir.

25 Q. What was the reason for not recording minutes?

1 A. (Mr Romney) During the pandemic, we were basically
2 Zoom calls, WebEx calls. There was no--no secretary appointed
3 or anything of that nature, so we didn't take any minutes.

4 Q. Did you record your action points, your decisions of
5 what you would do next in any document or any e-mails at all?

6 A. (Mr Romney) At times, yes.

7 Q. And who would have been responsible for recording the
8 action points in an e-mail?

9 A. (Mr Romney) We had no one appointed to take
10 particular actions.

11 Q. So--

12 A. (Mr Romney) Basically, it was voluntary.

13 Q. Right. And--and who was--who was the willing
14 volunteer?

15 A. (Mr Romney) I can't say who was a willing volunteer.
16 What I can say, what I was tasked to do, I would do, and then I
17 would submit e-mails.

18 Q. I see. And you would copy in the other members of the
19 Joint Task Force.

20 A. (Mr Romney) Yes.

21 Q. And that would obviously include--but it would
22 include people from the Immigration Department and people from
23 the Police.

24 A. (Mr Romney) Yes.

25 Q. Mr Lettsome, let's--let's turn to you.

1 What was your role then on the Joint Task Force apart
2 from chairing it?

3 A. (Mr Lettsome) I kind of guide the--the--the--their
4 meeting, (unclear) discuss points that we want to discuss, and
5 then, when we have to go before the NSC or the Cabinet, we
6 have--then we use the discussion to feed into what we
7 are--prepare for the Gov--for the Joint Task Force.

8 Q. So--

9 A. (Mr Lettsome) NSC.

10 Q. Right. I'll--I'll ask you in a moment about the NSC
11 and how the two--the JTF and the NSC connect.

12 But when you--if you had to go and present to the
13 NSC, I mean, did you record--did you summarise your discussions
14 so you had a paper to go to the NSC with, or was it just
15 yourself? Was it just agreed verbally between the members of
16 the Joint Task Force what you would present to the NSC?

17 A. (Mr Lettsome) There's time when we meet together, a
18 group, and we discuss and prepare like a formal something to
19 present to NSC.

20 Q. So you actually would write a submission.

21 A. (Mr Lettsome) Right.

22 Q. Right.

23 A. And based on the--the colleagues' input.

24 Q. So, where are those submissions now?

25 A. (Mr Lettsome) The (unclear) should have a copy and I

1 believe the Commissioner should have one.

2 Q. I--I--I don't think we've received any submissions of
3 the Joint Task Force prepared for the NSC. I'll show you what
4 we received. If you turn up to page 849. It's bit of a fat
5 bundle, so take your time.

6 A. (Mr Lettsome) Yeah.

7 Q. Thank you.

8 Those are Task Force Inter-Agency Meeting Minutes
9 from September the 3rd 2020, and they're chaired by Wade Smith,
10 so he was obviously back in post by then.

11 A. (Mr Lettsome) That's right.

12 Q. You're both on the attendee list. Now, that's the
13 one set of minutes that we have been provided with.

14 Do you remember when the JTF started taking minutes?

15 A. (Mr Romney) When Mr Smith took over as Chair, he
16 instituted undertaking of minutes.

17 Q. And so that was from August.

18 A. (Mr Lettsome) Yeah. And if I may, it wasn't from day
19 one, but the second week--in the first week we didn't have any
20 meetings.

21 Q. So, that was from about the--

22 A. (Mr Lettsome) The second, yeah.

23 Q. The middle of August would you say?

24 A. (Mr Lettsome) Yeah. Something like that.

25 Q. Thank you.

1 Now, so you would report to the NSC. Now, which
2 members of the--I'll direct this to Mr Lettsome--which members
3 of the Joint Task Force would attend the NSC to present?

4 A. (Mr Lettsome) When it was turned over to me as Chair,
5 after we prepared a document, I would--we all attend but I will
6 (unclear) present.

7 Q. I see. So would--Mr Romney, would you attend as
8 well?

9 A. (Mr Romney) Yes. You had Commissioner of Police, who
10 is a member of the NSC. The Chief Immigration Officer was
11 invited, and the Acting Commissioner of Customs, Mr Leslie
12 Lettsome, invited myself, as Deputy Commissioner would be in
13 NSC meetings at this time.

14 Q. And was that throughout the pandemic and
15 throughout--you were attending every NSC meeting?

16 A. (Mr Romney) No, sir.

17 Q. Just when you were invited to do so.

18 A. (Mr Romney) Only--only on invitation.

19 Q. Can you help us with this. The submissions that you
20 prepared as a JTF, who would hold them now?

21 A. (Mr Romney) The submission, we--

22 Q. Mr Lettsome explained that when you went to invite
23 the NSC, you would have a document that you would use to
24 present to the NSC.

25 A. (Mr Romney) Right.

1 Q. I'm just asking where would that document be held
2 now?

3 A. (Mr Romney) It should be held by us, and it should be
4 held by NSC because every member in the JTF, the heads would
5 have been provided with whatever document we wanted to submit
6 to the NSC.

7 Q. Now, I just turn to another topic, which is the
8 Comprehensive Border Security Plan, and again, Mr Smith gave
9 some evidence about that and explained. And, as I understand
10 it--and I'll go to Mr Romney first--but correct me if I'm
11 wrong, the Joint Task Force was asked to produce a
12 Comprehensive Border Security Plan; is that right?

13 A. (Mr Romney) Yes.

14 Q. At what point in time were you asked to do that?

15 A. (Mr Romney) This was somewhere around July 2020.

16 Q. Now, the version that--and we'll look at it as we go
17 through the bundle--the version that has been disclosed by the
18 Customs Department to the COI is actually labeled a revised
19 version. Can you remember how many versions of the
20 Comprehensive Border Security Plan there were?

21 A. (Mr Romney) A revised version?

22 Q. Yes.

23 A. (Mr Romney) There should only be one version.

24 Q. Right. But if--was it altered or updated during the
25 course of time?

1 A. (Mr Romney) Not by us.

2 Q. Okay. Well, perhaps we can come back to that--

3 A. (Mr Romney) Okay.

4 Q. --when we look at it.

5 In terms of drafting it, who took the lead in
6 drafting it? Which Department?

7 A. (Mr Romney) Customs.

8 Q. But then, obviously, the other Departments would
9 input into the content of it.

10 A. (Mr Romney nods head)

11 Q. Right. Again, sticking with Mr Romney, could you
12 turn up page 786, please. I'm going to try to take you through
13 the documents in as chronological a way as I can.

14 Now, this is--if you've got 876, it's an unsolicited
15 proposal for Border Control, and it's from EZ Shipping. If you
16 turn over to 879--

17 A. (Mr Romney) --79.

18 Q. Yes, 879.

19 --you should have there a letter dated the 6 of
20 May 2020, and it's from Clyde Chadwell, who is the owner of
21 EZ Shipping. If you look at the bottom, what I draw out to
22 your attention, of course, is it wasn't addressed to the
23 Customs Department. I'll now pick up later in time and ask you
24 when you first saw it, Mr Romney, so we don't need to--to
25 answer that question at this moment. But can I ask you this:

1 Do you know Clyde Chadwell?

2 A. (Mr Romney) Yes.

3 Q. In what capacity do you know Mr Chadwell?

4 A. (Mr Romney) I know him as a person that has barges
5 and is in the trade business.

6 Q. Have you, on a personal level, ever had business with
7 him?

8 A. (Mr Romney) Nothing on a personal level, but I do
9 know him personally because it is a small community.

10 Q. How do you know him personally?

11 A. (Mr Romney) School, family.

12 Q. Well, how close would you say your personal
13 relationship to Mr Chadwell was?

14 A. (Mr Romney) Business only. Customs business is
15 business we interact or Customs interact with his business.
16 That's about the nature of it. That's the level of it.

17 Q. Thank you.

18 Mr Lettsome, can I turn to you on the same topic?

19 A. (Mr Lettsome) Yes, sir.

20 Q. Do you know Mr Chadwell?

21 A. (Mr Lettsome) Yes, sir.

22 Q. And in what capacity do you know him?

23 A. (Mr Lettsome) Actually, I know Chadwell from a little
24 boy, working on the pier with his father, years ago, a child
25 growing up. And I checked the family tree. We are family on

1 both mother and father's side.

2 Q. So, there is a family connection there.

3 A. (Mr Lettsome) Yes, sir.

4 Q. And, as you said, I think you've seen--you saw him
5 growing up.

6 A. (Mr Lettsome) That's correct.

7 Q. But would--how would you describe your personal
8 relationship, if any, with him?

9 A. (Mr Lettsome) Not much of a personal relation, just
10 him doing business as a barge owner in and out of Customs, but
11 no other personal relationship.

12 Q. And no personal business relationship ever him with.

13 A. (Mr Lettsome) No, no, sir.

14 Q. Thank you.

15 Let's go to page 880. I just want to draw your
16 attention to one detail.

17 A. (Mr Lettsome) 880?

18 MR RAWAT: 880.

19 BY MR RAWAT:

20 Q. If I summa--I don't want to take you through the
21 detail of this proposal, but, in effect, it involved two ships
22 owned by Mr Chadwell, and the reason for drawing your attention
23 to 880 is there he gives the fees.

24 A. (Mr Romney) I'm sorry, one thing. You're calling him
25 "Chadwell". His name is Chalwell.

1 Q. Chalwell, yes. I--he's written--he's written--

2 A. (Mr Romney) Chalwell here.

3 Q. The reason--he's written--he has written Chalwell in
4 other documents but I'm--I--the reason I opted for Chadwell was
5 because that's how he spelt his name in his own letter to the
6 Premier.

7 A. (Mr Romney) Okay.

8 Q. But I'll--I'll defer to your expert opinion, Mr,
9 Romney, and switch to Chalwell.

10 Let's go to 880, the two ships there: Midnight Stone
11 and Midnight Chief. If my maths is right, that that comes to a
12 daily rate of \$17,000. I just want you to just keep that in
13 your minds because I'd like you now to go to 825.

14 A. (Mr Romney) 825.

15 Q. Yes, please.

16 We'll start again with Mr Romney.

17 At the bottom of 825, you have an e-mail from
18 Mr Matthews, the then-Commissioner of Police. It's dated 15th
19 of May of 2020. If you look at the cc list, you're both copied
20 into the e-mail, and it's an e-mail--and Mr Matthews has made
21 the same mistake as I have in describing--responding to
22 Mr Chadwell, but he responds to that letter that we just looked
23 at.

24 In fairness to you both, the--the--the
25 unsolicited--the document isn't copied to this e-mail, but

1 what's in the middle Mr Matthews says: "As you may be aware
2 the RVIIPF has have for some weeks been working weeks in
3 collaboration and partnership with HM Customs and our
4 Immigration team creating a Joint Task Force to deliver border
5 security. In this regard we have been fortunate to be
6 supported by volunteers from the charter industry and private
7 sector who have loaned us boats and captains for mobile control
8 and static platforms. This has included access to radar on
9 board such vessels for the monitoring of shipping at key
10 strategic locations".

11 And what he then goes on to say, and I'll paraphrase,
12 that he says, whilst his agency is not the lead agency, he
13 states: "...on behalf of the current Task Force arrangements
14 ... "we have so far been able to deliver the various proposals"
15 "you've highlighted using volunteers and existing Government
16 vessels virtually cost-free."

17 Starting with you, Mr Romney, Mr Matthews makes the
18 point they--that there--there had been the use of volunteers
19 and vessels from the-the charter industry that--that had been
20 loaned. Was that, in fact, what was happening in that time, in
21 May 2020?

22 A. (Mr Romney) That would be in April. It may have
23 stretched into May.

24 Q. So, in April, that--that's how you were--you were
25 using loaned vehicles in effect for--oh, loaned vessels for

1 radar platforms.

2 A. (Mr Romney) We had Customs. We had obtained the use
3 of--of two interceptor vessels, and those were paid for. The
4 vessel that we got from the charter industry, they were
5 procured by the Royal Virgin Islands Police Force outside of
6 Immigration, outside of Customs. We had knowledge, but they
7 were procured by Police.

8 Q. If we now go, and again trying to--Mr Lettsome, I
9 should ask you the same question.

10 Do you agree with Mr Romney that--

11 A. (Mr Lettsome) Correct.

12 Q. --there were vessels being used in the fashion that
13 Mr Matthews describes in his e-mail?

14 A. (Mr Lettsome) Yes, sir, that's correct.

15 Q. Let's go to 251, then, please.

16 A. (Mr Romney) 251?

17 Q. Yes, please. I'm sorry to make you jump around the
18 bundle, but it's just the way we've received documents.

19 My questions at this point may be better directed at
20 Mr Lettsome because this--what we see is an e-mail, and it's
21 the 17th of June 2020, and it's from Glenroy Forbes or sent on
22 behalf of him, and he was the then-Financial Secretary. But
23 it's sent to, essentially, the heads of the three--three
24 elements of the Joint Task Force, with you, Mr Lettsome, copied
25 as the Acting Head of Customs.

1 A. (Mr Lettsome) Right.

2 Q. And what he refers you to is an expedited extract.
3 If we turn over to 252, we will see that expedited. Now, it's
4 issued by the Cabinet Secretary, but it relates to a decision
5 of the National Security Council, and it's dated the 2nd of
6 June 2020.

7 Now, what it refers to is a special meeting held on
8 the 26th of May 2020 with an amended decision, and Council
9 "requested the re-submission of the 'Comprehensive Border
10 Security Plan, for the Territory, outlined as a three-month
11 plan, inclusive of timescales and funding requirements; and
12 then "the re-submission of the 'Comprehensive Border Security
13 Plan, for the Territory outlined as a six-month plan..."

14 Now, I think if--and I may have misheard him, but I
15 think Mr Romney said that the Comprehensive Border Security
16 Plan, his recollection was it--it came about in July 2020. But
17 given we're looking at a date of June 2020 and a meeting on the
18 26th of May, there must have been some sort of Comprehensive
19 Border Security Plan in place by that time, mustn't there?

20 A. (Mr Lettsome) Yes. I didn't get a chance--I thought
21 you were asking me--you asked Mr Romney (unclear)--

22 Q. Right.

23 A. (Mr Lettsome) There was two.

24 Q. Right.

25 A. (Mr Lettsome) There was a comprehensive plan and

1 there was a--adjusted one after.

2 Q. Okay. Well, hopefully, if I take you to the right
3 documents, you may--you may be able to help the Commissioner or
4 that point.

5 But would it be a fair point to make, Mr Lettsome,
6 that the--a version of the plan must have been in existence at
7 about May 2020, if we look at this document?

8 A. (Mr Lettsome) Yeah.

9 Q. And when they're asking you--they're asking for a
10 resubmission, can you remember what--what the Joint Task Force
11 was being asked to do?

12 A. (Mr Lettsome) my--let me understand you correctly.
13 You're trying to--(unclear) three months' plan evolved a six
14 months' plan, so to revisit and prepare to move forward to--

15 Q. But where you were being asked, can you remember were
16 you being asked back then to--it could be read as what has
17 happened was the National Security Council had just sort of
18 sent the plan back to you and said do it again and resubmit it.
19 Can you remember the--

20 A. (Mr Lettsome) I don't think that was the case. We
21 were trying to do upgrade, because the three-month (unclear)
22 upgrade to a six-month plan.

23 (Overlapping speakers.)

24 A. (Mr Lettsome) I believe that was the case.

25 Q. Mr Romney, can you help at all on it?

1 A. (Mr Romney) The plan was to identify our needs in
2 terms of border security. At the time, a lot of our assets
3 mainly our interceptors were down--

4 A. (Mr Lettsome) Right.

5 A. (Mr Romney) --for Customs as well as Police. The NSC
6 instructed that we provide them with our the plan, and in that
7 plan it would give the financial to get our assets up and
8 running as well as identify any other assets that we would need
9 for border security.

10 Q. I see. So, it was a combination of what do you need
11 to make good your plan for border security and what funding do
12 you need.

13 A. (Mr Romney) Yes, correct.

14 Q. And--obviously, Mr Matthews is here and we can ask
15 him questions, but as the Police Commissioner he has, as I
16 understand it, a non-voting role on the NSC. But as the Joint
17 Task Force, is it from your perspective, as members of the
18 Joint Task Force, is it the NSC that you answer to?

19 A. (Mr Romney) Ultimately, yes, the Head of Security.

20 Q. If we go to 819, we're now in July of 2020, and
21 this--if we're looking at an e-mail from Sandra Ward, and she
22 has copied, as she described it, Members of the Border Control
23 Task Force, which, I think, is a term that's sometimes used for
24 the Joint Task Force, but you're both copied into this, and she
25 says it's an Action point from Cabinet: "Cabinet agreed that

1 HM Customs/RVIPS/Immigration...revisit the proposal received
2 from private vessel owners offering their vessels to support
3 border management/control efforts, which will be considered by
4 the National Security Council", and then refers to a meeting
5 that will be held on 7th of July.

6 Now, the use of the word "revisit" suggests that what
7 you were going--being asked to do was to go back and look again
8 at a proposal. Would that be a fair--fair way of reading that
9 action item? Mr Romney, what do you think?

10 A. (Mr Romney) It sounds so.

11 Q. Looking at it now, does that help you to remember at
12 all what was going on at that point in time?

13 A. (Mr Romney) In--what date is this? In July?

14 Q. July 3rd, 2020.

15 A. (Mr Romney) I have some recollection.

16 Q. Would you like to share it with the Commissioner?

17 A. (Mr Romney) In May, it was the first time we had--or
18 I had any knowledge of a proposal, an unsolicited proposal, and
19 that is supported by e-mail, again, from the Commissioner of
20 Police that it came back again. So again, we would have to
21 revisit. Our take on it, whether we were for it or how we
22 (unclear).

23 At the time we were back then, we were looking at two
24 possibilities for security, a long-term solution and as a--on a
25 short-term solution, long-term solution being radars, permanent

1 radars at strategic point throughout the territory; short-term
2 solution in terms of having barges placed strategically around
3 the territory.

4 Q. It could also be said that the--that, as a Joint Task
5 Force, you had already considered the proposal and rejected it.
6 Had there been any discussions about--any proposal about the
7 use of private vessels at that time?

8 A. (Mr Romney) You're talking about barges or are you
9 talking about small boats?

10 Q. Well, I'm talking about what's written there, private
11 vessels, and they're offering their vessels to support border
12 management control efforts. So it doesn't refer specifically
13 to barges.

14 A. (Mr Romney) Right.

15 Q. But, prior to July 2020, this e-mail asking you to
16 revisit the question, had the Joint Task Force reached a view
17 about the use of private vessels?

18 A. (Mr Romney) We had reached our decision on the use of
19 barges.

20 Q. And what was that decision?

21 A. (Mr Romney) That we were not in favour of the use of
22 the barges because of the inflated price.

23 Q. Okay. I'll pause you there, if I may.

24 Mr Lettsome, do you agree with what Mr Romney has
25 just said?

1 A. (Mr Lettsome) Yes, but we also--we had the price--the
2 price came (unclear) was written there, \$17,000 a week, and, as
3 far as we understand the information with us had already gone
4 to the--the Premier, Chief Police, and they had no preview to
5 what was being offered. So we are just trying to see how best
6 we can protect the border, what we can do and what the best
7 option there was available at the time.

8 Q. So--

9 A. (Mr Lettsome) But at that time, based on the
10 (unclear) how would we be able to afford something like that
11 when it wasn't budgeted for.

12 Q. I see.

13 So, at that time, before--before this e-mail lands in
14 your in-box, the position was that, as the Joint Task Force,
15 you had thought that a proposal to use private vessels as
16 barges was just too expensive and it wasn't within the scope of
17 your budget.

18 A. (Mr Romney) Like I said, we had two options. The
19 Joint Task Force wanted to have permanent radar, and we weighed
20 between the two. It was an opportunity at this point to secure
21 those, and that's the direction we were going in.

22 Q. Thank you.

23 If we turn over to 820, I just wanted--this is
24 actually--Mr Matthews's then response to that e-mail, and it's
25 slightly out of sequence. So the 3rd of July e-mail comes

1 round with the minute action, and then Mr Matthews then
2 responds on the 5th July 2020, addressed to yourself,
3 Mr Lettsome, and Mr Penn, and says: "I have been caught by
4 surprise". He explains that he rejected Mr Chalwell's
5 unsolicited proposal. He gives a price of 17,500 per week,
6 but, in fact, it was 17,000 a day, as we saw. And he explained
7 that, as he says to you, that use had been made of boats as
8 platforms that had been provided free with just cost of fuel
9 and provision.

10 And he continued: "Of course you must make up your
11 own mind but the costs involved (if such funding is being made
12 available) could be used for static radar, night vision cameras
13 or other support to the security operation rather than being
14 used for the hire of static vehicles. We could even seek to
15 address the issue of compensation for crews..."

16 And he says that "I would add that such platforms do
17 not feature as a priority in our previous plan submitted to
18 NSC."

