

18 MAR 2014

Katherine Raue  
[fyi-request-1508-88622a83@requests.fyi.org.nz](mailto:fyi-request-1508-88622a83@requests.fyi.org.nz)

File Ref: 14/00108

Dear Katherine Raue

I refer to your official information request received by WorkSafe New Zealand on 4 March 2014 requesting:

*Copies of all correspondence and communication the Ministry holds about this matter [referring to the matters raised in media release of 28 February 2014 from Mr Whittall's lawyers] including any held by "Worksafe" and in particular the specific communications referred to in this report.*

We have interpreted your request as being for all correspondence and communications between the Ministry of Business, Innovation and Employment (now WorkSafe New Zealand) and Mr Whittall's lawyers regarding the prosecution being resolved without trial, as well as the specific communications referred to in the media release. Please advise if this interpretation is not correct and specify exactly what information you are seeking.

The following material falls within the scope of your request and is being released:

- The 'open letter' from Stuart Grieve QC dated 16 October 2013 (but sent 7 December 2013).

All other material within the scope of your request is withheld under section 6(c), which relates to maintenance of the law, and section 9(2)(h), which relates to the maintenance of legal professional privilege, of the Official Information Act 1982 (the Act). Under section 9(1) of the Act I do not consider that the withholding of information under section 9(2)(h) is outweighed by public interest considerations in making the information available.

As Acting Chief Executive of WorkSafe NZ, Geoffrey Podger, has made very clear, the offer of payment for Pike River families originated from Peter Whittall's legal advisers. It was not solicited by the Ministry of Business, Innovation and Employment. Meetings and subsequent discussions and communications between legal counsel, as inferred by Mr Grieve in his 28 February media release, are subject to a mutual obligation of confidence or privilege, as a matter of good practice. WorkSafe NZ has sought the views of the Solicitor-General and, consistent with its normal practice in relation to prosecutions generally, WorkSafe NZ does not propose to waive this confidentiality or privilege and cannot comment on specific points raised by Mr Grieve.

However, like any public prosecutor, WorkSafe NZ does engage in such discussions in individual cases in full compliance with the Solicitor General's Prosecution Guidelines, which make clear that such discussions have a significant value for the administration of the criminal justice system.

You have the right to contest the manner of this release by seeking an investigation and review of that decision by the Ombudsman, whose address for contact purposes is:

The Ombudsman  
Office of the Ombudsman  
PO Box 10-152  
WELLINGTON 6143

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact me at [brett.murray@worksafe.govt.nz](mailto:brett.murray@worksafe.govt.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brett Murray', with a stylized flourish at the end.

Brett Murray  
*General Manager - High Hazards & Specialist Services*