

7 January 2021

Ross Francis

By email: fyi-request-14217-7caf318b@requests.fyi.org.nz

Dear Mr Francis

Official Information Request dated 29 November 2020

Your request

I refer to your request for information to the Ministry of Justice (**Ministry**) under the Official Information Act 1982 (**Act**) on 29 November 2020. The relevant parts of your email are set out below. We have made minor changes to the formatting to separate the requests for information.

“When he reviewed Mr Ellis’ case in 1999, the late Sir Thomas Thorp said that “where one child claimed to have seen serious abuse being committed on another, the second child denied any such happening”. He also recommended that Professor Stephen Ceci be approached by the Ministry to provide a formal review of the complainants’ evidence. Since the writing of Thorp’s report in March 1999, has the Ministry contacted Professor Ceci about the Peter Ellis case?

Please provide me with copies of all information held by the Ministry about Professor Ceci, including any discussions by officials about him.

Where on the Ministry’s website, or elsewhere, can a copy of Thorp’s report be found?

Before the start of Murray Shane Webb’s retrial in October 2003, Justice Heath commented on Dr Karen Zelas’ written brief of evidence. Her intended testimony at Webb’s retrial featured many statements which might have assisted Mr Ellis during his trial. They included:” [You go on to quote a number of statements by Dr Zelas]

“Does the Justice Ministry hold this information? Please send me all information held by the Ministry about Dr Zelas between 1 July 2003 and 30 June 2004 (inclusive).

What comments, if any, has the Ministry articulated in respect of Dr Zelas’ conduct, impartiality or independence as an expert witness? Please send me copies of all records held in regards to this question.”

We write to answer some of your questions, and to notify you that we are considering charging you for the time involved in responding to the remainder of this request and to invite you to withdraw or rescope it.

Responses to your enquiries

At this stage we are able to respond to two of your queries without further searching:

- In relation to your first request, asking whether the Ministry had subsequently contacted Professor Ceci regarding the Peter Ellis case, we have previously provided an answer in our responses of 12 December 2016 and 1 December 2003. Subsequent to those responses we have not made any contact with Professor Ceci.
- Your third request, asking where on the Ministry's website, or elsewhere, a copy of Sir Thomas Thorp's report can be found, appears to be a general query rather than a request for official information. Nonetheless, to the extent it relates to information on the Ministry's website we have previously responded to this question and other questions about the availability of the report on 7 December 2018. The Ministry does not hold records on where, generally, other copies of the report might be found.

Charging for your request

The remaining aspects of your request are:

- Your request for copies of all information held by the Ministry about Professor Ceci; and
- Your requests for all information held by the Ministry about Dr Zelas between 1 July 2003 and 30 June 2004 (inclusive) and any comments made by the Ministry in respect of Dr Zelas' conduct, impartiality or independence as an expert witness.

At present, we do not know the volume of information held by the Ministry relating to Professor Ceci or Dr Zelas. It is possible that a search for this information will discover very little information that has not already been provided to you. Any response will be limited by the information actually held within our records, and will be subject to any grounds which make withholding the information necessary under the Act. However, at this stage we are prepared to assume that any search would discover at least some information that is responsive to your requests and that could be released.

On this basis, we have considered whether this is a case in which it would be reasonable to charge you for the time taken to respond to your requests. We are minded to do so, in light of the considerable labour that would be involved in responding, and your recent conduct. Our consideration of each of these points is expanded on below.

Responding would involve considerable labour

We have interpreted the remaining aspects of your request as excluding:

- Files held by the Ministry not relating to the Peter Ellis case (which would avoid the need to locate historical references to Dr Ceci or Dr Zelas in records held by other teams within the Ministry); and
- Files relating to matters on which we have conclusively provided you with all information, including, but not limited to, the files relating to the Ministerial Inquiry.

Even construed in that way, your remaining queries involve broad requests for all information held on individuals involved in the Ellis case. To respond to these will require time-intensive searching through physical and electronic files relating to the case. In this respect we note that while the first aspect of your request relating to Dr Zelas is limited to the dates 1 July 2003 and 30 June 2004, the other remaining requests are unlimited and would require a search of the full set of files relating to the Ellis case.

Your recent conduct

As you know, you have a long history of making a large volume of time consuming requests to the Ministry about the Ellis case. As exemplified by your questions above, your inquiries frequently involve broad requests for all documents and information on a topic relating to the case. Such requests take a significant amount of time to respond to and require searching through the considerable electronic and physical records of the case. At other times your queries appear to be efforts to engage with us about the topic, rather than legitimate requests for information. We frequently receive emails from you quoting persons who were once involved in the case and seeking some form of comment from us on their statements or actions, couched as a request for information. The Act does not support these types of requests.

Inevitably, over time these requests have become increasingly repetitive, seeking information on which we have already responded to you on multiple previous occasions or which in some cases simply does not exist. Even where a specific request has not been made before, frequently the information has already been provided across previous overlapping requests – as in our recent response to you of 13 November 2020.

Ultimately, we are concerned that a disproportionate amount of our team's time has been and will continue to be spent on your frequent requests about the Ellis case. We do not expect this to come as a surprise to you. We understand the Chief Ombudsman has recently written to you, in his opinion of 22 December 2020, highlighting the issues with your pattern of requests regarding the Ellis case and the impact this has on the Ministry.

After more than 15 years, with your requests on this case now likely numbering in the hundreds, we consider that charging would be an appropriate step to recover some of the costs involved in meeting your requests. While any decision to charge will always be made on a case-by-case basis, we consider that a decision to charge will often be reasonable where, as here, requests fall into the familiar pattern identified above.

Calculating the potential charge

The amount of any charge would be based on the Ministry of Justice Charging Guidelines for Official Information Act 1982 Requests (18 March 2002), as well as the Ombudsman's Guide on Charging (August 2019). Under these Guidelines, the rate of charging is \$38 (inclusive of GST) per half hour after the first hour. The charge is based on time spent searching and collating materials, not time spent making a decision about what to release.

Our previous experience has been that it takes approximately 4.5 hours for a staff member with detailed knowledge of the Peter Ellis files to search 1 full file, 1 part file and some electronic material for responsive material. As such, and given that the full set of files relating to the Ellis case comprises approximately 15 physical files, the amount of any charge could be substantial.

If a decision to charge is made, we would require payment of the full amount before preparing the information for release. Any unused component of the charge, or any component that relates to information that is ultimately withheld, would be refunded.

Opportunity to withdraw or refine the request

Before proceeding further, we wished to offer you an opportunity to withdraw the remaining aspects of your request or refine them in a way that could avoid or reduce the charge. For example, because the majority of time would be spent searching through physical files, limiting the request to a particular date range could limit the amount of materials that would need to be searched through.

We would be grateful if you could advise whether you would like to withdraw or refine the scope of your request by **11 January 2021**. We will then make a final decision on your request and, if that decision includes a decision to

charge for the supply of official information, provide you with a fixed estimate of the likely cost and information about how to accept the charge and make payment.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jeff Orr', with a stylized flourish at the end.

Jeff Orr

Chief Legal Counsel