19 Let me take this up with Mr Lettsome, first of all,
20 because the e-mail is addressed to you.

21 So, would it be fair to say that, at that point,
22 July 2020, the Joint Task Force had been able to access free
23 vehicle boats as platforms, that were essentially provided
24 free, with just costs for fuel and provision?

25 A. (Mr Lettsome) Yes, there was (unclear)--Mr Romney

1 mentioned earlier, (unclear) of the platform and also (unclear)
2 mentioned there, there was also aircraft used which was
3 (unclear) fuel, but that wasn't done by Customs. That was more
4 from a Police perspective.

5 Q. But--

6 A. But we was--we--we have knowledge of it.

7 Q. You were aware of it.

8 A. (Mr Lettsome) Of course.

9 Q. I mean, we will look at the Border Security Plan, and
10 I think we will then see what Mr Romney has explained about the
11 two options that you were thinking about, so we'll come back to
12 that. I just want to try and take things in time order, but
13 the point be that at least an element of the Joint Task Force,
14 namely the Police, had access to free boats that could be used
15 as platforms. Would you accept that?

16 A. (Mr Lettsome) Correct.

17 Q. And if we look at the last point at the end, it would
18 seem that your--your version of the Comprehensive Border
19 Security Plan in place at that time did not allow or did not
20 sort of give as a priority the idea of these--of vessels being
21 used as radar platforms. Would that be right?

22 A. (Mr Lettsome) At that point in time, yes correct at
23 that point in time.

24 Q. Yeah. Your focus, as Mr Romney explained, was the
25 idea of permanent radar stations at various points in the

1 territory; would that be fair?

2 A. (Mr Lettsome) It's fair to say at that point, yes.

3 Q. So when this--Mr Romney has explained, there was some
4 awareness of the EZ Shipping proposal, but at that point in
5 July 2020, although Mr Matthews says, you know, I've caught by
6 surprise, were you both similarly caught by surprise?

7 A. (Mr Romney) Mr Rawat, the only thing we knew of the
8 barges was from the e-mail from the then-Commissioner of
9 Police, which would have been on the 15th of May. After that,
10 we had no further discussion.

11 Q. So, for you--and we'll take Mr Romney first--this was
12 something that just came out of the blue, that you had to go
13 back and look at it again.

14 A. (Mr Romney) Well, we knew of it; something existed.
15 The particulars we did not know because we weren't given the
16 unsolicited proposal.

17 Q. But my point is that, up until then, July 2020, was
18 only at that point that you were asked to go and look at it
19 again, and you were asked to go look at it again by others. It
20 wasn't an internal decision of the Joint Task Force, was it?

21 A. (Mr Romney) No.

22 A. (Mr Lettsome) Correct.

23 Q. And is that something you agree with, Mr Lettsome?

24 A. (Mr Lettsome) (Unclear.)

25 Q. All right. And the point that's made is--is that--is

1 that there were other uses that--funding, any funding that
2 might come your way could be put--you were--you had static
3 radar and night-vision cameras were other matters that you
4 would have been interested in, as those responsible for border
5 security; is that right?

6 A. (Mr Romney) Yeah.

7 Commissioner, can I could interject something here.

8 Q. Yes.

9 A. (Mr Romney) We started using what I would say would
10 be sail boats as static platforms. Our officer would report
11 that it was not the best situation for them. You must realise
12 this is all in May, at the height of the shutdown. So, as time
13 progressed now, while there is a security concern, you still
14 have to look after the welfare of your officers. So coming now
15 in--this would have been reported, I want to believe, to NSC,
16 the issues that we were facing. If you're standing on a yacht,
17 the wave action, it would not be a comfortable situation.
18 The--the close proximity of an officer with some--with a
19 civilian on a boat is not a comfortable situation, and safety
20 concerns as well.

21 So, outside of the JTF, I don't know what
22 conversation the NSC would have had concerning now the
23 viability of continuing to use no sailboats. Now, as far as I
24 can recollect, the companies, the charter companies were saying
25 we cannot hold this indefinitely. We cannot do this

1 indefinitely, meaning having us--having the JTF use their boats
2 without paying--without compensation.

3 Q. Mr Lettsome, do you want to add anything to what
4 Mr Romney has just said?

5 A. (Mr Lettsome) (Unclear) is fully correct, yes. They
6 started out (unclear) and just fuel and so on. Then later on
7 (unclear) they started--decide that they needed compensation.

8 Q. But the--of the three agencies involved in the Joint
9 Task Force, that the only agency that was using these free
10 boats, if we can call them that, was the Police. Customs
11 weren't making any use of them, were they?

12 A. (Mr Lettsome) We did.

13 Q. You did. So you also accepted boats where you were
14 just paying the running costs.

15 A. (Mr Lettsome) We wanted--

16 A. (Mr Romney) Commissioner of Police was the head. He
17 brought this to us, and at that time there was pandemonium
18 here, and I would say there was pandemonium here in the
19 territory, what do we need to do to make this place safe. It
20 was not a time to actually debate or try to argue a point of
21 that nature.

22 So, yes, we did utilise the sailboats at a certain
23 time.

24 THE WITNESS: (Mr Lettsome) Commissioner, if I may?

25 COMMISSIONER HICKINBOTTOM: Yes.

1 THE WITNESS: (Mr Lettsome) Can I go ahead?

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: (Mr Lettsome) The point in time when we
4 commenced using the sailboats platform, actually Mr Romney was
5 in charge. I was out sick for like a week and days during the
6 lockdown. It was when I came back--if this was done on normal
7 circumstances based on the way of life structure and not went
8 in another direction of soliciting--unsolicited, the powerboats
9 because that can lead to other collusion, so we didn't--we
10 didn't--I wasn't in at that time. Romney was there, short
11 staff and try to use when we had source plan to try to calm the
12 whole thing down it was something on order. We go back and
13 hear that this pandemic thing that now arises go back a hundred
14 years, so everybody was in a frantic, didn't know what to do,
15 so what will help is come forward, Mr Romney was trying best to
16 see how to express what was going on. But if it was under
17 normal circumstances, we would not accept those vessels.

18 BY MR RAWAT:

19 Q. And in normal circumstances, does the Customs
20 Department have criteria or guidance about what you can and
21 cannot accept?

22 A. (Mr Lettsome) Yes, Customs and Duty Act, Section 105
23 tells you you cannot--you should not take those gifts and so on
24 and so forth. That can lead to collusion and that kind of the
25 stuff, so (unclear) another time.

1 Q. Before we leave the e-mails, if you would be looking
2 at page 820, if go to page 819.

3 A. (Mr Romney) 819?

4 Q. The conclusion of the e-mail is at the top of the
5 page, so what Mr Matthews says is "face pressures using private
6 vessels. My view is that for such high sums of money we should
7 go out to tender and let others bid."

8 Again, let's start with Mr Lettsome this time.

9 Do you agree that where high sums of money, to borrow
10 from Mr Matthews's term are involved, that this was something
11 that should go out to tender?

12 A. (Mr Lettsome) Yes. Yes. I agree because based on
13 the tendering process over a certain amount you have move to
14 tender. We're fully aware of that.

15 Q. Mr Romney, were you--would you at that time also have
16 been of a similar view that this was something that ought to go
17 out to tender?

18 A. (Mr Romney) Normal circumstances, yes.

19 Q. Now, it refers--you remember we were looking at
20 e-mail, and it refers to an NSC meeting on the 2nd of July.
21 You can see that from Ms Ward's e-mail further down.

22 A. (Mr Romney) Yes.

23 Q. Do you remember, either of you, attending that NSC
24 meeting?

25 I think Mr Lettsome, you may have said you might have

1 been off sick, so it was the 7th of July. You were off sick?

2 A. (Mr Lettsome) No, I was back to work at that time.

3 (Overlapping speakers.)

4 A. (Mr Lettsome) All three agency heads were there, and
5 then Mr (unclear) I think (unclear) Commissioner was there,
6 Police Commissioner, my Deputy, myself and Ian, there were
7 three of us at that meeting.

8 Q. Let's start--

9 (Overlapping speakers.)

10 Q. Let's start with you, Mr Lettsome, but do you
11 remember what the outcome of that meeting was? Do you remember
12 what you were told to do, if anything, by the NSC?

13 A. (Mr Lettsome) If my memory serves me correctly, the
14 measure was--answer is offered by EZ Shipping, and debated and
15 NSC, and we were told to go back and try and see if we can get
16 other people in the industry involved to see what--I mean, get
17 some value for money in terms of see who all is in the
18 industry. We realised that it was--we try Mr Romney, who was
19 leading enforcement and tried to call on Caribbean Transport.

20 Q. Sorry to interrupt you, we will--I'll pick that up
21 with Mr Romney. We will look at that in a moment.

22 So, the NSC essentially directed the Joint Task Force
23 to investigate the EZ Shipping proposal and others?

24 A. (Mr Lettsome) It was mentioned we needed to back and
25 see if we could it.

1 Q. I see.

2 A. (Mr Lettsome) I would say the NSC--the task was
3 looking at the option for barges, and coming after that it
4 was--we have used powerboats, we have used helicopter, a
5 helicopter. They didn't want any--any argument between, you
6 know, barge helicopter, so we were asked to see by using barges
7 how we felt that that could be.

8 Q. I see.

9 Let's go to 673, now, please, and we'll pick this up
10 from Mr Romney.

11 July 16, 2020, Mr Romney, you sent an e-mail to
12 members of the Joint Task Force, and you say: "As discussed in
13 our meeting, the proposal by EZ Shipping is sent for all to
14 review". Now that must be the unsolicited proposal that we
15 looked at earlier. I can take you to it if you will need
16 reminding of it. But just so that we're clear, was that the
17 first time that you, Mr Romney, had actually seen that
18 document?

19 A. (Mr Romney) The unsolicited proposal?

20 Q. The actual document itself.

21 A. (Mr Romney) It was sometime in July that I actually
22 saw the document or a document.

23 Q. I mean, you plainly, from what we looked in at the
24 May e-mail, you were aware of its existence.

25 A. (Mr Romney) Yes.

1 Q. Was this the first time you'd actually seen it?

2 A. (Mr Romney) Around July 24th, I saw a document.

3 Q. Mr Lettsome, that was the same position for you?

4 A. (Mr Lettsome) Can you repeat that, please?

5 Q. You can see that e-mail. If you look--if you
6 look--turn up 673.

7 A. (Mr Lettsome) Okay. 678.

8 Q. Yes, sorry.

9 A. (Mr Lettsome) From my recollection, yeah, it was the
10 first time.

11 Q. Thank you for that, sir. I am going to move on to
12 another document, so maybe it would be a convenient time to
13 stop for lunch.

14 COMMISSIONER HICKINBOTTOM: I think he's right.
15 We'll break now for lunch. Should we try and get back by about
16 10 to 2:00.

17 THE WITNESS: (Mr Romney) Okay.

18 COMMISSIONER HICKINBOTTOM: Ten to 2:00.

19 THE WITNESS: (Mr Lettsome) Yes.

20 THE WITNESS: (Mr Romney) Thank you very much,
21 Commissioner.

22 (Recess.)

23 COMMISSIONER HICKINBOTTOM: Mr Rawat, you may
24 continue.

25 MR RAWAT: Thank you, Commissioner.

1 BY MR RAWAT:

2 Q. Welcome back, Mr Romney and Mr Lettsome.

3 Before we had the short break, we were looking at an
4 e-mail from the--the 17th of June 2020. Can I ask you now
5 just, please, to turn up page 677, please.

6 If you take--sorry, we would actually move forward in
7 the chronology. If you just take a quick look at 675. That's
8 the July 16th e-mail we were looking at. That was the last
9 thing we looked at, Mr Romney. I asked you both whether that
10 was about the first time you'd seen the proposal, and I just
11 want to draw your attention to the e-mail above that from
12 Mr Matthews, 17th of July, where he says: "As I previously
13 mentioned, I just cannot see how this expenditure can be
14 justified".

15 If you go over to the next page, 677, this is--so I'm
16 going to put my questions to you first, Mr Romney, but this is
17 from you to members of the Joint Task Force, and you say: "I
18 know this will reach many with a hard heart as this is
19 something we didn't expect and it will change the whole
20 dynamics of this operation moving forward if we are to use the
21 proposed platforms. Be that as it may, we have proceeded to
22 put the figures (rental of radar platforms) upfront instead of
23 as an Appendix as the Commissioner has suggested so that this
24 will remain in the minds of NSC members. Deputy James in the
25 Excel spreadsheet I have highlighted some cell that would need

1 costing from you to complete. I also ask that you use your
2 eloquence for a closing statement".

3 Now, that last part, is that addressed to Alvin
4 James?

5 A. (Mr Romney) Yes.

6 Q. And in your middle bit where you refer to the
7 Commissioner's suggestion, which Commissioner were you speaking
8 of then?

9 A. (Mr Romney) It should be the Commissioner of Police.

10 Q. Right. There are two attachments to the e-mail, and
11 I want, Mr Romney, if you could possibly help me to confirm
12 whether they--they--what I'm going to suggest are, the
13 attachments are, in fact, the same things.

14 If you look at 678 and we'll come back to it--it's a
15 table, and if you go through, that ends at 6--if you go through
16 to 683, there is then a border security equipment and resources
17 costing document, which is at 683, and carries the logos of the
18 three agencies.

19 Are those the two attachments to that e-mail or have
20 I got it wrong?

21 A. (Mr Romney) As far as I can recollect, yes.

22 Q. Okay. Thank you.

23 Let's go back to the e-mail, then.

24 Now, why did you write: "I know this will reach many
25 with a hard heart as this is something we didn't expect"?

1 A. (Mr Romney) And this is--I think under these
2 circumstances, if we task--the task we'd get in the platforms,
3 radar platforms, it would now impact the budget, our budget.

4 Q. And you said--

5 A. And it would--

6 (Overlapping speakers.)

7 Q. I'm sorry.

8 A. It would impact the direction we wanted to go.

9 Q. So, I'll ask this question when we actually look at
10 the Security Plan, but you said it would change the whole
11 dynamics of this operation moving forward. Can you just help
12 the Commissioner with how would it have changed the whole
13 dynamics of the operation?

14 A. (Mr Romney) In terms of money?

15 Q. In all terms.

16 A. (Mr Romney) In terms of financing, the Joint Task
17 Force wanted--and I keep saying it--wanted to get the permanent
18 platforms, and if we went with the--the radar budget, then it
19 would be the--the funding that we would have to purchase our
20 permanent platforms would be diverted there. So, basically
21 what we needed was funding to continue the running of the
22 operation, and with this coming onstream, it would affect it.

23 Q. So, it would take from some other things that you
24 would want to do.

25 A. (Mr Romney) That is how we--we--that is how I say it.

1 Q. And would it have effect in other ways in terms of
2 deployment of--of your personnel or how you would--other means
3 by which you would safeguard border security?

4 A. (Mr Romney) Well, if you don't have the assets, then
5 you can't deploy personnel, and the assets, if you would see in
6 the document I'm talking about, would be of boats and having
7 them repaired and having funds available for the upkeep and
8 maintenance.

9 Q. Can we look at that table, please.

10 A. (Mr Romney) Sure.

11 Q. Because what I wanted to--I want to suggest something
12 to you, and I would--tell me if I'm right or wrong.

13 The position that we seemed to have reached is that
14 the focus of Joint Task Force before we get to July 2020 is on
15 this idea of permanent territory-wide radar platforms and
16 purchasing that, so vessels being used at platforms was not a
17 priority for you. You're then asked to revisit the question.

18 A. (Mr Romney) Say--say that again for me?

19 Q. So, if we go back in time, as we--just to pull--pull
20 what we've discussed together, if we go back, when the first
21 iteration of your plan was coming out, your focus was on this
22 idea of these permanent stations for radar, not on using
23 vessels as--as platforms. You wanted to go and buy radar
24 platforms, not to rent them.

25 A. (Mr Romney) Our main objective was security, border

1 security. And as the Joint Task Force decide, the permanent
2 acquisition of radar would have been a long-term solution. It
3 would go way beyond three months. It would go way beyond six
4 months, and that is the way we decided.

5 Q. But the point is that when the EZ Shipping proposal
6 came into play, it came at least to NSC, and then filtered down
7 to the JTF that this was something that you now had to consider
8 for your Border Security Plan.

9 A. (Mr Romney) Right.

10 Q. If we look at 678, we looked at the widening of the
11 border security footprint and, at d), reading across, its
12 recommended action was "Conduct more intelligence driven
13 maritime associ--operations by utilisation of the Joint
14 Intelligence Unit, Radar Platforms, Visual surveillance". You
15 then say "Cost description, rental Radar Platforms for a month,
16 \$510,000, purchase of 5 Radar Platforms, \$150,000", and the
17 action points at the end: "To search, secure and purchase
18 radar platforms used to detect aircrafts and vessels in and
19 around territory. It is...noted that there will be other cost
20 involved for erection of these platforms and proper planning
21 and evaluation has to be made".

22 So, am I right that, firstly, I mean who was
23 responsible for drafting this document? Was it a Customs
24 document?

25 A. (Mr Romney) Customs, Immigration, Police.

1 Q. Right. But who took the lead on it?

2 A. (Mr Romney) Customs was the lead.

3 Q. Now, is the new addition, in light of what had come
4 down from the NSC that you were looking at representing radar
5 platforms at d)?

6 A. (Mr Romney) You're asking me a question?

7 Q. Yes. Is that what--is that for how the plan had been
8 revised now?

9 A. (Mr Romney) We have to look at, you know, if we order
10 a platform what it will cost, so this is reflective of that,
11 yes.

12 COMMISSIONER HICKINBOTTOM: Okay. Can you just help
13 me with--with that line. At the top of the columns, you've got
14 the words "3-Month Estimate" above one column of figures and
15 "6-Month Estimate" at the top of another column of figures.
16 Does that mean--here's what I'm taking it to mean, but I may be
17 wrong--that the \$510,000 was the--was the estimate for the
18 first three months of this plan, and that was going to go on
19 rental radar platforms; and then where it's got "6-Month
20 Estimate" that presumably is the estimate of the costs for
21 months 4 to 6, would be 150,000, and that would be to purchase
22 five land-based radar platforms?

23 THE WITNESS: (Mr Romney) Okay, so the 510, if we
24 look at the figures, I think it was 17,000, but the--and I
25 think it was reduced to about 14,000 somewhat.

1 MR RAWAT: Well, it comes out--sir, it may help if we
2 look at--so it's 683.

3 COMMISSIONER HICKINBOTTOM: 683.

4 MR RAWAT: Yeah. I think--I think the two documents
5 get to go together because there--

6 (Overlapping speakers.)

7 MR RAWAT: --some additional--

8 COMMISSIONER HICKINBOTTOM: Oh, this--this may help.

9 BY MR RAWAT:

10 Q. So that's where the figure of 510 comes from.

11 A. (Mr Romney) Right.

12 Q. The--at that time--so, at that time, you were costing
13 it on the basis of the EZ proposal alone, weren't you?

14 A. (Mr Romney) Yes.

15 Q. But then, if--is--going back to the Commissioner's
16 point, was the idea that--that you--what you would do is you
17 would rent (unclear) you know, two platforms for a month with
18 an estimate at that time of \$17,000 a day, but you would
19 then--what you would want to do is actually buy five radar
20 platforms?

21 A. (Mr Romney) The ultimate goal was to buy the--the
22 radar platforms. This exercise here was to present to NSC, and
23 it would show what the cost then would be if we have the
24 3-month plan compared to a 6-month plan.

25 Q. I see.

1 And so, what's--I mean what's the difference between
2 a 3-month and a 6-month plan? I mean, would the expectation be
3 that if you--if you adopted the 6-month plan, you would look
4 within six months having five radar platforms or--

5 A. (Mr Romney) Within six months we were thinking we
6 could have the radar platforms up.

7 COMMISSIONER HICKINBOTTOM: The territorial ones.

8 THE WITNESS: (Mr Romney) Yes, the territorial.

9 BY MR RAWAT:

10 Q. But the rental rate of--obviously, the renting radar
11 platforms by barges was a short-term solution.

12 A. (Mr Romney) Yes.

13 COMMISSIONER HICKINBOTTOM: And I mean, helpfully,
14 Mr Rawat referred us to page 683, and--and--and that explains
15 that I was wrong in thinking that the 510,000 was a figure for
16 three months. That's the figure for one month.

17 THE WITNESS: (Mr Romney) Correct.

18 COMMISSIONER HICKINBOTTOM: So--I mean the figure
19 obviously for three months being \$1.5 million odd.

20 THE WITNESS: (Mr Romney) Yes.

21 (Unclear.)

22 COMMISSIONER HICKINBOTTOM: So that stands. And then
23 the 150,000, that would--that would be the cost of purchasing
24 five land-based radar stations.

