

3 October 2013

Mr James Lohead

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Dear Mr Lohead

Requests pursuant to Official Information Act 1982
Our Ref: OIA353/1

1. I refer to your request for information about the process for instructing private investigators, received by this office on 27 September 2013 and your request for information about the use of Mr Legat as an expert witness, received on 30 September 2013.
2. There is no document that sets out the process for instructing private investigators. Your request for that information is therefore refused on the basis that it does not exist (s 18(c) Official Information Act 1982 (“the OIA”). I have considered whether consultation with you would remove the reason for this refusal (as required by s 18B of the OIA) and have concluded that it would not.
3. Crown Law does not instruct experts in criminal prosecutions. We occasionally instruct experts in respect of appeals but this is rare and to my knowledge Mr Legat has not been instructed.
4. The instruction of experts in criminal proceedings is the responsibility of the party calling the expert, namely the prosecuting agency or the defendant. We do not hold any information about the instruction of experts by other agencies or defendants. However, when Crown Solicitors wish to instruct experts in indictable matters they must seek approval from the Ministry of Justice, and Crown Law facilitates that process.
5. I can therefore provide you with some limited information about the use of Mr Legat in Crown prosecutions. I must emphasise the following:
 - 5.1 Whether or not an expert has been approved for instruction does not necessarily mean that he or she was ultimately instructed or gave evidence in Court. For example, the Crown Solicitor may be given permission to instruct an expert witness but the defendant subsequently pleads guilty meaning that no expert evidence is required.

- 5.2 The Police frequently engage expert witnesses in the course of their investigation, who may then go on to give expert evidence in a Crown prosecution. In such cases the expert is instructed, and any applicable fees paid, by the Police and we will hold no record of this. This is common with experts from the New Zealand Fire Service, for example.
- 5.3 In respect of fire experts, an insurance company will often have commissioned an expert as part of their own investigation whose findings may then be relied on by the Crown in a subsequent prosecution. We will have no record of this either.
- 5.4 Not all prosecutions in relation to fires are indictable/Crown prosecutions. We only hold information in relation to trials conducted by Crown Solicitors.
6. With those caveats in mind, I can advise that Mr Legat was approved for use as an expert in the following trials. As there may be name suppression orders in place I have provided you with the CRI number, the scheduled date of the trial at the time approval was given (which may not necessarily be the date on which the trial actually proceeded) and the Court in which the trial was scheduled to take place.
- 6.1 CRI-2010-092-019834, Manukau District Court, 29 October 2012
- 6.2 CRI-2011-009-004503, Christchurch District Court, 25 June 2012
- 6.3 CRI-2010-009-011129, Christchurch District Court, 4 February 2013
7. You have also asked for information about the instruction of Fire Investigation Services Limited generally. Experts are instructed on an individual basis so we can only provide information about individual experts.
8. You have asked for “all public records of all cases between 2010 and 2013” and information about defence investigators used in the above cases, including transcripts of their evidence. Such records are held by the Court in which the proceeding was heard and access to them is governed by Part 6 of the Criminal Procedure Rules 2012. Crown Law does not hold that information, you will need to follow the process set out in those Rules if you wish to obtain it from the Court.
9. In accordance with s 19 of the OIA we advise you have a right, by way of complaint under s 28(3) of the OIA, to seek an investigation and review of this decision by the Ombudsman.

Yours sincerely
Crown Law



Charlotte Brook
Crown Counsel