

4 October 2017

Ross Francis

fyi-request-6518-cafc6f04@requests.fyi.org.nz

Dear Mr Francis

Official Information Act 1982 request: Record Keeping Concerns

I refer to your FYI request of 6 September 2017 requesting the following information under the Official Information Act 1982 ("the Act"):

"In its response to me dated 1 September 2017, the Justice Ministry did not provide me with all of the information I requested. Regarding the Justice Ministry's record keeping, has Archives NZ – or another agency or individual – conveyed any concerns or criticisms to the Justice Ministry since 1 January 2012? Please provide all records – including those of any informal discussions – held by the ministry about this question. This request includes records of communication within the ministry.

Please provide all records held by the ministry regarding any discussions that were held between 1 January 2009 and 30 June 2009 between the ministry and the Department of Internal Affairs about the Peter Ellis case. This request includes records of communication within the ministry.

Has the ministry attempted to obtain missing records pertaining to the Ministerial Inquiry into the Peter Ellis case.? If so, what action has the ministry taken to recover those records? What discussions (if any) within the ministry have taken place to locate the missing records, and have there been any discussions as to why the records are missing? (Please note the ministry has previously acknowledged that its records "do not indicate where the name Dr Louise Sas originated from." It has also acknowledged that its records "do not show how many videotapes of the children's interviews were sent" to the two international experts. The ministry has admitted that Val Sim, the ministry's then chief legal counsel, met or spoke with Sir Thomas Eichelbaum, who headed the inquiry, on at least six occasions during the course of the inquiry. The ministry acknowledges however: "It is important to note that this figure is unlikely to reflect all instances in which Ms Sim either met or spoke with Sir Thomas Eichelbaum...[t]his is because there are most likely discussions or meetings that took place, of which we are not aware and a record was not created.")"

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

1. *In its response to me dated 1 September 2017, the Justice Ministry did not provide me with all of the information I requested. Regarding the Justice Ministry's record keeping, has Archives NZ – or another agency or individual – conveyed any concerns or criticisms to the Justice Ministry since 1 January 2012? Please provide all records – including those of any informal discussions – held by the ministry about this question. This request includes records of communication within the ministry.*

The Ministry does not hold any records of concerns or criticisms regarding its record keeping received from Archives New Zealand, other agencies, or individuals since 1 January 2012. Consequently, I am refusing this aspect of your request under s 18(g) of the Act.

2. *Please provide all records held by the ministry regarding any discussions that were held between 1 January 2009 [sic] and 30 June 2009 between the ministry and the Department of Internal Affairs about the Peter Ellis case. This request includes records of communication within the ministry.*

The Ministry holds records regarding consultation undertaken with the Department of Internal Affairs to assist in providing advice to Hon Simon Power in 2009 when the matter of a Commission of Inquiry into the Peter Ellis case was being considered.

Schedule A sets out the documents which fall within the scope of your request together with my decision on release. Certain information has been withheld from one document under s 9(2)(g)(i) of the Act to maintain the effective conduct of public affairs through the free and frank expression of opinions between officials in the course of their duty.

I am satisfied that the reason for withholding the information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

As previously advised to you on 18 January 2009, 5 November 2009, and 3 April 2017, the final briefing 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>

3. *Has the ministry attempted to obtain missing records pertaining to the Ministerial Inquiry into the Peter Ellis case? If so, what action has the ministry taken to recover those records? What discussions (if any) within the ministry have taken place to locate the missing records, and have there been any discussions as to why the records are missing? (Please note the ministry has previously acknowledged that its records “do not indicate where the name Dr Louise Sas originated from.” It has also acknowledged that its records “do not show how many videotapes of the children's interviews were sent” to the two international experts. The ministry has admitted that Val Sim, the ministry's then chief legal counsel, met or spoke with Sir Thomas Eichelbaum, who headed the inquiry, on at*

least six occasions during the course of the inquiry. The ministry acknowledges however: "It is important to note that this figure is unlikely to reflect all instances in which Ms Sim either met or spoke with Sir Thomas Eichelbaum...[t]his is because there are most likely discussions or meetings that took place, of which we are not aware and a record was not created.")"

In response to your queries, the Ministry has searched all of its records for relevant information. You have been provided with all information the Ministry holds relating to the Ministerial Inquiry. There is no further information.

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

SCHEDULE A

#	Date	Document	Comment on release of document
1	16 February 2009	Email from Ministry of Justice to Department of Internal Affairs: "Advice on commissions of inquiry"	Released
2	27 April 2009	Email from Ministry of Justice to Department of Internal Affairs: "Commission of Inquiry – Ellis"	Released with redactions under section 9(2)(g)(i) of the Act
3	5 May 2009	Email from Ministry of Justice to Department of Internal Affairs: "Draft briefing to Minister of Justice on inquiry"	Released
		Attachment: Draft briefing on Commission of Inquiry – Mr Peter Ellis	Released
4	6 May 2009	Internal Ministry of Justice email including an email from Department of Internal Affairs	Released