25 THE WITNESS: (Mr Romney) Yes, that should be.

1 COMMISSIONER HICKINBOTTOM: No, thanks very much.
2 Yes.

3 THE WITNESS: (Mr Romney) And it has four comments
4 for the rate of the 150.

5 COMMISSIONER HICKINBOTTOM: Yes. So it would be
6 further costs of--

7 THE WITNESS: (Mr Romney) Yes.

8 COMMISSIONER HICKINBOTTOM: --construction and so on
9 but--

10 THE WITNESS: (Mr Romney) Right.

11 COMMISSIONER HICKINBOTTOM: Yes. Thank you very
12 much, yeah.

13 BY MR RAWAT:

14 Q. Before we--we leave 683, Mr Romney, can you just help
15 me with the--the top part of that document, 683.

16 A. (Mr Romney) 683.

17 Q. The Word document rather than the table.

18 A. (Mr Romney) Which?

19 Q. Do you see the bit you--that's written: "In order to
20 execute our (3) month plan more efficiently, it has been agreed
21 that there is much effort needed to ensure that all marine
22 assets are functional at all times".

23 An issue this time or at least--and we're talking
24 July 2020 here--is that you, yourselves, as the Customs
25 Department and the Police, had limited working vessels; is that

1 right?

2 A. (Mr Romney) That's correct.

3 Q. And you were looking for funding to try an upgrade
4 those vessels.

5 A. (Mr Romney) Make repairs and main--the
6 maintenance--look at the maintenance of them.

7 Q. Because--and that was for you, as, if you like,
8 responsible for law enforcement, that--that--that was a key
9 feature of the plan that you wanted in place.

10 A. (Mr Romney) Right, because at this time we had
11 24-hour--we had 24-hour operations on the water with the teams,
12 so the boats were going all day, basically.

13 COMMISSIONER HICKINBOTTOM: These vessels which are
14 referred to there, the working vessels and nonworking vessels,
15 these were small boats, were they?

16 THE WITNESS: (Mr Romney) Interceptor boats.

17 COMMISSIONER HICKINBOTTOM: Interceptor boats, yes.

18 THE WITNESS: (Mr Romney) Yes, with the exception of
19 the bore slides, more like--it's a bigger boat belonging to the
20 Police, not the interceptor.

21 COMMISSIONER HICKINBOTTOM: Yes, thank you.

22 BY MR RAWAT:

23 Q. If we--(unclear) your evidence is that this is the
24 document attach--is attached to your e-mail of July 2020, so it
25 gives us the date for it. At that time, if you look,

1 you--there were--there are four vessels named there that are
2 awaiting repair. Can you remember how soon after July 2020
3 they were repaired and operational?

4 A. (Mr Romney) That was quite some time. I would have
5 to go back and research that, but that was some time.

6 Q. And had they been out of action for quite some time
7 as well?

8 A. (Mr Romney) The Ursula certainly was. From the
9 beginning of the operation, the Ursula was not working.

10 The Predator went down shortly after the operation
11 started, and this was in April. I'm not much sure about
12 the--the Defender. The Defender is the Police--Police
13 inflatable. And the Midnight Justice, that wasn't operational
14 either.

15 Q. If we turn up--so, I think--this plan was then taken
16 to NSC; is that right? This is the revised table that we see.

17 A. (Mr Romney) Well, it's incomplete here, but once it
18 was completed, it would have been forwarded to NSC.

19 Q. That's--that's a fair point. I think there
20 are--we--we have but we don't need to take you to it, but we do
21 have other versions also, tables, that looked very similar but
22 which have come from, for example, the Financial Secretary, and
23 that probably more likely would have found its way through the
24 NSC route to the Financial Secretary. So we don't need to--to
25 dig into that further, but let's look at 832, please.

1 Following Mr Smith giving evidence, he agreed to go
2 back to the Department and make further inquiries, and we know
3 you both assisted with those inquiries, but this is the only
4 copy of the Comprehensive Border Security Plan that has been
5 provided. I think, as we have been going through your
6 evidence, both of you have recognised that there must have been
7 earlier versions of it.

8 A. (Mr Romney) Yes.

9 Q. Do you know what's happened to those earlier
10 versions?

11 A. (Mr Romney) Earlier versions to what? This plan?

12 Q. Yes.

13 A. (Mr Romney) This is the plan we were tasked to
14 prepare.

15 Q. Yes. But what we've seen already is that there is a
16 change because of EZ Shipping.

17 A. (Mr Romney) When we started, yes, there was, but this
18 was actually--how should I put it? We would have
19 presented--and I--I think it would have been individually--what
20 the needs of each Department was. Customs would have provided
21 theirs, Police, Immigration, and so forth. With us now coming
22 together as a team, this is where they wanted this completed
23 document. So I would say that NSC knew of the--the needs of
24 the Department, and this now was, as formulated, that.

25 Q. And--and I accept that, but if we look, though, I've

1 taken you through a number of documents, when you would
2 make--and you've explained you were making submissions to the
3 NSC, and we've seen extracts of minutes where you were asked,
4 for example, to revisit the question of private vessels. So,
5 it does seem that you had a Comprehensive Plan in place at an
6 early stage and then you had to revise it because of this
7 question of now renting barges. Would you accept that?

8 A. (Mr Lettsome) If I may?

9 Q. Yes, please, Mr Lettsome.

10 A. (Mr Lettsome) We was called upon to do a
11 Comprehensive Plan, which was submitted to the NSC Cabinet
12 Secretary.

13 Q. I'm--I'm not--

14 A. So Mr Lettsome) So the-the--the--the plan you ask for
15 should be--they should have copies.

16 Q. Yes, basically, equally--

17 (Overlapping speakers.)

18 A. (Mr Lettsome) And we also have (unclear) completed
19 it.

20 Q. You should have it.

21 A. (Mr Lettsome) Yeah, (unclear.)

22 Q. Let me--I'll come back to the point. Let's go
23 through it a little bit. Let's look at 845. There is a
24 heading there called "Funding Requirement", and it says: "The
25 funding requirement of the plan found at Appendix I..." We

1 haven't or can't identify the appendices to this. There might
2 be Appendix 1 but the appendices to this paper...

3 Can you help us with what it might have been?

4 A. (Mr Romney) So, and this one would go back to the
5 same document we were just looking at or it should be.

6 Q. The table or the Word document?

7 A. (Mr Romney) The table. Should take you back to that
8 table.

9 Q. Right. If you look at 837?

10 A. (Mr Romney) 837?

11 Q. Yes, please.

12 You've got there "Long Term Goal, "Radar Platforms",
13 and that's where we (unclear)--but that's where you--as you've
14 described it, Mr Romney, as the long-term goal of wanting radar
15 platform was erected at various points within the territory to
16 provide you with the long-term solution; yep?

17 A. (Mr Romney) Yes.

18 Q. Now, if we go back to 845, and the wording of this
19 section--do you remember we were--we were looking at that
20 funding--funding document, where--which refers to the various
21 ships. Its wording, similar wording is now found in this part
22 because again you see the reference to the ships that are out
23 of action.

24 "To complement the Sea patrols for the adequate
25 securing of the Territory's borders, there is an urgent need to

1 introduce additional mitigation measures to prevent illegal
2 activities. The Joint Task Force has recommended the
3 purchasing of radar platforms to identify vessels approaching
4 our borders and to track vessel movement around the Territory".
5 That harks back to the long-term goal, doesn't it?

6 A. (Mr Romney) What section you are reading (unclear)--

7 Q. At very bottom, where it says"--it starts out "To
8 complement".

9 (Overlapping speakers.)

10 A. (Mr Romney) Okay.

11 Okay, and your question here to this is...

12 Q. Yeah. My point was that that links back to the
13 long-term solution that the Joint Task Force was interested in.

14 A. (Mr Romney) Yes.

15 Q. So, you then continue--or the paper continues: "It
16 was suggested we utilize the services from a company within the
17 Territory. An unsolicited proposal was submitted a few months
18 ago to the Premier and copied to the Governor, the Financial
19 Secretary and Commissioner of Police from EZ Shipping, to
20 provide access to the service needed". And then it's costed
21 again 17,500, coming to 510,000 a month. And what's said: "It
22 may be prudent to utilize this service for one month, during
23 which time the five proposed radar platforms can be procured
24 and possibly installed. The cost of five radar units is
25 \$150,000, and installation cost is estimated at \$300,000".

1 So, at that point, what's--it--what's informed the
2 Comprehensive Border Control Plan is the EZ Shipping proposal,
3 isn't it?

4 A. (Mr Romney) Give me your question again?

5 Q. The information that I've just looked at--

6 A. (Mr Romney) Um-hum.

7 Q. --can only have come from the EZ Shipping proposal.

8 A. (Mr Romney) Right.

9 Q. And so, this must be a revision of the Border
10 Security Plan because you only so as Customs the EZ Shipping
11 proposal in July 2020.

12 A. Yes. There were other estimates. I guess you will
13 get to that at a later time.

14 Q. Right.

15 A. (Mr Romney) I won't say anything at this time.

16 Q. Yeah. I'm--it's no--no secret, Mr Romney. What I'm
17 trying to do is try and do it chronologically so we can--

18 (Overlapping speakers.)

19 A. (Mr Romney) No problem.

20 Q. --so we can assess what's going on.

21 But the Border Security Plan, the change is think
22 about radar barges and the costing can only come from that one
23 proposal that you got at the time.

24 A. (Mr Romney) Right.

25 Q. And does this document then go back to the NSC?

1 A. (Mr Romney) Yes, it should.

2 Q. If we look at 287--286, sorry.

3 A. (Mr Romney) 286?

4 Q. Yes, please, Mr Romney.

5 What you should have is a--is an expedited extract;
6 yep?

7 A. (Mr Romney) 286.

8 Q. 286.

9 A. (Mr Romney) Yes.

10 Q. So it's an expedited extract that goes over to the
11 next page. Just so that again you could orient yourself, two
12 pages preceding, you can sort of orientate yourselves, if you go
13 to the preceding two pages before, go to 284, do you see an
14 e-mail from Cheryl Fahie? You should have at the top probably
15 an e-mail from Mr Matthews.

16 A. (Mr Romney) Right.

17 Q. And it's 7--July 27th, Monday. Underneath that is an
18 e-mail to Mr Matthews saying: "I have been directed to ensure
19 by the Governor that you receive a copy of the attached extract
20 for your perusal", and he then circulates it to yourself,
21 Mr Romney, and to Mr Lettsome and others on the Joint Task
22 Force.

23 Now, it looks like the expedited extract is at
24 document 286.

25 Do you have the document, Mr Romney?

1 A. (Mr Romney) Yes.

2 Q. Okay. I mean, it's an expedited extract 24th of
3 July 2020, and again this refers to an NSC council meeting.

4 Do you--excuse me. Do you remember, either of you,
5 attending an NSC meeting in late July 2020, where your Border
6 Security Plan was discussed?

7 A. (Mr Romney) We did. We submitted it, and we had to
8 return to the meeting in late July, yes.

9 Q. Right. And pause there, Mr Romney.

10 Mr Lettsome, can you add anything to that? Do you
11 have a recollection of presenting a revised Border Security
12 Plan in late July?

13 A. (Mr Lettsome) Yeah, we--we had the original Border
14 Security Plan, and we had a--like I said, a plan for the
15 additional three months, and was subject to someone at NSC that
16 same day just mentioned.

17 Q. Now if you look over, if we just go through it,
18 though, at a), the NSC had reviewed and accepted the
19 Comprehensive Border Security Plan. And would you agree that
20 that--it must have been the plan that we've just been looking
21 at that--that they had before them?

22 A. (Mr Romney) The plan that we had before the draft, so
23 it couldn't have been that.

24 Q. But a version of it?

25 A. (Mr Romney) Yes, it had to be a version of it.

1 Q. But of the actual document, rather, not the table. I
2 appreciate the table was a--

3 A. (Mr Romney) Right.

4 Q. --draft from your e-mail. But do you think it's
5 likely that what we've just looked at 832 was what was placed
6 in--in late July before the NSC?

7 A. (Mr Romney) Let us go back and look at it again.
8 832?

9 Q. 832.

10 A. (Mr Romney) Okay. So this documents or a version of
11 this document should have been submitted to the NSC.

12 Q. Right.

13 A. (Mr Romney) Right.

14 Q. And Customs, as the lead agency, should have on your
15 computers somewhere every version of the Border Security Plan
16 that you ever produced.

17 A. (Mr Romney) Yes.

18 A. (Mr Lettsome) We should have.

19 Q. So, even if this was a draft version and there was an
20 amended version submitted to NSC, you will have that.

21 A. (Mr Romney) Yes.

22 A. (Mr Lettsome) We should have it.

23 Q. Okay. Let's go back to 286. I mean, we've only got
24 that one--one plan, so we'll just have to work on that basis.
25 But if you go to 286.

1 A. (Mr Romney) Okay, I'm there.

2 Q. Now, Council--what Council appears to have been--the
3 National Security Council appears to have done is reviewed and
4 accepted the 'Comprehensive Border Security Plan', reviewed and
5 accepted the Comprehensive Border Security Estimates. Now, is
6 that a reference to the table in which you'd put funding
7 details?

8 A. (Mr Romney) Whatever table we sent, yes--

9 Q. Yes.

10 A. (Mr Romney) --that would have been.

11 Q. And then identified priority funding areas, and we've
12 got money allocated for repairs to vessels, for fuel costs.

13 And then if you go over to the next page, 287: "At
14 least two 24-hour platforms, in principle, to be negotiated by
15 the JTF in conjunction with the Ministry of Finance following a
16 rapid invitation of proposals for approval by the National
17 Security Council".

18 So, who was to take the lead in the JTF in these
19 negotiations?

20 A. (Mr Romney) It would have been Customs.

21 Q. And in--in what way were you going to work in
22 conjunction with the Ministry of Finance?

23 A. (Mr Romney) The Ministry of Finance wanted to know
24 the costing, and we were now to provide them with the costing.
25 If you go back to our previous extract here, you would see it

1 asks the Deputy Commissioner of Police for costing because we
2 were to tasked with getting all the costs together for whatever
3 we needed or whatever would have been used for border security.

4 Q. And then who was to--who was to conduct the rapid
5 invitation of proposals?

6 A. (Mr Romney) That's not Customs.

7 Q. That's not Customs.

8 A. (Mr Romney) No.

9 Q. Do you know who did do it, then?

10 A. (Mr Romney) I don't know who did it, but that would
11 be a function of the Ministry of Finance.

12 Q. And what--can you help us with this. The proposals
13 for approval by the National Security Council, does that mean
14 that the proposal was--would end up going back to the National
15 Security Council and they would then decide which one to
16 accept?

17 A. (Mr Romney) Yes, whatever we were doing was subject
18 to the National Security Council. We were only making
19 suggestions.

20 A. (Mr Lettsome) (Unclear.)

21 Q. I see. As a--I'll come to you, Mr Lettsome, but
22 as--as the JTF you could only make proposals to the National
23 Security Council.

24 A. (Mr Romney) Yes, sir.

25 Q. So if they had directed to you buy five radar barges,

1 that's how you would have had to go.

2 A. (Mr Romney) If they had directed us?

3 Q. Yes. If they had--if the recommendation here was
4 that, in principle, you should try and find five or six boats,
5 is that what you would have had to do? Do you have to follow
6 what the NSC tell you to do?

7 A. (Mr Romney) No.

8 (Overlapping speakers.)

9 A. (Mr Romney) I don't think it wouldn't be prudent for
10 us to buy five or six boats at that time.

11 Q. I was giving that as a hypothetical.

12 A. (Mr Romney) I understand what you're saying.

13 Let me go where--I'm trying to figure out where
14 you're going, okay?

15 Q. Just--just asking for information.

16 A. (Mr Romney) Okay. Ask me again, and let me give you
17 an answer.

18 COMMISSIONER HICKINBOTTOM: Just one moment.

19 BY MR RAWAT:

20 Q. It's really a question that goes to how the
21 relationship between the JTF--

22 A. (Mr Romney) Okay.

23 Q. --and the National Security Council operate. Is the
24 ultimate decision with the National Security Council? Can they
25 override what you have to say? I think you're ceding to

1 Mr Lettsome.

2 A. (Mr Lettsome) If I may, Your Honour, what we does at
3 the Customs and the JTF in their proposal to the Minister of
4 Finance, to the Cab--to the Cabinet Secretary, to the NSC,
5 they're the one making sure as to what they want to do.
6 We--they have different options and they choose what they want
7 to do. As far as the financing is concerned, we just submit to
8 the Financial Secretary and Ministry of Finance, and they're
9 the one that make decisions. We are totally out of it.

10 Q. So it's finally down to the NSC.

11 A. (Mr Lettsome) And the Ministry of Finance, who
12 handles the money.

13 Q. So it--

14 A. (Mr Lettsome) I has nothing to do. All we do--all we
15 do is saying, this is what might help us. And we submit it to
16 the powers that be, and they make the decision.

17 Q. So, it's at least two, 24-hour platforms in
18 principle. If we go to 823, please.

19 A. (Mr Romney) 823?

20 Q. 823, please, and we'll go back to Mr Romney on this.

21 A. (Mr Romney) 823?

22 Q. Yes, please.

23 If you can give some more detail about this e-mail,
24 Mr Romney, it would be really helpful. But on July the 27th,
25 2020, you e-mailed Mr Leonard of Global Ocean Transport. And

1 you--we can turn there, but you have actually submitted a
2 memorandum, which is at 818, in which you explain the--the
3 "initial request was by telephone conversation between myself
4 and Mr Leonard." You got that at 818. But just help us with
5 why you had e-mailed Mr Leonard at this time.

6 A. (Mr Romney) Okay. The document helped with the
7 costing. We met with the Deputy Financial Secretary, myself
8 and another Assistant Commissioner of Customs to try to get all
9 the Customs together.

10 Q. Is that Mr Frett that you met with?

11 A. Yes, Mr Jeremiah Frett. We met with him. He asked
12 the question about the cost of the barge from Mr Chalwell. I
13 told him it was 17,000 for the week. He told me to verify that
14 amount. I did so by calling Mr Chalwell right there and then,
15 and Mr Chalwell said that figure is incorrect.

16 Now, in that same meeting, Mr Frett said it would be
17 prudent to explore other the barge owners in the territory to
18 get an idea as to the costing of what this feel (unclear) would
19 cost. So this is the reason why I communicated not only with
20 Mr Leonard but others. I'm--I'm certain that you have those.

21 Q. I'll take you to the--the other one that we have in a
22 moment. If you--if we can see just so that you can orientate
23 yourself, Mr Romney, that Mr Leonard's answer is at 816.

24 A. (Mr Romney) 816. And he writes.

25 Q. And he writes to Mr Smith now, who's come back and

1 he's now in post, isn't he?

2 A. (Mr Romney) Yes.

3 Q. And--and gives a charge of \$15,000 per day for--for,
4 I think, a landing craft.

5 Now, just clarify this for me. We--we looked at that
6 NSC extract a few minutes ago. The e-mail that you sent to
7 Mr Leonard is making inquiries about one vessel for one month.
8 Why were you asking just about one vessel when it seemed that
9 the NSC has said that you--you need to go and find two?

10 A. (Mr Romney) 823?

11 Q. Yes, 8-2-3.

12 A. (Mr Romney) Okay. And your question here to me is
13 this? Is what?

14 Q. Is you sent an e-mail to Mr Leonard inquiring about a
15 vessel for--one vessel for one month.

16 A. (Mr Romney) Right.

17 Q. The expedited extract that we looked at from the NSC
18 was--had said that you--that what was--they'd approved was at
19 least two 24-hour platforms in principle.

20 So--so why were you asking Mr Leonard about one
21 vessel when, in fact, NSC's view was that two would be needed?

22 A. (Mr Romney) If you get a cost for one, you could
23 basically say that the cost for two would be double the amount.
24 However, I think we had a telephone conversation. I don't know
25 if he had all his vessels operational or available.

1 A. (Mr Lettsome) Commissioner, if I may?

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: (Mr Lettsome) At that point in time, we
4 were asked to--asked different people in industry. We asked
5 Caribbean Transport. We also asked--I don't know the proper
6 name but the guy by the name of Zuckerman (phonetic) He had a
7 barge. All those were asked. So if we get one from Zuckerman
8 and we get one from (unclear), and the price is right, then we
9 can move forward. So it wasn't liking we're--you're looking at
10 a package deal. You're looking at vessels to go hire one from
11 Jack and from Tom, and have our boats. So that was the reason
12 I think Mr Romney answered.

13 Q. So--so you were open to the possibility of having
14 vessels from different companies.

15 A. (Mr Lettsome) Yeah, yeah--
16 (Overlapping speakers.)

17 Q. If we--let's go to 87.

18 A. (Mr Romney) 827?

19 Q. 87.

20 Just to pick up what Mr Lettsome was saying there, at
21 the bottom of 87, Mr Romney, there's an e-mail sent this day,
22 and this time it's to Caribbean Transport, and it's in exactly
23 the same wording as your e-mail to Global Transport. And 8-6
24 is where Caribbean Transport's e-mail's response back on the
25 11th of August comes back, but at the top you can see the

1 substantive answer, top of 87 he says--they basically say
2 they're unable to fill the requirement needs. They don't
3 essentially have a vessel for a month to rent.

