

26 August 2014

Lindsay R Kennard  
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Dear Lindsay Kennard

**Official Information Act 1982 request: Scott Watson**

This letter responds to your refined request, under the Official Information Act 1982 (the Act), for material “surrounding the investigation of Scott Watson’s request for the exercise of the Royal prerogative of mercy”, received by the Ministry on 29 July 2014.

On Friday 15 August the Ministry sent you copies (in instalments) of the IPCA reports on Operation Tam in response to your original request for information about Scott Watson’s application for the Royal prerogative of mercy, received through the FYI.org.nz website on 11 July 2014.

Your refined request has been broken down in 14 parts:

1. Transcripts of Kristy McDonald QC’s interviews with eye-witnesses Rozlyn McNeilly and Guy Wallace.
2. Ms McDonald’s interview notes from the interviews requested in 1.
3. Notes comparing Ms McDonald’s interviews with the evidence by Mr McNeilly and Mr Wallace in the trial transcripts (both written and verbal in the electronic video recording).
4. Notes comparing Mr Watson’s case with police best practice of the time.
5. Notes comparing Mr Watson’s case with eye witness evidence and eyewitness identification guidelines from foreign jurisdictions (e.g. Manitoba Police 1988 eye-witness guidelines, FPT Heads of Prosecution Committee Working Group Report on the Prevention of Miscarriages of Justice, “A Guide for Law Enforcement” Research report by the US Attorney-General Janet Reno, 1999).
6. Transcripts and notes of interviews with in-custody informants in Mr Watson’s case.

7. Police best practice information and in-custody practice in New Zealand regarding prison informants.
8. Guidelines on in-custody informants from comparative commonwealth jurisdictions. (E.g. Manitoba Guidelines Respecting the Use of Jailhouse Informers, FPT Heads of Prosecution Committee Working Group Report on the Prevention of Miscarriages of Justice, McFarlane Review of recommendations of Commissions and Royal Commissions in the wrongful Convictions of David Milgaard, Thomas Sophonow, Guy Paul Morin, Donald Marshall, and Commissions in Australia, New Zealand, United Kingdom and United States from 1912.)
9. Notes taken during the reading of the Court of Appeal ruling, in particular the Court's findings of "extensive cross examination of the Two Trip Theory".
10. All notes leading to the conclusion of "Harmless Error" and the definitions of "harmless error/harmless/error" used to reach this conclusion.
11. Answer to the question of whether the conclusion in Q10 was reached on a scientific basis, whether objective or subjective, and whether another reviewer would reach the same conclusion.
12. Ms McDonald's preparation notes relating to her interim and final reports.
13. Ministry of Justice preparatory notes for report to the Minister of Justice.
14. Notes detailing the reasons for [the Ministry] accepting the alteration of wording of direct quotes from the IPCA e.g. why was the quoted para 12 "Fell short of best..." used in Ms McDonald's reports instead of the actual wording of para 12 " fell far short of best...".

*Documents already publicly available*

As stated in the letter sent to you on 25 July, Ms McDonald's two reports on Mr Watson's application, dated March 2011 and March 2013, are publicly available. Ms McDonald's advice provides an overview of the key evidence submitted by and on behalf of Mr Watson in support of his application, and details Ms McDonald's consideration of that evidence, and her conclusions in respect of it.

The Ministry's report on Mr Watson's application, dated 10 June 2013, is also publicly available. The report provides a summary of Mr Watson's application and Ms McDonald's consideration of it. It also details the process for considering Mr Watson's application and the Ministry's advice to the Minister on the application.

Ms McDonald's advice and the Ministry's report can be found on the Ministry's website at: [www.justice.govt.nz/services/miscarriages-of-justice/scott-watson-application](http://www.justice.govt.nz/services/miscarriages-of-justice/scott-watson-application).

*Response to your refined request for official information*

The Ministry's response in relation to each part of your request for official information is set out below.

*Part 1*

The Ministry holds copies of the transcripts from the interviews Ms McDonald had with eye-witnesses Rozlyn McNeilly and Guy Wallace. We are withholding copies of these transcripts under s 9(2)(ba)(i) on the basis that these interviews were conducted in confidence and release of the information is likely to prejudice the supply of information from witnesses in relation to investigations into other applications for the exercise of the Royal prerogative of mercy.

*Parts 2 - 5*

As Ms McDonald's reports make clear, she was responsible for detailed consideration of Mr Watson's application and all relevant information provided in support of that application.

The Ministry does not hold copies of any draft workings or notes by Ms McDonald.

*Part 6*

Two in-custody informants provided evidence in Scott Watson's original trial – secret witness A, and secret witness B.

Despite repeated efforts on the part of officials and Ms McDonald to locate and interview secret witness A, no interview ever took place. This is reflected in paragraph 4.150, on page 107 of Ms McDonald's first report to the Ministry in March 2011. It follows that no transcripts and interview notes related to this witness exist.

Secret witness B was not interviewed by Ms McDonald or the Ministry so no transcripts or interview notes are held by the Ministry.

*Parts 7 and 8*

The Ministry does not hold any information within scope of these parts of your request.

*Parts 9 and 10*

As discussed above in response to parts 2 - 5 of your request, the Ministry does not hold copies of any draft workings or notes by Ms McDonald.

*Part 11*

Part 11 of your request is not a request for official information. Accordingly we do not propose to respond to it.

*Part 12*

As discussed above in response to parts 2 - 5 of your request, the Ministry does not hold copies of any draft workings or notes by Ms McDonald.

*Part 13*

We have interpreted this part of your request as relating to the briefing from the Ministry to the Minister about Ms McDonald's final report, dated 10 June 2013. As noted above, a copy of the final version of this briefing is available publicly on the Ministry's website.

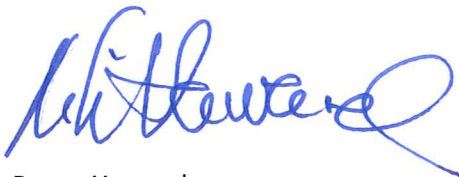
The Ministry does not hold any preparatory notes related to this briefing.

*Part 14*

The Ministry does not hold any notes regarding part 14 of your request. It appears that a statement in paragraph 12.2 of the IPCA letter of report to Mr Keith Hunter was inadvertently misquoted in Ms McDonald's supplementary advice of March 2013, and subsequently in the Ministry's report.

Where information has been withheld, you have the right under section 28(3) of the Act to complain to the Ombudsman about the decision to withhold this information.

Yours sincerely



Roger Howard  
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Office of Legal Counsel