

10 October 2019

Ref. OIA 77999

Ross Francis

By Email: fyi-request-11203-a4aecbc0@requests.fyi.org.nz

Dear Mr Francis

Official Information Request dated 12 September 2019

I refer to your request for information to the Ministry of Justice (**Ministry**) under the Official Information Act 1982 (**Act**) on 12 September 2019. Your request was as follows:

On 4 April 1999, Sir Thomas Thorp wrote to Val Sim, the then chief legal counsel at the Justice Ministry. The Crown Solicitor had apparently informed Thorp that the jury in the trial of Peter Ellis was “conservative”, that it convicted “only on those counts supported by initial evidential interviews”. Thorp said the Crown Solicitor was “plainly mistaken”.

“For example”, said Thorp, “the evidence of Complainant A produced convictions for three offences, none of which were mentioned in her first evidential interview. The evidence of Complainant G also resulted in three convictions, none supported by his first evidential interview”.

Please supply me with a copy of the Crown Solicitor’s comments referred to by Thorp regarding the Crown Solicitor’s mistake. (Apparently the Crown Solicitor sent a 46 page response – I do not require the whole document.) Please also supply me with the Justice Ministry’s response to Thorp’s letter, and a fax from Sim to Thorp dated 1 April 1999.

Sir Thomas Eichelbaum made a similar error to that of the Crown Solicitor. In his final report he claimed that “where the number of interviews was excessive, generally allegations arising out of the later interviews did not form the subject of charges”. In fact, nine of the sixteen counts on which Ellis was convicted came from allegations elicited in subsequent interviews.

In his draft report, did Eichelbaum make the same (or similar) mistake that he made in his final report? Please supply me with a copy of the relevant part of Eichelbaum’s draft report, and any comments from the Ministry to Eichelbaum about this issue.

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

1. *Please supply me with a copy of the Crown Solicitor’s comments referred to by Thorp regarding the Crown Solicitor’s mistake. (Apparently the Crown Solicitor sent a 46 page response – I do not require the whole document.) Please also supply me with the Justice Ministry’s response to Thorp’s letter, and a fax from Sim to Thorp dated 1 April 1999.*

As we advised in our response of 9 October 2018, information and materials communicated for the purpose of advising on a petition for the Royal Prerogative of mercy are confidential and we generally consider there to be a need to withhold these pursuant to s 9(2)(f)(i), s 9(2)(ba) and s 9(2)(a) of the Act.

We have reviewed the particular documents you requested. The Ministry's response to Sir Thomas Thorp's letter is withheld on the grounds described above. We do not consider that the need to withhold this information is outweighed by any public interest in disclosure.

In relation to the Crown Solicitor's comments, this document is a direct response to the issues raised in the applicant's petition and would also be withheld under the grounds described above. We do note however that in Sir Thomas' letter of 4 April 1999, which has previously been provided to you, he quotes the relevant comment by the Crown Solicitor in full before going on to describe it as mistaken. There is no further comment on this topic by the Crown Solicitor.

In relation to the fax of 1 April 1999, the contents of this communication are limited to the list of documents later referred to in Sir Thomas Thorp's letter of 4 April 1999. We consider this document can be released, and have **attached** it to this response.

2. *In his draft report, did Eichelbaum make the same (or similar) mistake that he made in his final report? Please supply me with a copy of the relevant part of Eichelbaum's draft report, and any comments from the Ministry to Eichelbaum about this issue.*

On 27 June 2009 we refused your request for Sir Thomas Eichelbaum's draft report, withholding the document in full. That decision was upheld by the Ombudsman on 16 February 2012. Your request for part of that information is refused as vexatious.

In relation to the second part of this question, the Ministry has already provided you with all records relating to the Ministerial Inquiry.

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

Yours sincerely



MP
Jeff Orr
Chief Legal Counsel