4 COMMISSIONER HICKINBOTTOM: It's 87, at the top of
5 87.

6 THE WITNESS: (Mr Romney) Okay. 87. 87.

7 BY MR RAWAT:

8 Q. Now, our understanding was that those were the only
9 two inquiries that Customs, apart from EZ Shipping, which I'll
10 come back to, but those are only two inquiries made. Now,
11 Mr Lettsome, you said a moment ago you may have made a third.
12 Can you remember how many inquiries Customs made at that time?

13 A. (Mr Lettsome) At the time Mr Romney was contacting
14 the different barge owners in that industry. I think we did
15 mention a second one. I don't know if he did get a chance to
16 contact him.

17 Q. Can you help us with that please, Mr Romney?

18 A. (Mr Romney) They contact Second Man; that's a Mr
19 Brown, but his barge was not operational.

20 Q. So what's the company's name again?

21 A. (Mr Romney) Second Man.

22 Q. Second?

23 (Overlapping speakers.)

24 A. (Mr Romney) That's the name of the company, and
25 that's the name he goes by as well.

1 Q. I see.

2 A. (Mr Romney) But his name is Mr Brown.

3 Q. Right.

4 A. (Mr Lettsome) Yeah. There was a newly acquired barge
5 that he (unclear) for me, to check and see if it was ready to
6 work, but unfortunately it wasn't operable at the time.

7 Q. Turn now to page 5.

8 Incidentally, Mr Romney, do you remember when I asked
9 you about who was going to get the proposals for the NSC, and
10 you said it was the Ministry of Finance?

11 A. (Mr Romney) Was to get proposals?

12 Q. Okay. Do you remember we looked at the
13 expi--expedited extract, and I asked you who was going to be
14 negotiating, who was going to be obtaining proposals, and you
15 said that was all down to the Ministry of Finance?

16 A. (Mr Romney) Um-hmm.

17 Q. And Mr Frett asked you to make inquiries.

18 A. (Mr Romney) Um-hmm.

19 Q. But were you expecting Mr Frett, as the Ministry of
20 Finance, to be making his own inquiries and obtaining proposals
21 as well?

22 A. (Mr Romney) No.

23 Q. So, were you--did you understand that when he made
24 that request to you, you--and you sent those e-mails, what you
25 were doing was obtaining proposals for Mr Frett?

1 A. (Mr Romney) Just did.

2 Q. And did you send them to him at the time? Did you
3 forward the response from Caribbean Transport and Global
4 Transport to him?

5 A. (Mr Romney) I don't know if I did at the time, but I
6 know all the mail, he got them.

7 Q. Do you--can you get a sense of when he might have got
8 them?

9 A. (Mr Romney) I can't recollect right now.

10 Q. If we look at 5, a letter 12th of August 2020,
11 addressed to the Commissioner of Customs, which, by then
12 Mr Lettsome would have been Mr Smith; is that right?

13 A. (Mr Lettsome) That's correct.

14 Q. And Mr Smith wasn't certain about the date on which
15 he'd taken his post back up, but can you help us? I think you
16 said that you'd stopped on the 7th of August.

17 A. (Mr Lettsome) Yeah. He took up on the 10th.

18 Q. On the 10th.

19 A. (Mr Lettsome) 10th of--yeah. I think it was the 10th
20 of (unclear), yeah.

21 Q. So what the letter begins is--

22 A. (Mr Lettsome) Can I refer to my (unclear)--

23 Q. Yes, of course.

24 A. (Mr Lettsome) Go ahead. I'll look (unclear).

25 Q. All right.

1 A. (Mr Lettsome) (Unclear) was--I'll--I'll--he was some
2 to be on the Friday, but it changed to the Monday, so I'll
3 check and see exactly.

4 Q. Right. The proposal begins--this letter begins:
5 "Thank you for taking the time to meet with us today to discuss
6 the marine border control needs of the territory".

7 Now, this suggests that there was a meeting between
8 Customs and EZ Shipping, and--and we are back to now it's
9 Mr Chalwell, at the bottom, sending it. Were either of you at
10 a meeting on the 12th of August with Mr Chalwell?

11 A. (Mr Lettsome) I wasn't.

12 A. (Mr Romney) I think I attended.

13 Q. Do you remember, Mr Romney, how--whether there were
14 any notes made of that meeting?

15 A. (Mr Romney) Not by myself.

16 Q. Was there a note taker there at all?

17 A. (Mr Romney) No.

18 Q. And what you're given is a--a proposal for the use of
19 two vessels, and at point 2, it's given the rate as \$7,200 per
20 day, and therefore it's--it makes--it excludes the cost of
21 fuel.

22 Now, can you help at all with how this proposal came
23 about?

24 A. (Mr Romney) No, I can't help with that.

25 Q. I mean, was it--was anybody from the Ministry of

1 Finance present at that meeting?

2 A. (Mr Romney) No.

3 Q. Do you remember if--I mean the letter obviously
4 followed on the same day. Do you remember the details being
5 discussed at the meeting?

6 A. (Mr Romney) Mr Chalwell basically just brought this
7 and submitted it to the Commissioner of Customs. It was, as
8 far as I could recollect, there was no discussion basically
9 about it.

10 Q. So, he just handed the letter over at the meeting.

11 A. (Mr Romney) We had some--some--some brief discussion.

12 Q. If you can, remember this letter and go to--go to
13 307.

14 A. 307. This is a second EZ Shipping letter, 21 of
15 August 2020. If you look at it, the wording is virtually the
16 same as that letter we just looked at. So it starts off by
17 suggesting that there was a meeting on the 21st of August.

18 Now, starting with you, Mr Romney, do you remember
19 that meeting, a second meeting with Mr Chalwell?

20 A. (Mr Romney) Not with myself.

21 Q. At which you were present.

22 A. (Mr Romney) No.

23 Q. Mr Lettsome, do you remember being present at a
24 meeting with Mr Chalwell?

25 A. (Mr Lettsome) Commissioner had no meeting with

1 Mr Chalwell, absolutely no meeting.

2 Q. What has changed is at the bottom: "We would like to
3 formally propose the use of three of our vessels". The rate is
4 now given as \$14,000 per day for all three vessels inclusive of
5 all costs.

6 As far as you're aware, did the Customs Department,
7 Mr Romney, have any involvement in negotiating these rates?

8 A. (Mr Romney) No.

9 Q. Now, I'll break down the question a little bit. You
10 didn't have any direct involvement (unclear)--

11 (Overlapping speakers.)

12 A. (Mr Romney) I didn't have any direct involvement in
13 negotiating anything.

14 Q. Do--do you know if Mr Wade Smith had any involvement
15 in it?

16 A. (Mr Romney) I don't know.

17 Q. Mr Lettsome, did you have any involvement?

18 A. (Mr Lettsome) No, I had not.

19 Q. Do you know if it was down to Mr Smith to negotiate
20 it?

21 A. (Mr Lettsome) I don't know.

22 Q. In the normal course of events, is this the sort of
23 the thing that the Ministry of Finance would be doing?

24 A. (Mr Romney) They would have input, definitely.

25 Q. So, you know, as the Customs Department, you've

1 obviously got a certain role. Where money is involved, would
2 you be expecting the Ministry of Finance to come in--come in
3 and take part in the meeting and the process?

4 A. (Mr Romney) Not necessarily, but before any action is
5 taken, we must seek their input.

6 A. (Mr Lettsome) If I may.

7 Q. Yes, please, Mr Lettsome.

8 A. (Mr Lettsome) What normally happened, the person
9 submitting what they want at least sent off to the Ministry of
10 Finance. They don't want to make decisions.

11 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.
12 I understand the Ministry of Finance has the money and so
13 you've got to go to the Ministry of Finance to get the money.

14 THE WITNESS: (Mr Lettsome) Right.

15 COMMISSIONER HICKINBOTTOM: But there is a difference
16 between page 5 and page 307; it's the difference the 12th of
17 August and the 21st of August because 12th of August--two
18 vessels and a rate of probably 14,400 per day, if the 7,200 is
19 per barge, and 307, three vessels. So there's a difference in
20 substance. It's not simply money. There's a difference in
21 substance. But--but--but you--you don't know how these came
22 about, really, because you have no part in the--

23 THE WITNESS: (Mr Lettsome) I had no negotiations.

24 COMMISSIONER HICKINBOTTOM: Thank you. Yes.

25 BY MR RAWAT:

1 Q. You're both at this point Deputy Commissioners, and
2 if--if you had no involvement in this from the Customs
3 perspective, who would have been responsible from the Customs
4 perspective for seeing this to fruition?

5 A. (Mr Lettsome) It would be the Commissioner.

6 Q. So it would be down to Mr Smith.

7 A. (Mr Lettsome) It would be up to him.

8 Q. Would you agree with that, Mr Romney?

9 A. (Mr Romney) Yes. If anything from Customs,
10 everything goes to the Commissioner of Customs.

11 COMMISSIONER HICKINBOTTOM: Mr Lettsome?

12 THE WITNESS: (Mr Lettsome) It would be submitted to
13 him. As far as negotiation, I don't know if he had
14 negotiation. But if that would be coming from outside, it
15 comes to the Commissioner and he (unclear) but I don't know
16 (unclear) in the negotiation.

17 BY MR RAWAT:

18 Q. One of the questions or requests that were made of
19 Mr Smith was whether he could provide any statistics about how
20 the deployment of the radar barges or how effective they were
21 because he said that--that--that effectiveness was--was
22 measured. Now, that's been provided at 932 in the bundle.

23 The next comes to you, Mr Lettsome, because I think
24 this was provided under cover of your memorandum.

25 Now, it's headed "Joint Border Patrol Monthly

1 Reports, August 24, 2021 through" the "31st" of "January 2021",
2 which is the period of time that the radar barges were being
3 rented.

4 Now, just so that we can be clear, Mr Lettsome, is
5 this a document that's been prepared for the COI, or is it one
6 that you already have it?

7 A. (Mr Lettsome) Is that (unclear)?

8 Q. 932, please.

9 A. (Mr Lettsome) Is there--is there a date on it.

10 Q. If you go--go--I think you might not be on the right
11 page.

12 A. (Mr Lettsome (Unclear.)

13 Q. 932.

14 A. (Mr Lettsome) 190, sorry. (Unclear), my bad.
15 9...932.

16 Q. Yes. Is that a document that--is it a summary that's
17 been prepared for the purpose of the COI or is it a document
18 you've had from before?

19 A. (Mr Lettsome) I'm checking the dates. Oh.

20 Commissioner, what the original plan that we had, due
21 to the fact Mr Smith wasn't there at the time, given what we
22 had prepared and then use that to help complete what he wanted
23 submitted.

24 Q. Right.

25 A. (Mr Lettsome) So just a summary excerpt of what our

1 original plan was.

2 Q. So--

3 A. (Mr Lettsome) So it was Mr Smith that prepared it. I
4 wasn't part of preparing that.

5 Q. I see. So, do you know whether it was prepared for
6 Mr Smith to provide information to the Commissioner or is this
7 the sort of report that you would have generated from when--or
8 just after EZ Shipping had finished their contract?

9 A. (Mr Lettsome) Mr Smith was asked to make a
10 presentation to NSC.

11 Q. I see.

12 A. (Mr Lettsome) And based on that, he went back--says
13 he was in there, and see what was there, and he used this
14 original submission extract to make his presentation.

15 Q. Other than this document, does--and I'll ask you,
16 Mr Lettsome, first--but does the Customs Department hold any
17 other information or statistics about how effective these radar
18 barges were?

19 A. (Mr Lettsome) Can you repeat the question, please?

20 Q. We obviously have this document.

21 A. (Mr Lettsome) Um-hmm.

22 Q. Other than this document, does the Customs Department
23 have any other information about how effective those radar
24 barges were?

25 A. (Mr Lettsome) There should be some data, but Mr

1 (unclear) should be familiar with as to following up (unclear)
2 progressive, whether succession, as we rent the barge, you have
3 a data on what goes on from day to day, so I think Mr Romney
4 have access to those data.

5 Q. Let's turn to Mr Romney.

6 What this says is--is number of vessels detected,
7 number intercepted, number detained and fined and then the
8 number of court proceedings. But aside from this, is there any
9 other data that the Customs Department collected about how
10 effective they were?

11 A. (Mr Romney) Okay, so on a month-to-month basis we
12 would have--we would generate our reports as to the progress of
13 what happened the previous month. Even in the JTF meetings, if
14 you go back to the minutes, we would report weekly what
15 incident occurred from Customs' standpoint.

16 Q. The difficulty for us is--I mean, I don't know
17 whether--I suppose from August 24th, were you--were you
18 minuting your minutes, your JTF minutes?

19 A. (Mr Romney) No, only when Mr Smith came on board.

20 Q. Right.

21 A. (Mr Romney) And that would be probably the second
22 or--or mid-August.

23 A. (Mr Lettsome) Hmm.

24 Q. So, in relation to the data platform, radar
25 platforms, what other information were you collecting?

1 A. (Mr Romney) I don't understand your question.

2 Q. What I'm trying to find out is what--how--how did
3 you, as the Customs Department, monitor whether the radar
4 platforms were an effective measure? The only--we asked this
5 question of Mr Smith.

6 A. (Mr Romney) Um-hmm.

7 Q. The only information the--the Commissioner has been
8 given is on this page.

9 A. (Mr Romney) Right.

10 Q. My first question is: Is there any other
11 information? And you referred to monthly reports being
12 generated. So that led me--

13 A. (Mr Romney) And that's just a standard report from
14 the Department.

15 Q. Right.

16 A. (Mr Romney) From the Department standpoint.

17 Q. So, other than that, there's nothing else about the
18 radar platforms.

19 A. (Mr Romney) No, not as far as I can recall.

20 Q. Can I just take the first one of this page on--as an
21 example, the August 24th to the 31st.

22 Number of vessels detected, so presumably the number
23 of vessels that appeared on the radar, 11; number of vessels
24 intercepted, that's nine. So that would be vessels intercepted
25 by your other boats; yes?

1 A. (Mr Romney) Yes.

2 Q. And the number of vessels detained and fined is one,
3 and number of court proceedings is one. Is that two separate
4 things? Could you detain a vessel and fine it and also do
5 court proceedings against a different vessel?

6 A. (Mr Romney) So each one would be different, so you
7 detain the vessel first and then you would settle
8 administratively or--or to court. So, in that particular
9 instance there, most likely detention and a fine was imposed.

10 Q. I see.

11 So, in August, the--the effect was that you had, if
12 you like, two outcomes against vessels, one being detained and
13 fined, one being subject to court proceedings.

14 A. (Mr Romney) Yes.

15 Q. September, it was three vessels detained and fined,
16 no court proceedings. October, one vessel detained and fined.
17 November nothing, December nothing, and in January one detained
18 and fined.

19 And by that, that actually means that you, on the
20 water, stopped them and fined them there and then.

21 A. (Mr Romney) No.

22 Q. No. What do you do with them?

23 A. (Mr Romney) They would have to report to Customs
24 headquarters or a representative from them.

25 Q. Can I take you back now to 283, please.

1 You remember we were looking at the expedited extract
2 of July 2020 from the NSC, which spoke about two platforms. In
3 this e-mail on August 17th, 2020, Mr Matthews, the then-Police
4 Commissioner, sends an e-mail to the Financial Secretary in
5 which you both are copied in, and refers to the NSC expedited
6 extract and the subsequent submission of priority spend areas
7 for the new Security Plan. He makes the point that the only
8 vessel available on the water is Customs' Midnight Express.
9 All remaining vessels awaiting funding for repairs, and he asks
10 about the allocation recommendation from NSC for the SAP
11 process.

12 If you want to see where Mr Forbes' response starts,
13 it's at 282, but the actual answer is then at the top of 283.
14 So just--just look at the bottom of 282, and you'll see there's
15 an e-mail sent on his behalf, 31st of August.

16 Now, he sends that e-mail just to Mr Matthews and
17 just to Mr Smith, so the two of you are not copied into it, but
18 what he says is: "Following the recent set of meetings with
19 the Premier and Minister of Finance, I would like to confirm
20 the funding in the amount of \$1M is current available through
21 the Ministry of Finance to address the priority areas in the
22 COVID-19 Border Security Plan".

23 Were--were you aware of this e-mail, Mr Romney, and
24 about additional funding being available?

25 A. (Mr Romney) No.

1 Q. Mr Lettsome, did you ever become aware of this
2 e-mail?

3 A. (Mr Lettsome) Can't recall.

4 Q. And the point about--that Mr Matthews makes, is
5 there, at that time in August, you just had one viable boat on
6 the water, the Customs' Midnight Express. The rest all needed
7 repairs; is that right?

8 A. (Mr Romney) That's correct, yeah.

9 Q. If you turn to 241, please. This is a memorandum
10 from the Ministry of Finance by Jeremiah Frett, and it relates
11 to the contracts that was then put in place for EZ Shipping.
12 Now, am I right to say, Mr Romney, you would have had no
13 involvement in that contract?

14 A. (Mr Romney) No, sir.

15 Q. Mr Lettsome, would have you had any involvement in
16 the contract?

17 A. (Mr Lettsome) No, sir.

18 Q. If you go to four--sorry, paragraph 4), 242, please.

19 A. (Mr Romney) 242?

20 Q. Yeah. It--it--it sets out there the background,
21 refers to the three companies, so there's--there's no reference
22 to Second Man or Mr Brown. At 6), it says that "further agreed
23 the Financial Secretary would negotiate the terms of the draft
24 proposal..." and refers to the final proposal.

25 If you go to 7) at 243?

1 A. (Mr Romney) Which page?

2 Q. Same page, 243, go to paragraph 7, 243.

3 COMMISSIONER HICKINBOTTOM: Yeah, go ahead, thanks.

4 BY MR RAWAT:

5 Q. So, at paragraph 7, Mr Frett explains that the
6 "barges will function as strategic outpost locations", and then
7 at 8) he says: "The barge platforms were activated on 23rd of
8 August 2020 and have yielded significant results ranging from
9 arrest, deterrents, and detention of vessels. Immigration has
10 joined Customs on the platforms, but the RVIPF has not yet
11 committed to use these platforms. Nevertheless, this
12 expeditious activation was deemed necessary as there is
13 evidence that some person(s) violated the laws of the
14 Territory. It is alleged that on Saturday morning 22nd of
15 August, a person violated the border entry laws and that
16 Customs has aborted an apparent attempt by smugglers and,
17 through the use of platforms, has been able to detect and hold
18 a vessel coming into our territorial waters on Saturday the
19 28th of August".

20 Now, Mr Frett, when we asked him about this, said
21 that this information had come from Customs. Had it come from
22 you, Mr Romney?

23 A. (Mr Romney) I don't know specifically if it came from
24 me.

25 Q. Well, Mr Lettsome, did it come from you?

1 A. (Mr Lettsome) (Unclear.)

2 Q. It didn't come from you.

3 A. (Mr Lettsome) (Unclear.) (Shaking head)

4 Q. If at that time Mr Frett was seeking information from
5 the Customs Department, who would he approach?

6 A. (Mr Romney) Either one of us.

7 Q. But do you remember being asked about how
8 effective--Mr Romney, Mr Lettsome's evidence is that he--he
9 wasn't involved in this, but do you remember Mr Frett speaking
10 to you about what kind of results the radar barges are
11 producing?

12 A. (Mr Romney) This is dated the 28th of August 2020?

13 Q. It's dated the 2nd of September. If you look at the
14 beginning of the page, at 243--241, I'm sorry, I should have
15 drawn that to your attention.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 THE WITNESS: The 2nd of September but in the
18 document you said that would have come into force on 23rd of
19 August.

20 Q. Yes.

21 A. (Mr Romney) So then we're only dealing with one week.

22 Q. Yes.

23 A. (Mr Romney) Look, given the assessment of the
24 platform in one week, I--I don't think that's quite a span of
25 time that would be--will give you a clear idea as to the

1 effectiveness.

2 Q. So, do you think it would be premature to describe
3 the barge platforms, after one week as having yielded
4 significant results ranging from arrest, deterrents, and
5 detention of vessels?

6 A. (Mr Romney) In one week?

7 Q. Yes.

8 A. (Mr Romney) The fact that the BVI is such a small
9 community, it would have been known by the public that the--the
10 Customs Department would have had these barges in strategic
11 location. Now, those are things that cannot be measured
12 because persons that would have gone unfettered in and out the
13 territory know they would know, hey, I can't go to the USVI
14 like I would ordinarily because there are radars out there.
15 So, measuring that, so, is very difficult to do, but certainly
16 you would have seen a reduction in the movement.

17 Q. But what Mr Frett and his evidence was in effect that
18 this--this wasn't his information. This was Customs'
19 information. All he did was write it down. So, what he was
20 saying was that Customs were telling him that there had been
21 significant results.

22 Now, when we looked at your--and "significant
23 results" implies that you have the data.

24 A. (Mr Romney) Right.

25 Q. When we look at page 932, that we looked at earlier,

1 in that period, ending just a couple of days before Mr Frett
2 wrote this memorandum, you--you detained one vehic--one vessel,
3 and you'd had one court proceedings.

4 So, it's--it's not neces--would you--would you
5 describe this as a significant result to have detained and
6 fined one vessel and to have taken court proceedings against a
7 second?

