

12 November 2019

OIA 78651

Ross Francis

By Email: fyi-request-11453-472c65dd@requests.fyi.org.nz

Dear Mr Francis

Official Information Request dated 14 October 2019

I refer to your request for information to the Ministry of Justice (**Ministry**) under the Official Information Act 1982 (**Act**) on 14 October 2019. Your request was as follows:

Please send me copies of any draft letters (for the Minister) or draft press releases written by officials in 2000 and 2001 pertaining to the Peter Ellis case.

Since 1 January 2000 to the present day, who has been paid compensation for wrongful conviction, or compensated for an investigation and or prosecution of a suspect? What was the reason(s) for compensation in each of those cases, and did the Justice Ministry oppose payment of compensation in any of those cases?

On 2 October 2019, it was reported that a Dunedin man was paid \$130,000 after he was acquitted by jurors. A jury found him not guilty on eight charges against against [sic] three girls following a trial in April last year. Please provide me with copies of all information you hold about the police investigation, and correspondence regarding the man's compensation, including the reason(s) for payment.

We have divided your request into several parts, set out below:

1. *Please send me copies of any draft letters (for the Minister) or draft press releases written by officials in 2000 and 2001 pertaining to the Peter Ellis case.*

The scope of this request would require a lengthy search through a significant volume of physical and electronic records relating to the Peter Ellis case over a two-year time period. Additionally, we are aware that at points during that period the Ministry assisted with the drafting of a large number of the Minister's responses to members of the public, which would be caught within the scope of your request.

As you will know from your complaint to the Ombudsman earlier this year, the Ministry would usually withhold draft correspondence prepared for the Minister under s 9(2)(g)(i) of the Act, although a case-by-case assessment will be made in each instance. As such, there may be little that can be released to you as a result of the above search. Completing this assessment would also add to the already significant workload associated with responding to your request in full.

Accordingly, we advise that at this stage we are refusing this part of your request under s 18(f) of the Act as it would require substantial research and collation. We have considered extending the timeframe or accepting the request

but charging for it, but do not believe those steps would diminish the significant impact of responding to the request on our team, which is responsible for the files and must carry out the relevant searches.

Given the wording and background to your request we have concluded this is in the nature of a 'fishing' request and accordingly have not sought to amend its scope. Please advise if you would like to rescope the request, for instance, by identifying a particular draft document you are seeking. Unless the scope of your request is substantially reduced, we would need to consider whether to charge for the time taken in providing the relevant information.

2. *Since 1 January 2000 to the present day, who has been paid compensation for wrongful conviction, or compensated for an investigation and or prosecution of a suspect? What was the reason(s) for compensation in each of those cases, and did the Justice Ministry oppose payment of compensation in any of those cases?*

In December 1998, Cabinet adopted Guidelines for the consideration of compensation claims for wrongful conviction and imprisonment. Since 1 January 2000, compensation for wrongful conviction and imprisonment has been paid on eight occasions. Those payments were made to:

- David Dougherty
- M (name suppressed)
- F (name suppressed)
- Lucy Akatere, McCushla Fuataha and Tania Vini
- Aaron Farmer
- Phillip Johnston and Jaden Knight
- Teina Pora
- Tyson Redman

These payments were made at Cabinet's discretion. In each case, the essential reason for compensation is that Cabinet was satisfied on the balance of probabilities that the applicant was innocent of the convictions that were the subject of the claims. The Ministry of Justice did not oppose payment of compensation in any of those cases.

The Cabinet guidelines do not apply to compensation claims for investigation or prosecution of a suspect. The Ministry does not hold any information on compensation payments in such cases.

3. *On 2 October 2019, it was reported that a Dunedin man was paid \$130,000 after he was acquitted by jurors. A jury found him not guilty on eight charges against against [sic] three girls following a trial in April last year. Please provide me with copies of all information you hold about the police investigation, and correspondence regarding the man's compensation, including the reason(s) for payment.*

We believe we have found the media reports you are referring to, dated 2 October 2019, in the New Zealand Herald and Otago Daily Times. You will note from a close reading of those articles that the payment in question was a costs award by the judge in the case, not an award of compensation for wrongful conviction. For the avoidance of doubt, we have attached the internal email arranging and providing the basis for the payment. One of the attachments to this email is withheld under ss 6(c), 9(2)(a) and 9(ba)(ii) of the Act. We do not hold any information regarding the police investigation into this case.

You have the right under section 28(3) of the Act to complain to the Ombudsman regarding this response.

Yours sincerely



Jeff Orr
Chief Legal Counsel