

3 April 2017

Ross Francis  
fyi-request-5521-00157b67@requests.fyi.org.nz

Dear Mr Francis

### Official Information Act 1982 request: Peter Ellis Case

Thank you for your FYI request of 12 March 2017 requesting the following information under the Official Information Act 1982 ("the Act"):

*"Has the Justice Ministry informed the Minister of Justice, Amy Adams, of the benefits that may result from establishing a Commission of Inquiry into the Peter Ellis case?"*

*According to the records held by the Ministry, what benefits may result from establishing a Commission of Inquiry into the Peter Ellis case?"*

*Has the Ministry supplied Amy Adams with a copy of "New Evidence in the Peter Ellis case"? This document can be found here:*

[http://www.peterellis.org.nz/docs/2007/new\\_evidence.pdf](http://www.peterellis.org.nz/docs/2007/new_evidence.pdf)

*Is justice the primary consideration by the Ministry when it decides whether to recommend that an applicant's case be referred to the Court of Appeal? If it is not, what is the primary consideration?"*

I have divided your request into four parts, which I have addressed below.

1. *"Has the Justice Ministry informed the Minister of Justice, Amy Adams, of the benefits that may result from establishing a Commission of Inquiry into the Peter Ellis case?"*

By way of background, and as you will be aware from previous requests you have made, on 17 December 2014 Minister Adams received a request from Dr Lynley Hood and Dr Don Brash to commission an overseas judge to review the case of Peter Ellis. In her consideration of this request Minister Adams was provided with a copy of the advice of the Ministry of Justice to Hon Simon Power in 2009 when the matter of a commission of inquiry into the Peter Ellis case was being considered. That advice contained information for the Minister considering all the implications of a Commission of Inquiry, including any arguments for and against establishing a Commission of Inquiry.

The letter from Minister Adams responding to the 14 December 2014 request of Dr Brash and Dr Hood states that Minister Adams considered the advice of the Ministry of Justice to Hon Simon Power in making her decision not to recommend that a Commission of Inquiry be established.

The letter of Minister Adams to Dr Brash and Dr Hood is publicly available at <https://www.beehive.govt.nz/release/request-ellis-commission-inquiry-declined>. The advice of the Ministry of Justice to Hon Simon Power considering the implications of establishing a Commission of Inquiry is publicly available at <https://www.beehive.govt.nz/release/no-commission-inquiry-peter-ellis-case>. I note that we have previously provided you with a link to this advice on 18 January 2009 and 5 November 2009. The Ministry does not hold any further information that addresses your query.

As such I am not releasing the abovementioned documents pursuant to s 18(d) of the Act as the requested information is already publicly available.

2. *“According to the records held by the Ministry, what benefits may result from establishing a Commission of Inquiry into the Peter Ellis case?”*

As I have said above the Ministry of Justice has considered the implications of a Commission of Inquiry into the Peter Ellis case, including the arguments for and against establishing a Commission of Inquiry in the advice provided to the Hon Simon Power in 2009. As this information is publicly available I am refusing your request pursuant to s 18(d) of the Act.

The Ministry does not hold any further information that addresses your query.

3. *“Has the Ministry supplied Amy Adams with a copy of “New Evidence in the Peter Ellis case”? This document can be found here:*  
[http://www.peterellis.org.nz/docs/2007/new\\_evidence.pdf](http://www.peterellis.org.nz/docs/2007/new_evidence.pdf)”

After searching the relevant files, I am able to advise that there are no records of the Ministry of Justice providing Minister Adams with a copy of your article “New Evidence in the Peter Ellis case”.

However, I can advise you that the advice of the Ministry of Justice to Hon Simon Power dated 12 March 2009 does refer to your article at paragraph 95. Therefore, while the Ministry of Justice has not provided Minister Adams with a copy of your article, according to our records, your article has been brought to her attention.

4. *“Is justice the primary consideration by the Ministry when it decides whether to recommend that an applicant’s case be referred to the Court of Appeal? If it is not, what is the primary consideration?”*

We have previously provided you with information regarding the test for exercising the Royal prerogative of mercy to refer a case to the Court of Appeal in our letter to you of 7 February 2012 responding to your request dated 21 December 2011.

As we said in that letter clause 11 of the Letters Patent 1983 empowers the Governor-General to exercise the Royal prerogative of mercy. Under the prerogative powers, the Governor-General may grant a number of remedies.

In advice given by the Ministry of Justice to the Minister of Justice on the exercise of the Royal prerogative of mercy, the Ministry has observed that while there are no specific limits on the use of the prerogative powers, strong conventions have developed that reflect the respective roles of the judiciary and the executive branch of government.

Section 406(1)(a) of the Crimes Act 1961 provides that the Governor-General may refer a person’s conviction or sentence back to the courts for determination. If this occurs, the Court deals with the matter as if it were an appeal. The Ministry’s advice is that an applicant must normally provide “fresh evidence” not available at the time of trial that is sufficiently credible and cogent to indicate a likely miscarriage of justice. Further, exercise of the Royal prerogative of mercy will normally be considered only after applicants have used their appeal rights in the courts.

These principles are summarised on the website of the Governor-General:  
<http://gg.govt.nz/role/royalprerogative.htm>.

You have the right to complain to the Ombudsman under s 28(3) of the Act and seek a review of this response.

Yours sincerely



Jeff Orr

**Chief Legal Counsel**