8 A. (Mr Romney) If I would say that? Like I said,
9 looking at the three (unclear) and you not understanding the
10 dynamics of such a small society, such a small community, it's
11 very difficult maybe for yourself to understand the difference
12 you would have seen on the water comparing to having a platform
13 in place and taking it--and not having a platform in place. So
14 the numbers that you see here may not reflect a significant
15 amount to yourself or anybody else looking at it, but for us,
16 being out there on the water and knowing the traffic that is
17 out there, yes, it would appear to us that there is a reduction
18 of movement.

19 COMMISSIONER HICKINBOTTOM: That's helpful.

20 I think the beginning of paragraph 8 refers to yearly
21 significant results ranging from arrests, deterrents, and
22 detention of vessels. As I understand your answer, Mr Romney
23 is that that's not complete, really, because the--the real
24 significance is the--is the decreased movement on water, so--I
25 mean an ideal result, if you're right and I understand this,

1 that would be, you know, no vessels detected because nobody was
2 moving. That's not a very elegant way of putting it, but
3 that--that's the--the criterion that--that you are using.

4 THE WITNESS: (Mr Romney) Yes.

5 COMMISSIONER HICKINBOTTOM: Yes, I see that.

6 BY MR RAWAT:

7 Q. So, just the knowledge of people being told
8 that--that Customs now have radar platforms has a deterrent
9 effect.

10 A. (Mr Romney) Yes.

11 Q. I'll try and take this--this bit quickly. If you go
12 to 231, Mr Frett--or EZ Shipping had more than one contract
13 through the period. They--they were engaged for--for longer
14 than a month, and this is the second memorandum that Mr Frett
15 produced, dated the 28th of October 2020. And--

16 A. (Mr Romney) Hold on a minute. So what page are you
17 on?

18 Q. 231, please.

19 A. (Mr Romney) 231, okay.

20 A. (Mr Lettsome) 231.

21 Q. He refers, at paragraph 2, that the measure had
22 proven objectively successful in deterring persons seeking to
23 enter into the territory illegally. So it stopped people
24 coming into the Virgin Islands. There has been a marked
25 reduction in marine traffic to that end.

1 No again, I think Mr--Mr Frett's evidence to the
2 Commission was that this was information coming from Customs.
3 Mr Romney, did have you any input into this memorandum?

4 A. (Mr Romney) Into this?

5 Q. Yes.

6 A. (Mr Romney) If Mr Frett asked me anything, I would
7 provide whatever he asked. But for this memorandum, no.

8 Q. So you don't remember him approaching you for
9 information.

10 A. (Mr Romney) If he approached me for information, I
11 would send it, I would give it to him, but he wouldn't
12 necessarily say what he wanted it for.

13 Q. That's fair enough. But do you remember him asking
14 you for information?

15 A. (Mr Romney) He asked me, and I provided, yes.

16 Q. Mr Lettsume, did you have any input into this
17 memorandum?

18 A. (Mr Lettsume) No, sir.

19 Q. If we go then to 263, please.

20 Now, this is the 15th of January. It relates to the
21 third and last contract EZ Shipping had. Again, it's drafted
22 by Mr Frett, and again paragraph 2, the last part of it that I
23 just--is in the same--uses the same words as the previous
24 memorandum that we had looked at.

25 Mr Lettsume, turning to you, do you remember having

1 input into this memorandum, Mr Frett contacting you for
2 information about how effective the radar platforms were?

3 A. (Mr Lettsome) I can't recall, sir.

4 Q. You can't recall as in--you can't remember if you did
5 or not?

6 A. (Mr Lettsome) I can't remember it. I--I--I don't
7 remember how the conversation went.

8 Q. Mr Romney, what about you? Do you remember in
9 January being approached by Mr Frett for information about how
10 the radar barges had been?

11 A. (Mr Romney) No. But let me make this clear. From
12 the Ministry of Finance, the relationship between the Ministry
13 of Finance and Customs, basically the Financial Secretary is
14 our boss. The boss will speak to our boss, which will be
15 Mr Smith, okay? So anything that is--is requested, it goes to
16 the head. That's what it's about.

17 Q. And does that work, Mr Romney, that the normal course
18 is that if the boss of the boss needs information, he goes to
19 the boss, he goes to Mr Smith?

20 A. (Mr Romney) Whoever sits in that seat, yes, he goes
21 to the Commissioner, whoever sets in that seat.

22 Q. At paragraph 4 on 263, the recommendation is for
23 EZ Shipping's contract to be extended to provide two barges to
24 serve as radar platforms for the securing of sea borders for a
25 further month.

1 Can you--Mr Romney, we'll start with you--but do you
2 know why the--we've now gone down from three to two barges?

3 A. (Mr Romney) From three to two?

4 Q. Yeah.

5 A. (Mr Romney) This is when?

6 Q. In January 2021.

7 A. (Mr Romney) In December, we had the opening up the
8 borders and the airport open. I know Immigration would have
9 said they needed their officers to work at the different ports.
10 The announcement by the Governor--the Government was that they
11 were opening the borders, and as such, Immigration notified us
12 that they needed to--to pull their officers in preparation for
13 the opening. So, we had a reduction in manpower.

14 Q. Do you agree with that, Mr Lettsome, that that was
15 the reason for reduction of--of two--from two--two to--three to
16 two?

17 A. (Mr Lettsome) Sir, I'm not too sure whether there was
18 a reduction. The Commissioner was in control in the moment.
19 They know that. I didn't have any part in that. I don't know
20 it was (unclear) two to three--from three to two.

21 Q. Can I just ask you, Mr Lettsome, some questions just
22 on--on one final matter. If you go back to 832.

23 A. (Mr Lettsome) 832?

24 Q. Yes.

25 Sorry, let's do it with 679.

1 A. (Mr Lettsome) 679.

2 Q. Do you remember the table that we were looking at?
3 You find page 678, first?

4 (Overlapping speakers.)

5 A. (Mr Lettsome) 6--

6 Q. 678.

7 A. (Mr Lettsome) 678.

8 A. (Mr Lettsome) 677 page number. Yes, sir.

9 Q. This is the table. If you go--it starts at 678, and
10 if you go over to the next page, 679, you should see a section
11 that says "Mitigation of Corruption and the Pending Risks". Do
12 you have that?

13 A. (Mr Lettsome) Yes, sir.

14 Q. Commissioner, for your note, that's dealt with in the
15 Comprehensive Border Security Plan at 842.

16 COMMISSIONER HICKINBOTTOM: Yes, thank you.

17 BY MR RAWAT:

18 Q. But reading across this, Mr Lettsome--and the reason
19 I'm asking you is--so you had held the post of Acting
20 Commissioner. It says: "Request thorough background checks of
21 current staff/ workers prior to employment, (Immigration, HM
22 Customs, BVIAA, ASSI Regulations)" and it says "to be conducted
23 in-house". And it then goes through on the six--I think the
24 six-month plan again, conduct in-houses, and then "Request
25 background check on Border Security Officers in conjunction

1 with RVIPF to ensure accountability".

2 That's the plan to essentially do background checks
3 on--on all your officers, isn't it?

4 A. (Mr Lettsome) Yes, sir.

5 Q. Has that plan been put in place for the Customs
6 Department?

7 A. (Mr Lettsome) Has the plan (unclear) put in place
8 since this?

9 Q. Yes.

10 A. (Mr Lettsome) To my recollection, not as yet.

11 Q. Now, before the plan was put in place, before this
12 recommendation was made, did you have any procedures in place
13 for doing background checks on your Customs Officers?

14 A. (Mr Lettsome) They'll be done at the
15 entry--when--entry level, but as time progressed, no.

16 Q. So, when you joined the Department, you--you have a
17 background check, but after that nothing.

18 A. (Mr Lettsome) (Unclear) there might be some
19 background check behind the scene, but given the person
20 that--you know that a background check was done on them.

21 Q. So, for yourself, there might have been something
22 when you joined in '77, but nothing since.

23 A. (Mr Lettsome) Yeah, I'm--I'm not aware of. I'm
24 going--

25 Q. Or regular checks every five years or anything like

1 that.

2 (Overlapping speakers.)

3 A. (Mr Lettsome) But we--but as time progressed, we
4 need--we realise that having trended up in a new region and we
5 realised that's something that (unclear), so we wanted to
6 introduce it into our plan.

7 Q. You don't--you haven't been able to introduce it
8 under this plan. Are there plans to introduce it now?

9 A. (Mr Lettsome) There--there is plan to introduce it,
10 yeah.

11 Q. And when--I'll come to you, Mr Romney.

12 When will that happen?

13 A. (Mr Lettsome) Well, the--the present Commissioner is
14 working a lot (unclear).

15 Q. I see. But does he have a date by which he wants to
16 do background checks of his officers?

17 A. (Mr Lettsome) He have a--there is a plan that
18 includes things like this. It's kind of ongoing but it's not
19 fully implemented.

20 Q. So it's not fully formulated yet as a plan.

21 A. (Mr Lettsome) No, not yet.

22 Q. So there isn't a date by which these will come in.

23 A. (Mr Lettsome) Not that I know of.

24 Q. Do you know--is there any sense of who will carry out
25 these background checks?

1 A. (Mr Lettsome) Well, we--we--we rely heavily on the
2 background checks for the--the Police Department.

3 Q. I see. Tell me if you can't help answer this, but in
4 terms of your employees and whatever interests they may have,
5 personal businesses, for example, that they may have as Customs
6 Officers, do you hold any of that kind of information?

7 A. (Mr Lettsome) Can you repeat that question, please?

8 Q. It wasn't very well put, but you obviously employ
9 Customs Officers. If they have outside interests that might
10 conflict with their role as Customs Officers, do they have to
11 reveal that to you?

12 A. (Mr Lettsome) Yeah. It is mentioned in the other
13 part of the Customs management, (unclear), that if we have
14 outside interests, that we should declare it.

15 Q. But is there any way of making sure that they do do
16 it?

17 A. (Mr Lettsome) Not sure.

18 Q. Thank you, Mr Lettsome.

19 Mr Romney, I think you--you--you were--you were going
20 to add some detail to--to Mr Lettsome's answers.

21 A. (Mr Romney) Okay. So, under this--you see the ASSI,
22 ASSI control or airport, so every one of our officers that
23 works at the airport, they have to have a background check done
24 by the Royal Virgin Islands Police Force and also by BVIAA.

25 As recently as a few months ago, this year, 2021,

1 BVIAA came to us and said some of our--some of the applications
2 we had sent in, they were insufficient, and now we are in the
3 process of renewing those or sub--resubmitting those
4 application both to the Royal Virgin Islands Police Force, it
5 goes to the airports, then in charge of intelligence and also
6 to the head of BVIAA security, Mr Williams.

7 In terms of what the Department has in place, we have
8 to--to spread out a bit more and look at what the Government
9 has--has in place. I know when I joined the Department
10 and--and after a few years ago, any interest an officer had
11 that would conflict, any officer or any--any Customs Officer or
12 any public officer that had any outside interests that may
13 conflict with their job, they needed to let the head of the
14 Department know. That was a requirement. I think that there
15 was some amendments to that, but I can't actually put my mind
16 to it at this point in time, but it was a requirement.

17 So, let me give you an example. I work at Customs,
18 and if I wanted to do--go into any venture that would conflict
19 with my job, then I would be required to submit to the
20 Commissioner of Customs my interests in doing such. That will
21 be forwarded, as far as I know, to H.R., and whether it is
22 approved or disapproved would be up to that body. I think that
23 that has been done away somewhat.

24 Q. When--you mentioned your officers that work at the
25 airport.

1 A. (Mr Romney) Yes, sir.

2 Q. Do you rotate officers into the airport or is it a
3 permanent position?

4 A. (Mr Romney) They are rotated.

5 Q. And what kind of rotation do you have? Means every
6 four months? Every six months? Or...

7 A. (Mr Romney) No. I would say more yearly because,
8 getting a--getting a pass at the airport, it takes quite a
9 while, and it's not only those officers that would be required
10 to do the background check. We have officers in the Mobile
11 Task Force and the (unclear) in the Canine Unit. They also
12 work at the airport from time to time, and their information
13 will be submitted for background checks and approval.

14 MR RAWAT: Sir, may I (unclear)?

15 COMMISSIONER HICKINBOTTOM: Certainly, yes. Thank
16 you.

17 BY MR RAWAT:

18 Q. Gentlemen, you both have been very patient with us.
19 Can I say that I have no further questions for you, but can I
20 thank you for coming today and also thank you for the way
21 you've given evidence to the Commissioner.

22 COMMISSIONER HICKINBOTTOM: Yes. Can I thank you,
23 too, for both coming and also the way in which you have given
24 your evidence. It's just been very, very helpful.

25 Just one thing I think to do.

1 Privacy, Solicitor General.

2 SOLICITOR GENERAL: May we request at least one day
3 to review the Transcript before--

4 COMMISSIONER HICKINBOTTOM: How long after the
5 Transcript?

6 SOLICITOR GENERAL: One day.

7 COMMISSIONER HICKINBOTTOM: A day?

8 SOLICITOR GENERAL: Yes.

9 COMMISSIONER HICKINBOTTOM: Yes. And does that apply
10 to the submissions this morning or do you need any time--

11 SOLICITOR GENERAL: Out of the abundance of caution,
12 we will apply to that as well.

13 COMMISSIONER HICKINBOTTOM: Okay. That's what will
14 be done. Thank you.

15 Good. Thank you both. I'll just rise for a few
16 minutes because then we'll sanitise everything (unclear).

17 MR RAWAT: Thank you, sir. Thank you.

18 (End of Session 2)

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Session 3

COMMISSIONER HICKINBOTTOM: Good, Mr Matthews. Thank you for being so patient.

THE WITNESS: Good afternoon, Your Honour. A pleasure.

COMMISSIONER HICKINBOTTOM: Could Mr Matthews be sworn in, thank you.

COMMISSION SECRETARY: Yes.

Mr Matthews, would you like to swear an oath today or make an affirmation?

THE WITNESS: I'll swear an oath.

COMMISSION SECRETARY: Would you like to take the Bible in your left hand and repeat the words on the sheet in front of you.

THE WITNESS: I swear by Almighty God that the evidence I shall give should be the truth, the whole truth, and nothing but the whole truth.

COMMISSION SECRETARY: Thank you.

COMMISSIONER HICKINBOTTOM: Yes, thank you.

Mr Rawat.

MR RAWAT: Thank you.

BY MR RAWAT:

Q. Good afternoon, Mr Matthews.

A. Good afternoon.

Q. Thank you for coming to give evidence.

1 Can we start off formalities. Can you give your full
2 name to the Commissioner, please.

3 A. My name is Michael Brian Matthews. I'm the retired
4 Commissioner of Police for the Virgin Islands Police Force.

5 Q. You will have heard me say to Mr Romney and
6 Mr Lettsome about the manner in which I am trying to put my
7 questions to you, but the point is if you need me to repeat or
8 rephrase anything, do ask. There is a bundle there in front of
9 you, and again keep your voice up, speak slowly.

10 As with Mr Lettsome and with Mr Romney, you're here
11 as a witness to assist the Commissioner, and it's really to ask
12 for your help in just putting some of the pieces of the
13 EZ Shipping puzzle together.

14 A. Okay.

15 Q. You've pointed out you're now retired from your final
16 role, but just give the Commissioner a brief outline of your
17 professional history in the police forces.

18 A. I have been a police officer since April 1982. And
19 when I joined in the United Kingdom, I became Constabulary. I
20 concluded my service in the United Kingdom in January 2013,
21 where I was the Chief Constable for Gloucestershire
22 Constabulary before I took a post as Chief Constable of the
23 Sovereign Base Area Police in Cyprus working for the Ministry
24 of Defence, UK.

25 And then, in April 2016, I was successfully appointed

1 as the Commissioner of the Royal Virgin Islands Police Force
2 for initially a three-year contract but was extended to five
3 years, which I just concluded just a month ago.

4 Q. Thank you.

5 Now, as I've said, we're really just--questions are
6 directed to the contract to use radar barges supplied by
7 EZ Shipping. And I'm going to try and shorten things, I hope,
8 by just asking if you agree with some of the details that
9 Mr Romney and Mr Lettsome have helpfully given us today. So,
10 we know about the Joint Task Force. I think we were told by
11 Mr Romney it was about March 2020 that it was set up. Do you
12 agree with that?

13 A. Yes, I would agree with that.

14 Q. And that certainly until Wade Smith came back into
15 post, the Task Force wasn't keeping minutes; is that right?

16 A. That will be correct.

17 In our first few meetings--and I think Mr Romney said
18 sometimes it's more than one a week--I took the initial Chair,
19 having agreed with Mr Lettsome and Customs and with the head of
20 Immigration that we should form this Task Force. Parts of the
21 kind of senior responsibility was to swear in Customs and
22 Immigration Officers as auxiliary Police Officers to give them
23 the requisite power, so I kind of took the initial Chair. But
24 as was indicated by the previous witnesses, most of this was
25 done by Zoom, Your Honour.

1 So I took notes, handwritten notes, when I was
2 chairing those meetings, but it would be correct to say we
3 didn't formalise into recorded minutes and published minutes
4 until Mr Smith took over the Chair around August time of last
5 year.

6 Q. But when the meetings--if the meetings agreed an
7 action point, were those circulated by e-mail? Do you
8 remember, or...

9 A. I don't believe there was much circulating in those
10 early days because we all knew each other pretty well and had
11 signed up to what we were trying to achieve. I think, you
12 know, is that all that would happen is I would make a note or
13 whoever was chairing the meeting would make a note, and then
14 the next meeting we would ask for an update, but I don't recall
15 us circulating summaries or action points.

16 Q. We were told that the Joint Task Force did--and this
17 is Mr Lettsome's evidence--produce documents that it would then
18 submit to the National Security Council, the "NSC". Is that
19 also your recollection?

20 A. Yes, that's correct.

21 Q. Now, you, as the Police Commissioner, are a member of
22 the NSC, aren't you?

23 A. That is correct.

24 Q. And as the former Police Commissioner, in that role,
25 do you actually have a vote on the NSC?

1 A. No.

2 Q. So, who are the voting members of the NSC?

3 A. It is the Chair of the NSC, which is the Governor for
4 the territory, and then you have the Premier and the Minister
5 of Finance and the Deputy Premier. And then they're advised by
6 the Attorney General from a legal perspective and the
7 Commissioner of Police from a security perspective.

8 Q. I see.

9 And does it work on the basis that from time to time,
10 if you needed another department to come and present to the NSC
11 it would be invited to do so?

12 A. Yes.

13 Quite frequently, Customs, Immigration, Director of
14 Public Prosecutions--it depends what the subject matter was
15 about, but yes, they could be invited in to give expert opinion
16 and advice to the--to the Committee.

17 Q. The Comprehensive Border Security Plan. Now, I think
18 we have at the moment one version of that, which is the version
19 that was all that refers to the EZ Shipping proposal, and what
20 I put to Mr Lettsome and Mr Romney is that there must have been
21 early versions of it. Were there, in fact, a number of
22 versions of the Security Plan?

23 A. Yes, Commissioner. My recollection, it differs
24 slightly from what I heard earlier in that originally we were
25 tasked to--as was said, to provide a comprehensive security

1 proposal to the National Security Council, which was done, and
2 it brought with it in totality some bill of well over a million
3 dollars' worth of proposals. I don't remember the exact
4 figures. You may have them already.

5 And certainly when that was brought to the National
6 Security Council as a document, it was--I would say "rejected"
7 is probably too strong a word, but it was requested that it was
8 broken down because, first of all, it wasn't clear in our
9 original submission what the priority order was of any
10 spending. And, secondly, the Minister of Finance made it clear
11 that we may not have all of that funding available all at once,
12 and that's when the three-month plan was then tasked to say
13 "Take your original proposals away and come back with a
14 three-month plan and then a six-month plan."

15 So, there were previous iterations, but in fairness
16 to the evidence my colleagues gave to the Inquiry, some of
17 those iterations never lasted the end of the day because it
18 might have been something that got spun around on an e-mail
19 between us, and one of us might say, "I've gone through it and
20 I've added a line to paragraph whatever" and then sent it back.
21 And then, of course, you've got another version again because
22 another paragraph has been updated.

23 So, I guess the only important ones were the ones the
24 JTF finally said, "Okay, we're all happy with this document.
25 This is the one that's going to go to the NSC."

1 Q. And in terms of the ones that were submitted to the
2 NSC, presumably obviously the NSC would hold those, but of the
3 three agencies, who would hold the master copy?

4 A. Well, Customs took the lead for the compilation of
5 the Comprehensive Security Plan so they held the master copy,
6 but it would be fair to say, I'm sure, that the other agencies
7 all had copies on e-mail or a hard copy.

8 Q. If you look to your bundle, please, Mr Matthews, and
9 just look at 876.

10 A. 76?

11 Q. 876.

12 We may jump around the bundle, I'm afraid, but...

13 A. Yes.

14 Q. Just to give you an opportunity to look at a document
15 you will have seen last year at least, but it's the unsolicited
16 proposal for border patrol from EZ Shipping.

17 Now, if you go to 879, that's the actual letter, and
18 it's addressed to the Premier, copied to you, the Financial
19 Secretary, and the Governor.

20 Now, I've asked this question of more than one
21 witness, but as of 6 of May 2020, did you know Clyde Chalwell?

22 A. I can't actually say I know the gentleman personally
23 or whether I have ever met him in person. I certainly do not
24 know him personally.

25 Q. Right.

1 Now, if we go to 880, he gives the costing for two
2 ships, but--and it comes to \$17,000 a day.

3 Now, at 825 in the bundle...

4 A. Yes.

5 Q. ...we find your response to Mr Chalwell at the
6 bottom--the bottom half of the page, but 15th of May 2020,
7 you're copied in, your Deputy Alvin James?

8 A. Correct.

9 Q. Another Officer from the Police Force, also the
10 Premier and Minister of Finance, and then Customs colleagues.
11 Now, just familiar yourself with the e-mail. I won't read this
12 out, but I read this to Mr Romney and Mr Lettsome, but once
13 you've taken a moment to read it, can you just assist the
14 Commission further, what was happening at the time in terms of
15 the use of volunteer boats and private captains?

16 A. As you rightly pointed out, this is May 15th by the
17 time I'm responding to this, but since about the end of March
18 certainly throughout April and beginning of May, we had already
19 responded to the closure of the borders in the BVI.

20 Indeed, I, on a personal note, had to cut short a
21 vacation with my wife, and we were almost, I think, the last to
22 get back in before the borders shut down in March, so I knew
23 that it was serious, you know, that we had got back in and the
24 borders closed, and no more flights, went into quarantine, and
25 we were immediately then looking at the responsibility for

1 ensuring the security of that closure.

2 And indeed, as I alluded to earlier on, because of
3 the scale of what we were being asked to do, I recognised very
4 quickly that was beyond the RVIPF's capability on its own, and
5 I made the approach to Customs and Immigration about joining
6 forces and using their resources together with our resources to
7 do both sea and land-based patrols to ensure that border
8 security.

9 In doing so--and, Mr Amory, who was mentioned in that
10 e-mail, was copied into that e-mail, he was Superintendent of
11 Operations within the Royal Virgin Islands Police Force and
12 also sat on the Joint Task Force, I tasked Mr Amory with
13 approaching the private sector, in particular the charter
14 industry, to see water systems may be available to us to get
15 coverage out on the borders.

16 In particular, I was concerned about the border
17 between the U.S. Virgin Islands and ourselves. And that
18 coupled with, it was brought to my attention, although I don't
19 recall seeing specific correspondence addressed to me on it,
20 but it was brought to my attention that people had also reached
21 out voluntarily and had contacted people within the force
22 saying, "We would be willing to go and sit out there".

23 Now, bearing in mind that the context of this is when
24 the border is shut down, we had a lot of charter boats with a
25 lot of crews on them trapped here, and they were all required

1 to sit on buoys out in the channel or in the bays around the
2 islands, and they had to sit it out for 14 days. Once we had
3 shut the borders, we gave people a chance to sort of get a few
4 groceries, and then it was quarantine before we would allow
5 anyone to move around again.

6 So, I certainly recall one of the officers came from
7 one of those charter boats that was in quarantine stuck on a
8 buoy but happened to be out towards the end of Norman Island
9 looking at USVI. They had radar on board, and they said,
10 "Would it help you guys with your security if we switched our
11 radar on and kept an eye on things for you?" And that was
12 right back at the probably the end of March, so that was
13 beginning of us getting an understanding actually of what the
14 charter industry might be able to do to help us and why we then
15 approached the charter industry direct.

16 Q. And you've explained the process maybe through
17 Mr Amory, but--and were the charter industry receptive to the
18 approach?

19 A. Yes. Yes.

20 The provided--initially, they provided one boat with
21 a captain on board, and there was no initial rental charge
22 other than for fuel and provisions, and we stationed that boat
23 off of Jost Van Dyke because we knew we had a vulnerable area
24 between the island of Jost Van Dyke and straight across to
25 St John and St Thomas, which are the U.S. Virgin Islands, and

1 that boat was stationed there with a radar operating, and we
2 would put a member of law enforcement on there alongside the
3 boat captain on a daily basis and monitor anything that moved,
4 and then passed the information in to our patrols that might or
5 might not be available to intercept.

6 Q. And so, the way these things worked is they sit at
7 selected locations and just run the radar?

8 A. Correct, yes.

9 Q. Now, you made the point that this emerged at the
10 start of the lockdown response, and we're now in May.

11 Was it still working efficiently as of May?

12 A. Yes. As far as I can recall, I think by around that
13 time we had at least two catamarans sitting out there assisting
14 us in this fashion.

15 There is something in the back of my mind,
16 Commissioner, that suggests that we may have been asked to
17 start hiring on a weekly basis at some point, and I can't--I
18 can't honestly recall the costs, but it was around somewhere
19 between a thousand to \$2,000 a week to hire, but that seemed to
20 come in around that time.

21 Q. Now, when, if you like, the terms of the contract
22 start changing and people start wanting pay, who do you have to
23 take that up with?

24 A. If we haven't got funding within our own budget, then
25 you have to make application to the Ministry of Finance.

1 Q. And did you ever have discussions with the Ministry
2 of Finance about hiring boats to sit as sort of radar--radar
3 platforms?

4 A. We certainly had--we certainly had conversations with
5 the Ministry right back at the beginning about just hiring
6 boats because, as I think you already heard in evidence, there
7 was a significant period of time when a number of boats were
8 not operating either on the Police service side or on the
9 Customs side. I cannot recall if we specifically asked about
10 boats with radars. We were just literally desperate to get law
11 enforcement officers out on the water to get some coverage.

12 And we certainly--again, without putting in, you
13 know, an advert out, people approached the force and said,
14 "I've got a high-speed boat. I would be willing to loan it to
15 you." Some of the bigger resorts here up on the North Sound,
16 for example, Oil Nut Bay, Necker Island, resorts like that,
17 they--they came forward very quickly offering boats, and we
18 took up those offers and used those boats for free, but they
19 weren't radar boats. They were boats that we could deploy law
20 enforcement personnel on.

21 Q. If you like, a sort of interceptor boats or patrol
22 boats?

23 A. Yes. They were patrol boats, you know, to give a
24 visible presence on the water.

25 Q. I see.

1 Now, you effectively in this e-mail rejected
2 Mr Chalwell's offer.

3 A. Yes.

4 Q. Was there any particular concern that you had about
5 it at that time?

6 A. Yes.

7 If I can be honest, which I must be today, as--as the
8 Police Commissioner, like many heads of departments, as the
9 terminology is used here, I'm also what they call an
10 "accountable officer" when it comes to the budget allocated to
11 you. And from Day 1, as Police Commissioner's made very clear
12 to you about the financial regulations in force in the
13 territory and the requirement placed upon you to adhere to
14 those financial regulation. And throughout my experience as a
15 senior Police Officer, I've always been under an absolute
16 responsibility for the public purse and ensuring value for
17 money.

18 And so my first reaction in reading the proposal
19 was--and it was just my opinion at the time when I read it--I
20 couldn't see how that represented value for money against the
21 budget that I had been allocated. I certainly could not afford
22 it within the police budget. And the costs I saw there, I
23 simply was not willing to even make an approach to the Ministry
24 of Finance because my genuinely held belief at the time is I
25 would be laughed out of the room. I actually thought the

1 Ministry of Finance thought I was mad by taking such a proposal
2 forward, so I never bothered.

3 And to my shame, Commissioner, I actually, I think,
4 threw the proposal in the bin after reading it, and I think it
5 might be my Deputy who said to me, "You know, you ought to at
6 least send him a reply," and I probably put out the bin and put
7 it on the desk and then typed the letter sort of thing.

8 Q. Let's go to 251.

9 A. 251.

10 Q. Please.

11 A. Yes.

12 Q. This is an e-mail sent from Glenroy Forbes to
13 yourself and other members of the Task Force leadership, and it
14 forwards Cabinet's decision about the Border Security Plan. If
15 you turn over, you can see Cabinet's decision.

16 I just want to show it because it's just--it's a
17 decision dated the 2nd of June 2020, and you said a few moments
18 ago that effectively you were asked to break down the plan in
19 more detail.

20 A. Yes.

21 Q. Could this have been the point where you were, having
22 submitted a Border Security Plan, you were then asked to break
23 it down to a three-month plan and a six-month plan?

24 A. Yes. This looks very much like--this is exactly what
25 I was referring to earlier, yes.

1 Q. Now, if we go to 819.

2 A. 819?

3 Q. Please.

4 A. Yes.

5 Q. Now, at that time, you're effectively wearing two
6 hats, aren't you? Because you're a member of the NSC but you
7 were also a member of the Joint Task Force presenting at the
8 NSC.

9 Do you agree with Mr Romney and Mr Lettsome that,
10 certainly from a security point of view, the final word sat
11 with the NSC?

12 A. Yes.

13 Q. And so, all the Joint Task Force could do was makes
14 proposals--

15 A. Yes.

16 Q. --which could be accepted, rejected or amended?

17 A. Yes, that's correct.

18 Q. Now, here, what's happening is--and again, it's
19 copied to the Joint Task Force, if you like, but it says that
20 Cabinet agreed that the Task Force revisit the proposal
21 received from private vessel owners offering their vessels to
22 support border management/control efforts which will be
23 considered by the National Security Council, and that's to be
24 considered the 7th of July.

25 Now, your response to that is overleaf, and it's on

1 the 5th of July, and you say that you had been caught by
2 surprise by the emergency NSC meeting topic, and you say on
3 15th of May: "I wrote to Mr Chalwell following receipt of an
4 unsolicited proposal offering two of his vessels as static
5 platforms. My response was to decline his offer." We will
6 look at this in more detail, but what's being asked by Cabinet
7 is that you revisit the proposal received from private vessel
8 owners.

9 So this is some time now since May. What did you
10 take that as a request to do? What did you think you were
11 being asked to revisit?

12 A. Well, as you can see, as it's indicated in there, it
13 took me completely by surprise because up until that point
14 there had been no conversation that I could recall or within
15 the National Security Council around the use of static barges
16 or any proposal.

17 So, as you said, you know, after I'd sent my answer
18 back to Mr Chalwell in May, I hadn't really given this any more
19 thought until I received this e-mail saying Cabinet has made
20 this decision.

21 And I put two and two together and thought, well, as
22 I recall--and I was correct from looking at your copies--that
23 the Premier was also copied into the original proposal, so I
24 was copied--sorry, the original proposal went to the Premier
25 and I was copied into it, is probably more accurate.

1 And so, my understanding of what this Cabinet
2 direction was that we were to revisit that proposal having
3 perhaps, in my head, I thought, well, I singularly, if you
4 like, refused it, as the Commissioner of Police, but I'm
5 getting the understanding now that they want the entire Joint
6 Task Force to now look at this.

7 And I should stress--and it may help to contextualise
8 that further by simply saying this, Commissioner: As the
9 Commissioner of Police, I am operationally independent, so even
10 the--even though I answer, I'm accountable to the Governor of
11 the Territory by law. Operationally, the Governor cannot
12 direct me; the Premier cannot direct me. NSC cannot direct me
13 how I will operationalise a task. They can tell me what their
14 priorities are and things they believe should be addressed by
15 the Force, but I must then decide independently of that how I
16 will address that problem.

17 The same does not exist for the heads of Customs and
18 Immigration, and therefore, I guess a long-winded answer to you
19 is, my take on it was that the Commissioner of Police has said
20 "no," but Cabinet are now asking for the Joint Task Force,
21 which includes Customs and Immigration to consider this offer,
22 which, of course, you see my response there.

23 Q. So, you put two and two together and thought, "Well,
24 this can't factor what I received in May." Now, at the time we
25 are obviously a couple of months further down the line.

1 Was the Royal Virgin Islands Police Force still using
2 volunteer boats as radar platforms?

3 A. By that time I would say we probably weren't. Most
4 of the charter boats had ditched their crews as soon--as soon
5 as people were allowed to leave the territory, a lot of people
6 did leave the territory. A lot of the boats were also being
7 taken away or put into safe locations because, of course, we
8 were into hurricane season by then, so I would say from
9 recollection we probably by that time were not.

10 Q. And in terms of the sort of progress of the lockdown,
11 you explained to the Commissioner that you and your wife were
12 the sort of last people back in through the door, so there then
13 followed a total lockdown in March. How long did that last?

14 A. I hate to say, Commissioner. It all merges into one
15 in my head, but certainly the borders were--remained closed
16 right through the year until December. But internally, in
17 terms of lockdown, there were different occasions when we were
18 locked down as a community, but my recollection is the initial
19 lock-down, I believe, was for 14 days. It may have been 21
20 days. We certainly gave people two or three days to get
21 shopping in before we did it, and then they eased restrictions
22 up. There was a further lock-down because there were more
23 cases of COVID in the territory. We had a, regrettably, a
24 death as well as a direct result of COVID. And following from
25 that, it got very, very strict in terms of movement, curfews,

1 masks, social distancing, et cetera, but the order of these
2 things were done--and I regret--

3 COMMISSIONER HICKINBOTTOM: The borders were closed
4 from March to December?

5 THE WITNESS: Yes, yes.

6 BY MR RAWAT:

7 Q. In terms that you were no longer using boats and
8 there had been a reduction in the availability of charter
9 boats, if you had had the funding and had wanted to go out and
10 get yourself a charter boat, could you have done that?

11 A. Yes.

12 Q. Would there have been sufficient boats around?

13 A. Yes. Indeed.

14 And when--and it may be jumping ahead, but when we
15 were tasked to revisit these decisions, there was much debate
16 in the Joint Task Force about what the best solution was.

17 And certainly when good colleagues in Customs were
18 looking at barge options at the same time I had tasked my team
19 back to the charter industry again and look at charter boat
20 options, which for the very reason I stated, were earlier,
21 much, much cheaper options on the table as far as I was
22 concerned.

23 Q. And were they still much cheaper options?

24 A. Yes.

25 Q. And did you get that information to anyone?

1 A. Yes. I gave it to the National Security Council.

2 Q. I see.

3 Now, the point is made that the National Security
4 Council will convene a special meeting on the 7th of July, and
5 so up until that point, as sitting on the Council, this hadn't
6 come back to the Council at any point?

7 A. Not to my recollection, no.

8 Q. Now, if we go to your--on the--on the next page, it's
9 your response of the 5th of July that we briefly looked at, but
10 your final paragraph--and it's addressed to Mr Lettsome and
11 Mr Penn--is, of course, you must make up your mind, but the
12 costs involved, and you list various things that could be used,
13 could be purchased.

14 A. I'm sorry, which page?

15 Q. 820. If you look at 820.

16 A. 820, yes. Sorry.

17 (Overlapping speakers.)

18 Q. I'm trying to--maybe I'm going a bit too fast.

19 So, you set the background, explained what your
20 response to Mr Chalwell had been, and you conclude you must
21 make up your own mind with the costs involved if such funding
22 is made available could be used for static grade or
23 night-vision cameras or others brought to the security
24 operation rather than being used for higher static vehicles.

25 Now, pause there. Why did those things--static

1 radar, night-vision cameras or others--why did those come
2 uppermost to your mind to put in your e-mail?

3 A. Even--even prior to COVID and the lock-down here, it
4 was my opinion that we had inadequate security on our waters.
5 For an island-based community, you know, 60 islands, we were
6 porous, and we needed a robust and visible response on the
7 water.

8 In discussions with the Governor at the time,
9 Augustus Jaspert, I pushed for funding for static radar, and
10 that at a point the last year around this time, there was an
11 offer developed through UK funding to support the purchase of
12 static radar.

13 Now, I can't remember from the top my head without
14 looking at documentation at which point that offer came, and it
15 may have been after I had written that because certainly I
16 mentioned in here night-vision glasses, and we did obtain those
17 through UK funding mechanisms by the Governor's Office later in
18 the year.

19 So, I know certainly I was having conversations with
20 the Governor on these matters, and hence that's probably why it
21 was in the forefront of my mind.

22 Q. Now, when you say "static radar", is that a reference
23 to what I was asking Mr Romney about, which was that the
24 long-term goal of having radar platforms, so on land you have
25 radar platforms for specific locations to give you full

1 coverage?

2 A. Yes, yes, land-based radar platforms, yes.

3 Q. Now, you conclude in that e-mail--and it goes back
4 over the page, and we could look at that--by that that such
5 platforms not feature as a priority in our previous plan
6 submitted to NSC.

7 Now--so do you agree with Mr Romney that, certainly
8 from the Joint Task Force's perspective, the priority would
9 have been the static radar option?

10 A. Absolutely.

11 Q. And so the more funds that could be committed to that
12 Option the better?

13 A. Yes, absolutely.

14 And with the knowledge that there was a potential
15 offer on the table with matched funding from the UK.

16 Q. Look over to 819. You need to go back a page.

17 A. Yes.

18 Q. That's the way it's been photocopied.

19 But you say: "Should we face pressure to make such
20 use of private vessels? My view is that for such high sums of
21 money we should go out to tender and let others bid."

22 Now, you had put it down as \$17,500 per week.

23 A. Yes.

24 Q. In fact, it was 17,500 per day.

25 A. Yes.

1 Q. So it was higher than you envisaged.

2 But breaking that comment down, "should we face
3 pressure to make such use of private vessels," who would the
4 pressure have come from?

5 A. Cabinet in the first instance I would have been
6 referring to there because, in receiving this from Cabinet,
7 which was quite an unusual scenario--you know, one is used to
8 receiving direction from the National Security Council on
9 security matters because security comes under the Governor
10 under the Constitution of the Territory, to then see the
11 elected Cabinet who don't have direct responsibility for
12 security directing matters on security, I felt that obviously
13 we, as the recipient, direct recipients, of that direction, we
14 have to act on it because they are our elected members, they
15 are Government, but for me, recognising that wasn't necessarily
16 their role and responsibility, that felt that we were in a
17 pressurised situation.

18 Q. Do you--we looked at the--and it's still--we're on
19 that page, but obviously this meeting, this special meeting on
20 Tuesday the 7th of July, now is there anything particular about
21 the fact that it's referred to as a "special meeting"?

22 A. No. Generally, there has been a number of special
23 meetings of the National Security Council convened.
24 Originally, it was also envisaged that NSC would sit every two
25 weeks--that's going back several years, Commissioner--but it

1 was never really achieved during the five years I was in
2 tenure. Generally speaking, NSC would sit every four to six
3 weeks, so I would suggest normally.

4 But with COVID and with security becoming at the
5 forefront of people's minds, there very often was emergency
6 meetings called, and they were sometimes called by the Governor
7 himself, they were sometimes called by the Premier, but either
8 way they were called, and we would attend accordingly.

9 Q. If we go now to 673, please, Mr Matthews.

10 A. 673?

11 Q. Yes, please.

12 A. Yes.

13 Q. July the 16th now. Mr Romney now circulates to
14 everyone the proposal by EZ Shipping for everyone to review.
15 And would you agree with this--you copied your May response to
16 Mr Chalwell. You copied in others but they hadn't seen the
17 proposal, so this July the 16th appears to be the first time
18 that the Joint Task Force is now considering the EZ Shipping
19 proposal.

20 A. Yes. Now I agree with Mr Romney, that would have
21 been right.

22 Q. If we then go to 677.

23 A. Yes.

24 Q. 19th of July, Mr Romney now says in the e-mail: "I
25 know this will reach many with a hard heart as this is

1 something we didn't expect, and it would change the whole
2 dynamics of this operation moving forward if we are to use the
3 proposed platforms." So, this is addressed to you.

4 What did you take, or what did you understand by the
5 phrase "this will reach many with a hard heart"?

6 A. I think colleagues were being kind to me because they
7 know that I was not in favour of the barges as a way forward;
8 and also that it meant a change to what I understood to be the
9 agreed plan that had been agreed with National Security Council
10 in terms of what we were taking forward. It was--it was--to
11 me, this was a change to that plan because, in my mind, it had
12 been agreed that we were going to take forward a proposal to
13 get land-based radar in place and fund that accordingly, and
14 that in the short term, you know, we would get our boats all
15 working, and we would pay allowances to the officers who were
16 going to sit out there all night patrolling.

17 All of those things had been kind of ticked and
18 agreed, and then suddenly this seemed just to me rise above
19 everything else and take priority, so I guess that's--that
20 would be my interpretation of what Greg was referring to there.

21 Q. And to complete the picture, of course, if we look at
22 673, you responded to Mr Romney's e-mail by saying, "As I
23 previously mentioned, I just cannot see how this expenditure
24 can be justified."

25 So, the intervention, if we can describe it as that,

1 from Cabinet had, to borrow Mr Romney's words, "changed the
2 whole dynamics of the whole operation"?

3 A. Yes.

4 Q. So, up until that intervention, can you just give the
5 Commissioner a little more detail what NSC had agreed to be
6 done? What was the plan that was going to carry forward?

7 A. We'd submitted--I believe by that time we'd submitted
8 a draft three- and six-month proposal, which did not include
9 static barges, but it did include a list of other things being
10 costed out. And that was my understanding of what we were
11 working to deliver when suddenly these e-mails started
12 appearing about static barges.

13 Q. And so, within what time frame were you expecting to
14 have static radar on-land in place? You're now in July 2020.

15 A. I think we were probably all guilty of being
16 overambitious because I do remember conversations in the Joint
17 Task Force talking about three months, and actually
18 subsequently we did get advice from experts from other overseas
19 territories in the Caribbean as to how to go about going to do
20 this and what the time scale and cost would be.

21 But I suppose in my mind around that time, I thought
22 by late in 2020, early 2021, we might have something operating
23 here.

24 Q. At the time that you left your role, which is very
25 recently, are there, in fact, any static platforms in place?

1 A. Not to my knowledge, no.

2 Q. And in the time after, obviously, EZ Shipping was
3 contracted and we might look at that, but in the period from
4 August to the time that you left your role, were you involved
5 in any discussions about obtaining static platforms to be sited
6 on land?

7 A. Yes. I was involved in a Joint Task Force meeting
8 that Wade Smith chaired and the Governor's Office invited
9 guests from, I believe it was, Cayman Islands and Turks &
10 Caicos to give us advice on how to go about doing this, and the
11 Governor's office had also independently sought expert advice
12 from the UK around the type of radar we should think about, its
13 range, locations and so forth, and those papers were circulated
14 for discussion with the Joint Task Force as well. And all of
15 those papers subsequently, as I recall, went to National
16 Security Council as well.

17 Q. What time of year was that, that circulation?

18 A. This we're now talking October-November time, I
19 guess, last year.

20 Q. Now, let me ask you this, because you said you can't
21 see how this expenditure could be justified, and that's in
22 July. What was it in July 2010 that was making you express
23 such a strong opinion about the expenditure?

24 A. There were a number of issues here, not least of
25 which, in my humble opinion, Cabinet had not sought our advice

1 before reaching this conclusion that this needed revisiting. I
2 had been called to many--to join many Cabinet meetings
3 throughout the summer on Zoom, mainly, on occasion in this
4 room, and my reasonable expectation--I knew it would be
5 unreasonable--was ask the Commissioner of Police and vis-à-vis
6 the Security Advisor to the National Security Council and most
7 senior Police Officers in the territory, if we were to have a
8 discussion in Cabinet about border security and the response to
9 that and what a solution might look at, one might have expected
10 that I would have been involved in that discussion. I was not.
11 And it wasn't clear to me whether any of my colleagues had been
12 involved, but it soon became clear they hadn't been either.
13 And that this felt that the politicians had--election members
14 had reached this conclusion themselves.

15 Now, that's perfectly their right to do so, and it's
16 not for me--and I've said this quite publicly in the National
17 Security Council--it is not my position, as the then
18 Commissioner of Police, to determine how Cabinet or the
19 Minister of Finance spends public funds. I can only give
20 security advice. But I believed that this was a poor solution.
21 I didn't believe that this would resolve what it was we were
22 seeking to tackle.

23 And mainly my belief was based on this. I'm no
24 expert on radar, and I certainly don't disagree the radar is a
25 solution and was an effective way of dealing with areas of our

1 territory where we haven't got eyes and ears on the ground, but
2 you've got to have a response to whatever the radar picks up.
3 And the reality is, throughout most of last year, a vast
4 majority of the marine capability in its territory has been off
5 the water, broken.

6 And Mr Romney referred earlier on to the Ursula,
7 which is the Police launch. The Police launch at one
8 point--and it began prior to COVID, but it was broken down--it
9 was off the water for nearly 18 months whilst we tried to get
10 \$36,000 to fix it from the Ministry of Finance.

11 Now, I cannot fathom for one minute why the Police
12 launch would be left off the water, that the Police would have
13 no capability other than a small rib, which is all we had going
14 at the time, and yet we were going to invest in these radars
15 that we then didn't have the capability of responding to.

16 So, I guess, for me, in making that statement and
17 some may argue when they hear this, they may say, "Well, you
18 know, it's not for you to justify what Cabinet wish to spend
19 their money on," and of course it's not, and I absolutely agree
20 with that, but as a professional Police Officer with a
21 hopefully reasonable level of expertise in security matters
22 after 40 years, I couldn't justify in my mind at all.

23 Q. Now, you'd said--and correct me if I'm wrong--but it
24 was unusual for Cabinet to intervene in a security issue.

25 A. Yes. I mean, Cabinet are perfectly entitled to and

1 on numerous occasions asked for matters to come to them.
2 And, indeed, if expenditure, if NSC make a decision for
3 expenditure over a hundred thousand dollars, it has to go to
4 Cabinet anyway. The Minister of Finance can ratify anything
5 under a hundred thousand dollars, as I recall. And indeed, I
6 have been in NSCs in the past five years where that has
7 happened without it going to Cabinet.

8 So, it is not unusual at all for Cabinet to require
9 the Commissioner of Police or the Head of Customs or Head of
10 Immigration or all three to come and explain themselves to
11 Cabinet. And I've sat in, as I say, in this very room and been
12 grilled by Ministers on all matters relating to aspects of
13 policing. So, that's perfectly within their right to do that,
14 and frankly I think it's right that they do. It's
15 accountability at the end of the day.

16 But I couldn't understand on this occasion--and this
17 is the only occasion I can think of--that we'd received a
18 directive from Cabinet about something that I personally have
19 never discussed with Cabinet.

20 Q. Go to 832, please, Mr Matthews.

21 A. Yes.

22 Q. This is the only copy of the Comprehensive Border
23 Security Plan that has been provided to the Commissioner. If
24 you go to 845 and slightly take it back to front, but go to 845
25 for a moment.

1 A. Yes.

2 Q. At the very bottom, there is a reference to an
3 unsolicited proposal being submitted from EZ Shipping, so I
4 think, as I'd suggested to Mr Romney and Mr Lettsome, we can at
5 least date that until just after July of 2020 because what's
6 happened is that the EZ Shipping proposal has been incorporated
7 into the Border Security Plan, and it's been revised.

8 A. Yes, correct.

9 Q. So, what I want to ask you about is just perhaps just
10 the development of the plan, if you like.

11 If you go to 837.

12 Now, that's where we got the reference to the static
13 on land radar platforms.

14 A. Yes.

15 Q. So, this is a recommendation of the Joint Task Force.
16 Were all of the members of the Joint Task Force agreed that
17 this was a good step and a recommendation that should be done?

18 A. On 837?

19 Q. Yes, static on-land radar platforms.

20 A. As I recall, that was something that we all agreed at
21 the time was our ambition to achieve.

22 Q. Now, if you go to 845, there is a section called
23 "funding requirements".

24 A. Yes.

25 Q. And the reason I want to draw your attention to it is

1 there is a paragraph that begins, "In order to execute the
2 six-month plan more efficiently, much more effort needs to
3 ensure that all marine assets are functional at all times," and
4 then it sets out the details about the availability of assets
5 to Customs and the Police Force and repairs that are needed to
6 a number of identified boats.

7 Leaving aside the new development of the availability
8 of EZ Shipping, had that not come into play, what was the plan,
9 then, to protect the border? You wanted, as a long-term goal,
10 static radars, but what was--in terms of what you would do at
11 sea, what was the primary option that the Joint Task Force
12 recommended to protect the borders at sea?

13 A. As I recall, it was to increase the number of vessels
14 available to the Joint Task Force to ensure that we were able
15 to have fully manned crews on the water 24/7, and I remember we
16 talked about ambition of trying to have at least two boats out
17 at any time during that 24-hour cycle.

18 Q. Now, of those boats that we see--Predator, Defender,
19 Midnight Justice and Ursula--which ones were the Police ones?

20 A. The Defender is the Police rib, Midnight Justice is
21 the Police high-powered boat, and the Ursula is the Police
22 launch. I believed the Predator is a Customs vessel.

23 Q. So, you've got then looking for--at the time I'm
24 going to suggest it's sometime after July 2020, you as Police
25 Commissioner at the time had one working vessel and three out

1 of action?

2 A. Correct.

3 Q. Of Defender, Midnight Justice, and Ursula, how long
4 was it before they were able to or they were again available to
5 you?

6 A. Midnight Justice only became available to the Police
7 service a week before I retired in April of this year.

8 The Defender was repaired sometime around this period
9 of time because we had been using Defender exclusively for the
10 greater part last year and the beginning of this year, and the
11 Defender is a fast rib.

12 And the Ursula, at the time of my retirement, was
13 still off the water.

14 Q. Now, Predator is a Customs boat. Can you help us
15 with how soon or when that then became available to the Joint
16 Task Force?

17 A. I honestly cannot recall.

18 Q. Fair enough.

19 Now, you said it was ambition to have two boats
20 patrolling at all times. Was that achieved at any time during
21 the course of the pandemic?

22 A. Certainly, we had a period of time where we had both
23 the Customs boat and a Police boat on the water at the same
24 time, but it was not the majority at the time, and what we
25 sought to do with the resources because our capability grew by

1 about 34 members of staff when we swore in Customs and
2 Immigration officers, so what we sought to do was when we
3 couldn't get two boats out of the water, we sought to man
4 land-based patrols with these extra personnel, so you might
5 have a Customs vehicle driving around with a Police Officer on
6 board or a Police vehicle with a Police Officer and Immigration
7 Officer on board, and their job was to, you know, monitor all
8 of the--all of the territories that they were driving around
9 the beach areas at night, in particular hours of darkness
10 during curfew and obviously spot to see if anything was moving
11 on the water so that at least we could guide more accurately
12 boats in.

13 I mean, whichever way you look at it Commissioner we
14 desperately lacked an effective capability out there the radar
15 ultimately would give.

16 Q. And by "radar ultimately would give," do you mean on
17 land static radar?

18 A. Well, I'm not a radar expert, and I would be the
19 first to admit, you know, however the barges ended up out
20 there, they did provide radar. Whether that was my personal
21 preference about how to do it is not really up for debate, but
22 that--yes, that's what I'm talking about, is, you know, in my
23 mind, we had plenty of opportunity to invest and install and
24 get this up for the long term for the territory.

25 Q. I mean, if we look at it, go to 678. This is, if you

1 like, sort of the funding proposal.

2 A. Yes.

3 Q. So, this was--this was--I think Mr Romney says is a
4 document attached to his e-mail of the 19th of July, the "hard
5 heart" e-mail?

6 A. Yes.

7 Q. And so I took both Mr Lettsome and Mr Romney to 678
8 to D in particular where we see reference to the radar
9 platforms.

10 But is it right that the plan was to rent radar
11 platforms for one month?

12 A. I don't recall that. This is a familiar document to
13 me because this was attached to the Comprehensive Plan that was
14 presented to the NSC, and this was the document that the NSC
15 focused most of its energies into looking at and to examining
16 it.

17 And at D, the 510,000 over three months, that was
18 for, as my understanding and my memory, was for the
19 installation of static radar platforms on land pointing out to
20 the sea.

21 COMMISSIONER HICKINBOTTOM: This table's slightly
22 confusing in this sense: The figure of \$510,000 is for one
23 month, but for three months, as it's made clear on the other
24 annex, and it's obviously 1.5 million odd, so that's only one
25 month, but the fuel cost is actually the fuel cost for three

1 months. But the whole column is not--

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: --three months because
4 there is a million dollars missing--

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: --from that box.

7 BY MR RAWAT:

8 Q. To help you, Mr Matthews, if you go to 683, it
9 explains it a little better.

10 A. Yes.

11 Q. So, at the bottom there, there is a reference to two
12 platforms costing \$17,000 totaling to \$510,000 a month. If
13 extended for the three months, the cost would be 1.5 million,
14 so the 510,000 seemed to relate to the hiring of the
15 EZ Shipping boat.

16 A. Right, right.

17 Q. But it seems to be that the--and tell me if I'm
18 reading this wrong--that purchasing five radar platforms to
19 site on land would have cost \$150,000 plus costs of interests,
20 installation, et cetera. I mean, do you remember that
21 difference in costs being discussed at all?

22 A. I have to say, Commissioner, that my memory is
23 that--and you're right, of course, in your assertion that this
24 is confusing, but my memory of Page 678 and the 510,000 but not
25 in relation to the barges. My memory of that was about, as it

1 indicated in the box next to it, the actual purchase of static
2 platforms on land.

3 COMMISSIONER HICKINBOTTOM: Just--we had this
4 explained by the other people, they explained it like this,
5 that there are two columns of figures, three-month estimate and
6 the six-month estimate, the six-month estimate for months four,
7 five, and six, and the description is to the left of those
8 columns, so rental radar for months one to three, 110,000,
9 purchase of radar platforms in months four, five, and six,
10 150,000.

11 THE WITNESS: Right.

12 COMMISSIONER HICKINBOTTOM: Is that--

13 THE WITNESS: That makes sense. That makes sense.

14 BY MR RAWAT:

15 Q. To clarify this and hopefully quite quickly,
16 Mr Matthews, but you'd heard from Mr Romney that he was--he was
17 asked to make inquiries of various other barge owners. Now,
18 were you asked to make any inquiries yourself by the Financial
19 Secretary?

20 A. Not by the Financial Secretary, but I recall that
21 National Security Council did not agree to the EZ Shipping
22 proposal when it was brought to the emergency meeting, and from
23 there it was tasked that other potential providers of the
24 territory should be assessed.

25 And my recollection at the time was it was for both

1 barges and charter boats, and when that went back to the Joint
2 Task Force, Customs took the lead for looking at other barge
3 owners in the territory, and we took the lead for approaching
4 the chartering industry again to look at those options.

5 Q. With respect to both, was the idea of using charter
6 boats as--

7 A. As radar platforms.

8 Q. As radar platforms?

9 A. Yes.

10 Q. It was an alternative option.

11 Did you--I think you said that Mr Amory undertook
12 that work?

13 A. Yes.

14 Q. That went back to National Security Council?

15 A. Well, this is where--this is where the water gets
16 very muddy because the barges were--the EZ Shipping barges were
17 effectively deployed before the National Security Council had
18 agreed the final solution to this. The NSC meeting that I
19 attended where it was announced that these barges had been
20 deployed caught both the Governor and myself out because the
21 debate hadn't taken place in NSC about whether we were or were
22 not going to take up the EZ Shipping offer. By the time that
23 debate happened, the barges were already out there.

24 Now, I was aware from Joint Task Force work that
25 Customs had done a fairly thorough job in checking out anything

1 else that might be available barge-wise in the territory; and,
2 as far as I recall, there wasn't much else out there other than
3 what EZ Shipping had sitting here. And certainly the feedback
4 from the charter industry was we had one charter company
5 willing to assist us, and we were preparing quotes--and I think
6 they even gave us quotes--and I don't think any of that saw the
7 light of day because the matter was moved on before we had the
8 debate.

9 Q. So, to break that down a little, you had got--had
10 that gone through, there would have been an option to use
11 charter boats for radar purposes at sea?

12 A. That was--it would be fair to say that probably at
13 the time we went back to NSC I wasn't in a position to firmly
14 nail down an offer, but we certainly had an understanding from
15 one of the charter companies what they might be able to do to
16 assist us if they could get a couple of captains back into the
17 territory to sit on the charter boats also. So, there were
18 some what-ifs around it, but we didn't get a chance to complete
19 that piece of work.

20 Q. Because you went to an NSC meeting and you were told
21 they had already been deployed?

22 A. Yes.

23 Q. That's a national security matter, isn't it?

24 A. It is.

25 Q. Who is deployed on the borders?

1 A. It is.

2 Q. So it is a matter you would want to advise the
3 National Security Advisor to the NSC?

4 A. Yes.

5 Q. And as I understand it, security is a matter for the
6 Governor?

7 A. That's correct.

8 Q. But neither you nor the Governor were consulted to
9 use of EZ Shipping?

10 A. No.

11 Q. So, presumably, you would have had no involvement in
12 negotiating a contract with EZ Shipping?

13 A. No.

14 Q. You were not consulted in any way in negotiating a
15 contract with EZ Shipping?

16 A. No.

17 Q. Were you told who was speaking to EZ Shipping?

18 A. My understanding was that Customs were tasked with
19 going back to EZ Shipping and getting a reduced cost. I think
20 that was minuted in the NSC minutes around--around the time
21 from the emergency meeting. And we subsequently heard that it
22 had gone from 17,000, I think, down to 14,000. And my
23 understanding was, on the basis of that reduction, that a
24 decision was made by the Ministry of Finance to go ahead.

25 Q. So, who made--you didn't know about it as National

1 Security Advisor, the Governor didn't know about it, who was
2 responsible for security. Who made the decision to--

3 COMMISSIONER HICKINBOTTOM: The NSC knew about it?

4 THE WITNESS: No, the NSC--as a body, no.

5 COMMISSIONER HICKINBOTTOM: For deployment.

6 THE WITNESS: No.

7 BY MR RAWAT:

8 Q. Who made the decision to deploy the barges?

9 A. I don't know who actually made the decision. It was
10 the Premier or Minister of Finance who announced it at the NSC
11 to, as I say, to the surprise of the Governor and myself.

12 COMMISSIONER HICKINBOTTOM: But it would have been
13 the Ministry of Finance who would have been paying for it?

14 THE WITNESS: Yes.

15 COMMISSIONER HICKINBOTTOM: Literally paying for it?

16 THE WITNESS: Yes.

17 BY MR RAWAT:

18 Q. If you go to 283, please. I just want to--it's an
19 e-mail 17th of August 2020--sorry, I will allow you to just
20 look it up.

21 A. Yes.

22 Q. And it's an e-mail from yourself to the Financial
23 Secretary at the time Glenroy Forbes, and you're referring to
24 an NSC expedited extract. Now, we believe that that's
25 document, if you need to look at it, at 286.

1 A. Yes.

2 Q. But what you're really asking for--I mean, you say
3 there, "We're now in a situation where only one vessel is
4 available on the water, this being the Customs Midnight
5 Express," and you asked for an update urgently about when a
6 decision might be expected on the spending allocation
7 recommendation.

8 A. And this was the point, Commissioner, that I was
9 making earlier on, that my severe reservations about putting
10 out a radar capability at that cost which we couldn't respond
11 to.

12 Q. Had you--I mean, had you expressed those reservations
13 to the NSC at any point?

14 A. Yes.

15 Q. And was that your view as the Security Advisor?

16 A. Yes.

17 Q. That it would be diminished if you didn't--the use of
18 radar would be undermined by the absence of vessels to
19 intercept?

20 A. Yes.

21 Part of the requirement of these static barges that
22 EZ Shipping were going to provide was that the Joint Task Force
23 would be required to place law-enforcement officers on them,
24 and as you've already highlighted, the original deployment was,
25 I think, three barges, and that required at least three

1 law-enforcement officers 24/7 on those barges.

2 There were a number of urgent issues that were raised
3 for me, as the security advisor, not least who else was on
4 these barges, who were the people that EZ Shipping were
5 deploying and sitting on these barges with law enforcement had
6 been vetted, did they need any policing powers? Did they need
7 to be sworn in? Those kind of questions.

8 But more fundamentally, I--I refused to put Royal
9 Virgin Islands Police Officers on them. There was a whole host
10 of reasons for that, which I'm very happy to share, not least
11 health and safety. Our officers had no training about going on
12 vessels of this scale, and I'm responsible for the health and
13 safety of all of my officers, and if one of them fell off that
14 barge in the middle of the night, I'm responsible, and I would
15 have been reckless for doing so without giving them adequate
16 protection and training.

17 Secondly, as I told the National Security Council, I
18 didn't believe it was the best use of warrantied Police
19 Officers to be standing statically on a barge waiting for a
20 radar to ping. I said the best use would be for them to be on
21 fast boats being to intercept anything that was trying to sneak
22 in our borders; and therefore, as the independent operational
23 decision that I could make, my independent operation decision
24 was to leave Police Officers off those barges and keep them on
25 whatever boats we could find to put out there. And, you know,

1 the one Customs boat that was available at the time we would
2 have been putting Police Officers on that boat.

3 And I suppose ultimately, Commissioner, perhaps it's
4 been the thread of e-mails that you had seen from me dating
5 back to my initial concern in May of the original proposal, I
6 said very openly and very clearly in the National Security
7 Council that I'm sure that at some point the Auditor General
8 would look at this Contract, and it wasn't for me to determine
9 to the Ministry of Finance or the Minister how to spend public
10 money in this way, but I did not want it to be suggested that
11 the person potentially in the room with the most knowledge had
12 recommended something that their heart wasn't in, in terms of I
13 couldn't justify that cost personally.

14 So, for all of those host of reasons, I withdrew my
15 support for putting all the emphasis on them, and I owed an
16 apology to my colleagues in Customs and Immigration because
17 that put the heavy burden on their shoulders and it must have
18 made life very difficult for them at the time, and it wasn't--
19 using (unclear)'s statement earlier--it was done with a heavy
20 heart, Commissioner, but there were certain lines I felt I
21 couldn't cross, and these were those lines that I just
22 described.

23 Q. A few minutes ago, Mr Matthews, you said that, you
24 know, you couldn't personally justify, but isn't the proper
25 question is whether, as a Police Officer of some years'

1 experience, who held senior positions in a number of police
2 forces and as Security Advisor at the NSC, was it something you
3 couldn't justify as a professional?

4 A. Exactly. Exactly.

5 Q. If you go to--just before we leave this e-mail, the
6 reason for drawing it to your attention was that you'd raised
7 the question of funding, and in 31st of August 2020,
8 you--that's where Mr Forbes replies.

9 The start of the e-mail is on Page 282, but it
10 goes--the main--

11 A. Sorry, which page? I apologise.

12 Q. You should be on 283, I hope.

13 A. 283, yes.

14 Q. 283 is your e-mail?

15 A. Yes.

16 Q. 282 is the beginning, at the bottom of 282 is the
17 beginning of Mr Forbes, somebody sends e-mails on his behalf,
18 it's the beginning of his response, but the substance we find
19 back on 283.

20 A. Yes.

21 Q. And it refers to the amount of \$1 million being
22 currently available to address priority areas in the COVID-19
23 Border Security Plan, and a further 914,300 would be allocated
24 in the 2021 budget estimates.

25 In terms of how that money then flowed in the

1 direction of those tasks with maintaining border security, were
2 you able to address the priority areas that had been
3 identified?

4 A. No, because the previous response regarding the
5 vessels were off water and how long it's taking to get the
6 repairs done, it isn't a case that couldn't be repaired or that
7 they were written off. It was a case that we could not get the
8 funding streams applied urgently enough to get the repairs done
9 within the timeframes that they needed doing.

10 It's--it's probably one of the most bureaucratic
11 processes I have ever come across in my entire career in terms
12 of the way finances are managed here, but that's a matter for
13 the BVI Government. It's not a criticism, but it is extremely
14 slow and bureaucratic.

15 Q. And were you looking for monies to fund repairs not
16 just police forces but also to Customs?

17 A. Yes.

18 Q. So, it was a Joint Task Force request?

19 A. Yes.

20 Q. And how often was it raised with the Ministry of
21 Finance?

22 A. Sorry?

23 Q. How often was this issue being raised with the
24 Ministry of Finance?

25 A. Well, what is interesting about your question, sir,

1 is that right back at the beginning of this, when we realised
2 we were going to have to lock down the borders and formed this
3 joint approach, we received a letter from the Minister of
4 Finance outlining that he was going to allocate immediately
5 \$2 million to provide boats for the Task Force to be able to do
6 its job, and that was very pleasing and very welcome at the
7 time.

8 But we'd already had boats on order, and when those
9 boats did materialise, it became, I guess, clear that actually
10 some of that money was going to get taken up in finalising some
11 of the bills for that. But I never saw the scale of money
12 that's talked about here or in the letter I received back in
13 March-April time last year referring to \$2 million, I never saw
14 that funding reaching the operational frontline for the Royal
15 Virgin Islands Police Force. If it had, we would not have had
16 our boats off water for so long.

17 COMMISSIONER HICKINBOTTOM: Without going back to the
18 Schedule, this e-mail refers to about \$2 million.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: And into 2020 to '21,
21 that budget year--sorry, that period, I think it cuts across
22 two years. But am I right to assume that most of that is on
23 the barges?

24 THE WITNESS: Well--

25 COMMISSIONER HICKINBOTTOM: That you know.

1 THE WITNESS: I--I--I honestly don't know because I
2 never saw the end-of-year figures as to what was spent on the
3 Security Plan.

4 It would be fair to say that when we got excited
5 about, you know, the potential \$2 million and we then huddled
6 down and wrote our first Comprehensive Security Plan, we
7 probably had that figure in mind, and you know we were putting
8 a wish list in there.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: So, you know, it wasn't unsurprising,
11 and it was absolutely right and proper that the Ministry of
12 Finance and Cabinet would push back and say, "Well, hang on a
13 sec, what are your priorities amongst all these big spends
14 because this is a lot of money?" So, I certainly understand
15 that.

16 But as I say, having seen the money allocated, it's
17 not as straightforward as if this is new money appears in the
18 budget and you could spend. My business manager often would
19 pull her hair out because suddenly you would be told, "Okay,
20 you've got to find it from within your existing budget but if
21 you go into an overspend, don't worry it about it, we will
22 cover it" sort of thing. So, it's not as straightforward as
23 someone giving you a cheque and saying now spend that on
24 security. There is a lot more to it.

25 But I can't say, Commissioner, what the spend

1 breakdown was at the end of the day. I never saw it.

2 COMMISSIONER HICKINBOTTOM: Thank you.

3 BY MR RAWAT:

4 Q. Could I take you, please, to 241, Mr Matthews.

5 A. Yes.

6 Q. Not I'm going to suggest a document that you--you
7 would have had input into, but it is one that I took Mr Romney
8 and Mr Lettsome to, but it's the 2nd of September 2020, the
9 then-Deputy Financial Secretary Jeremiah Frett puts a memo
10 in--and this is about getting a contract in for EZ Shipping.
11 They're already started working. I wanted to just ask for your
12 help at paragraph 3 because--well, I think if we break it down
13 a little bit.

14 So, in paragraph 1 what's referred to is the latest
15 initiative has been implementation of static platforms to
16 identify all vessel movement in and around the territorial
17 borders. Pending the acquisition and installation of this
18 technology, it was suggested that the Government of the Virgin
19 Islands utilize a company within the territory to provide such
20 services."

21 It then says that in paragraph 2 that mitigation
22 measures such as rental of catamarans or smaller boats and
23 vessels and the utilisation of air surveillance were
24 introduced. Officers of Customs and Immigration had concerns
25 that adopting the use of smaller vessels comes with inherent

1 risks due to exposure as they're required to be on the high
2 seas for a long period. In addition, smaller fiberglass
3 vessels are susceptible to damage by bullets or other
4 projectiles. Thus, the larger recommended vessels are made of
5 cast iron, aluminum, and thus are more sturdy and can withstand
6 such attacks.

7 Now, pausing there, I know your inquiries with the
8 charter industry perhaps didn't get as far as you had hoped
9 before the deployment of EZ Shipping, but would this complaint
10 that you had been using smaller fiberglass vessels which is
11 susceptible to damage, would that be a complaint that would be
12 relevant to whether you choose to use the charter boat or not?

13 A. Yes, yes. Most definitely. This comes back to
14 health and safety again, and I'm grateful for you drawing it to
15 our attention because, in all fairness, if this were raised in
16 the Joint Task Force meeting as well that there was concern by
17 officers of the partner agencies around vulnerability on
18 smaller vessels.

19 Q. Paragraph 3 of the note says: "Assistance from the
20 UK military was also recommended as a temporary solution. This
21 option was not acted upon as it is viewed that the territory
22 possesses both the requisite manpower and the ability to
23 procure the necessary resources to secure our sea border.
24 Costs of UK military support is unknown." And then it turns
25 over, "with such assistance is welcome in the form of grant

1 that would aid with infrastructure development and build a
2 permanent capacity among the agencies responsible for securing
3 sea borders."

4 Now, earlier, you referred to UK funding, and you
5 also referred to match funding from the UK. Is this what you
6 were thinking of when you made the reference to UK funding, or
7 is this--

8 A. No, this is--this is exactly what I was referring to,
9 which was that the Governor's Office, through the Governor at
10 the time, had come up with, I believe it was \$300,000 of
11 funding and brought that to NSC and said that the UK were
12 prepared to provide this if the BVI Government could
13 provide--match-fund that, so you would have \$600,000, but that
14 was all focused on starting--getting us kick-starting the
15 static radars on land.

16 Q. And the static radars were costed at 150,000?

17 A. Correct.

18 Q. --plus obviously the cost of installation and--

19 A. Correct.

20 COMMISSIONER HICKINBOTTOM: Which was 300,000.

21 BY MR RAWAT:

22 Q. So that sum would have more than covered replacement-

23 -

24 A. It certainly got us on our way there. I mean, I
25 don't know how accurate the assessments were for the

1 installation of radar, but it certainly would have gotten the
2 ball rolling, yes.

3 Q. And that was brought to NSC?

4 A. Yes.

5 Q. And what was the outcome of that discussion?

6 A. The BVI Government did not want to at that moment in
7 time accept the funding because BVI wanted to do this under
8 their own steam. They felt they were responsible for making
9 sure that the population of BVI were protected by the funding
10 through the BVI Government, and it was declared that the BVI
11 Government would meet before money is required for this with
12 the need to seek the UK funding.

13 Q. And you say "before money is required for this," is
14 "this" the deployment of static on land radar platforms?

15 A. That's what I understood it to mean, yes.

16 Q. Now, this reference is specifically to assistance
17 from the UK military. You've--you've spoken of it in terms of
18 UK funding. What knowledge do you have about what assistance
19 was being sought from the UK military?

20 A. The UK deployed naval vessels to the Caribbean every
21 year. There is currently two deployed in the Caribbean as we
22 sit here in preparation for hurricane season.

23 And I can't remember which of the ships it was. I
24 recall it was probably H.M.S. Midway, which is one of the UK
25 bigger warships, was potentially available to come into the

1 territory late September into October and provide patrols, to
2 enhance the patrols that were out on the water.

3 Obviously, the Governor at the time was acutely aware
4 of the shortage of capable response vehicles on the water, and
5 very much, I think, had gone the extra mile to try to put
6 pressure on the UK Government to get the military to perhaps
7 send their sailing ship this way rather than anywhere else in
8 the Caribbean.

9 Q. And the presence of a British warship in Virgin
10 Islands territorial waters, what kind of deterrent effect do
11 you think that would have had?

12 A. Well, they have been very effective in the past.
13 They're here for--they're in the whole of the Caribbean for a
14 number of reasons. Security is one of them, and immediate
15 response after disaster is another. But certainly in the last
16 few months, the last time H.M.S. Midway was deployed here, she
17 certainly had successes in interdicting persons with contraband
18 who were heading in the direction of the British Virgin
19 Islands. Very often those interdictions took place a long way
20 out, you know, and we wouldn't have known too much about it
21 until after the result came in, but certainly they were
22 involved in interdicting what was believed to be cocaine
23 smuggling and such like into the territory.

24 Q. Could you just turn to 243 and paragraph 8, please,
25 Mr Matthews. This is part of Mr Frett's memo where he refers

1 to effectiveness of the barges activated on the 23rd of August
2 yielding significant results. Although you hadn't deployed
3 your officers on the barge, did you at any time receive any
4 information or data about how effective the barges were?

5 A. At each of the weekly Joint Task Force meetings,
6 Customs would normally give an update as to where the barges
7 had identified something and, you know, whether that had
8 resulted in a success or otherwise.

9 And that was--that was, you know, given as a weekly
10 update almost even if it was, you know, in the past week barges
11 hadn't detected anything, that would still have given as an
12 update, as I recall through the Chair as head of Customs.

13 Q. Did that information coming to you as a member of the
14 Joint Task Force cause you to change your view as to the
15 usefulness or the utility of using EZ Shipping to provide radar
16 platforms?

17 A. It didn't change my view. It substantially increased
18 my view that we desperately needed permanent radar solution in
19 the territory. And through the Governor's Office again, we
20 started pushing through NSC to try and resurrect that and get
21 that done because what it boiled down to me was that the
22 EZ Shipping solution wasn't sustainable because the country
23 would be bankrupt in the end, I guess. If you're going to park
24 three barges out there at that price per day and leave it for
25 the next couple of years, that's just not the way forward. If

1 anything, it just cemented in my mind the radar was an absolute
2 necessary solution.

3 In terms of the barges, it would be fair to say that,
4 you know, we were aware--we were aware as RVIPF, they picked
5 things up on the radar we then responded to, but also we picked
6 things up separately that the barges picked up later on the
7 radar afterwards, and so they should have.

8 One could equally argue that during the same period
9 of time a significant amount of serious crime was detected
10 within this territory. That raises a question still as to how,
11 for example, significant quantities of cocaine still managed to
12 arrive in the territory. Between November and April,
13 November 2020 and April 2021, the RVIPF seized over 3.6 tons of
14 cocaine.

15 So, I think it's part of the solution of security,
16 but it's clearly not the whole solution or the ultimate
17 solution, and has to be backed up with lots of other measures,
18 which, if we wind the clock back into the Comprehensive
19 Security Plan that all three agencies agreed, that did contain
20 a number of other measures that would complement radar,
21 complement high-speed boats, complement, you know, night-vision
22 binoculars, et cetera.

23 COMMISSIONER HICKINBOTTOM: It's been emphasised
24 rightly a small territory. Word about things gets around very
25 quickly, and so people generally would have known that these

1 barges were out there with their radar. Don't speculate about
2 this question. If you can't answer it, don't, but can I assume
3 that people generally would also have known that the
4 law-enforcement agencies, you and Customs, didn't have many
5 boats on the water?

6 THE WITNESS: Yes.

7 But I also, Commissioner, I do concur with the
8 evidence you heard earlier from my colleagues that certainly in
9 the last part of the year we did see a significant drop in
10 vessel movement out there, yes.

11 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

12 BY MR RAWAT:

13 Q. The point that Mr Romney made was the mere fact
14 people knew they were out there--

15 A. Yes.

16 Q. --would have had a deterrent effect?

17 A. I think he's correct in that.

18 Q. If I could just move on, Mr Matthews, to the last
19 topic, and it's just to ask for your assistance as the
20 then-Police Commissioner. It's the point I can take you back
21 to page, but you may have--you will have heard me ask
22 Mr Lettsome about how vetting is undertaken.

23 A. Yes, sir.

24 Q. And he made the point that the resources of the
25 Police Force are utilised.

1 Starting with your own organisation, the Police
2 Force, leaving aside the mention of it in the Comprehensive
3 Border Security Plan, were--was the Police Force undertaking
4 background checks on all of its officers?

5 A. Yes. We--as part of the recruitment process to join
6 the RVIPIF, background checks are undertaken before a job offer
7 is made. And depending on the applicant would depend on the
8 type of background check. And if I can, Commissioner, I will
9 explain what I mean by that.

10 If it's--if it's a local applicant living on Tortola,
11 we will do local background checks, you know. We will do
12 criminal record checks, the local criminal record checks will
13 speak to their references and so forth.

14 But we also accept transferees from other Caribbean
15 forces; and, in that regard, we have on occasions put vetting
16 officers on planes and flown them to the country where the
17 applicant lives to personally interview not only the police
18 service that they were working for, if they were a transferee,
19 but if they were a non-transferee, just an applicant, we would
20 go and personally interview who the referees were for those
21 individuals.

22 We have learned some very valuable lessons from a
23 policing perspective, not least of which because for the last
24 two to three year, we, as a force, have been focusing our
25 energies on trying to stamp out any threat of internal

1 corruption.

2 Now, unfortunately, in stamping out that threat, it
3 gets very public when you arrest police officers and you're
4 arresting your own and you're charging your own, but my view is
5 that's a positive thing that shows your systems are working.
6 But even we recognised after recent incidents towards the end
7 of last year where police officers were arrested and charged
8 with criminal offences, everyone is innocent until proven
9 guilty, so they still await their hearings and their day of
10 justice. But we recognised then that our vetting procedures
11 needed to be enhanced even further.

12 And indeed, at my time of departure, we were due to
13 take on 12 new recruits into the force, and as a result of the
14 first round of vetting, we were not satisfied that we'd vetted
15 them enough, and we did more focused vetting; and, as a result
16 of that, there were three or four individuals that we
17 eventually said "no" to who, under the previous regime of 2020,
18 would have taken them on.

19 So, it feels late in the day now, and lessons have
20 been learned, but most certainly we do our best to do an
21 enhanced vetting process for people joining the force.

22 Q. That's when people are being recruited. Do you do
23 background checks once they're in service, or--

24 (Overlapping speakers.)

25 Q. --at particular times?

1 A. We don't do a sort of rolling every few years a
2 background check again on them, but we do have regulations in
3 place, for example. And it surprised me, it caught me out when
4 I came here, unlike in the UK, where I had most of my service
5 and experience, police officers here are entitled to apply for
6 secondary employment, and they do that through to the
7 Commissioner of Police and the Commissioner could grant that if
8 it's a role that's not going to conflict with the role,
9 impartial role, of a police officer.

10 So, that is often the time when you can do kind of
11 secondary checking up because somebody has to declare what it
12 is they're doing, show you a trade license, and very often you
13 sort of then find that there are--and there have been conflicts
14 where you go no, you can't do that because if you do that, that
15 wouldn't be right for impartiality of a police officer because,
16 you know, you're doing this with the community or you're
17 running a licensed premises or something. And so that's about
18 the only thing that actually happens continually.

19 We do have other things that we do to do our best to
20 ensure officers remain on the right side of the law, and that
21 we introduced, for example, random drug testing within the
22 force as well, and in particular with firearms officers. Any
23 officer that is authorised to carry a firearm has to sign to
24 accept that they could be randomly drug-tested at any time.
25 So, those kinds of checks are in place.

1 But in terms of the full-blown background checks
2 going out and looking at referees and going into bank accounts
3 and things like that, no.

4 Q. And that's applicable to your own organisation, but
5 as Mr Lettsome pointed out, you were also asked to do it for
6 other agencies.

7 Is the Police Force asked to, if you like, vet
8 members of the Immigration Department and the Customs
9 Department?

10 A. Not--not to any great extent at the moment, but I'm
11 aware, as Mr Lettsome said, that they are seeking to do that,
12 going forward and seeking the assistance of the force to do it.

13 And in all fairness, when we refer back to the
14 original Comprehensive Security Plan which listed the source
15 stamping out of corruption, it was my recollection that it was
16 either Customs or Immigration that wanted that in there, that
17 that suggestion didn't actually come from the Police end. They
18 wanted that in there, and it was a recognition that they knew
19 there was vulnerabilities in their organisations as well as
20 ours and that we needed to address those vulnerabilities.

21 So, I'm sure my successor, like I would have been,
22 would have been more than happy to assist our colleagues in
23 doing such vetting going forward.

24 Q. How were you doing it in past, sir, to what extent--

25 A. To my knowledge, I'm not aware of too many requests

1 today. You know, we have been--generally speaking is somebody
2 will come to us if, say, for example Immigration were to say,
3 "We're employing three new Immigration Officers and these are
4 their details," we'd probably just do a criminal record check.

5 MR RAWAT: Sir, might I have a moment?

6 COMMISSIONER HICKINBOTTOM: Certainly, yes.

7 MR RAWAT: Commissioner, those are my questions.

8 Mr Matthews, thank you very much for your patience
9 and your time, and for the way you've given your evidence
10 today.

11 THE WITNESS: Thank you.

12 COMMISSIONER HICKINBOTTOM: Thank you, Mr Matthews.

13 Can I reiterate that, thank you for your patience.
14 You had to be very patient, and thank you for giving your
15 evidence and giving it so clearly.

16 Just one thing--well, I think two people to address
17 it to, Solicitor General, what about privacy? Do you want to
18 look at the Transcript?

19 SOLICITOR GENERAL: One day.

20 COMMISSIONER HICKINBOTTOM: Now, I don't know whether
21 it's necessary for either you or the current Police
22 Commissioner to look at your Transcript when you've talking
23 about the National Security Council and various things.

24 What do you think, Mr Rawat?

25 MR RAWAT: I suppose, as a courtesy, we could provide

1 the Transcript to the current Police Commissioner.

2 COMMISSIONER HICKINBOTTOM: Yes, that seems to be the
3 best thing to do. There may be nothing, and obviously the
4 Solicitor General is going to look at it anyway, but perhaps
5 out of an abundance of caution we will send it to the new
6 Commissioner of Police.

7 THE WITNESS: Commissioner, when I was--when I was
8 still Commissioner and asked to submit documentation to the
9 Inquiry, I did write within my submission to say that I was
10 conscious information that I was passing was National Security
11 Council information.

12 COMMISSIONER HICKINBOTTOM: Exactly.

13 THE WITNESS: And, of course, I swore an oath of
14 security with the National Security Council, but recognising
15 when I came in this room that the Solicitor General was
16 present, I felt that any information I gave was safe within
17 this room to give, and that you would determine, you know,
18 whether that could become public knowledge and whether that
19 would breach the National Security Council oath that I had
20 taken and obviously would still stand by even as a civilian
21 now.

22 COMMISSIONER HICKINBOTTOM: Exactly.

23 Everything you say in this room is private until it's
24 made public, and the Solicitor General and you, Police
25 Commissioner, will have a chance to look at the Transcript

1 before we--before it becomes public.

2 Thank you, Commissioner.

3 THE WITNESS: As I'm sure you know, sir, as a police
4 officer and certainly as a judge of many, many years of
5 experience, this is probably the quickest I have been able to
6 sit and come and give evidence. You know we waste several days
7 before you got into a witness box.

8 COMMISSIONER HICKINBOTTOM: You waited quite a while.
9 Okay. Thank you.

10 THE WITNESS: Thank you.

11 (End of Session 3)