

7 December 2018

Ross Francis

By Email: fyi-request-9024-ffd5dd25@requests.fyi.org.nz

Dear Mr Francis

Official Information Request dated 9 November 2018

I refer to your request for information to the Ministry of Justice (**Ministry**) under the Official Information Act 1982 (**Act**) on 9 November 2018. Your request was as follows:

"I have the following request to assist me in my research of the Peter Ellis/Christchurch Civic Creche case.

In 2017, approximately how many lawyers that were seconded to, employed, hired, contracted to or paid by the Justice Ministry made a declaration of a possible or actual conflict of interest? Please note this request includes those who stated they had no conflict of interest to declare.

In 2002, Val Sim, then chief legal counsel at the Justice Ministry, informed then Justice Minister Phil Goff: "The [Peter] Ellis case has been the subject of a good deal of public anxiety and concern created largely by the media portrayal of the case, and more recently reinforced by Ms [Lynley] Hood's book. However, it needs to be remembered that neither the media nor Ms Hood have had access to all of the evidence and in particular have not had the advantage of seeing the children give their evidence."

How many (if any) of the complainants' evidential interviews had Ms Sim viewed before she made that comment? How many (if any) transcripts of the complainants' evidential interviews had she read? Had she read Dr Michael Lamb's affidavits that were written in 1999? If so, please send me copies of emails, comments, notes, etc she wrote about those affidavits.

When did Sir Thomas Thorpe's report, supplied to officials on 28 March 1999, become publicly available? Please send me all records held about the release of Thorp's report, including communication with then Justice Minister Phil Goff who claimed, in March 2000, that it was not in the public interest to release Thorp's report. How long did it take for Sir Thomas Eichelbaum's report, dated 28 February 2001, to become publicly available? Please provide a link to both reports from the Ministry's website."

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

1. *In 2017, approximately how many lawyers that were seconded to, employed, hired, contracted to or paid by the Justice Ministry made a declaration of a possible or actual conflict of interest? Please note this request includes those who stated they had no conflict of interest to declare.*

As you will be aware, the Office of Legal Counsel is the central team of lawyers engaged by the Ministry to provide legal advice and is the primary team to deal with applications for the Royal prerogative of mercy (including the various applications by Mr Ellis). Based on the information available, we can advise that within the Office of Legal

Counsel there was one conflict of interest declaration in the 2016/17 financial year (1 July 2016 to 30 June 2017) and none in the 2017/18 financial year (1 July 2017 to 30 June 2018). There were 5 nil declarations during this period (all from senior managers, who must report annually whether or not they have a conflict).

2. [In relation to the statement by Val Sim]: *How many (if any) of the complainants' evidential interviews had Ms Sim viewed before she made that comment? How many (if any) transcripts of the complainants' evidential interviews had she read? Had she read Dr Michael Lamb's affidavits that were written in 1999? If so, please send me copies of emails, comments, notes, etc she wrote about those affidavits.*

We have recognised the statement you have quoted as originating from Ms Sim's report to the Minister regarding Ms Lynley Hood's book "A City Possessed". This substantially repeats your request of 27 March 2012 where you asked, among other questions, "what material pertaining to the Ellis case did Ms Sim traverse in the course of her review" and for copies of all documents pertaining your questions. In our response of 27 April 2012 we advised that all information relating to the review had been provided to you, and there were no further documents to be disclosed. We most recently reiterated that point to you in our letter of 9 May 2017, in response to your similar inquiry of 12 April 2017.

3. *When did Sir Thomas Thorpe's report, supplied to officials on 28 March 1999, become publicly available?*

The answer to this question would depend on what you mean by publicly available. Sir Thomas Thorpe's report has not been published on the Ministry's website. However, it is available on request to the Ministry. As you may be aware, and is explained in the press briefing mentioned below, there was a period following the issuing of the report where it was withheld under the Act in order to avoid prejudicing the ongoing decision-making process on Mr Ellis' applications for the Royal Prerogative of Mercy.

4. *Please send me all records held about the release of Thorp's report, including communication with then Justice Minister Phil Goff who claimed, in March 2000, that it was not in the public interest to release Thorp's report.*

The records we hold which might relate to the release of Sir Thomas Thorpe's report are limited to drafts of letters provided to the Minister's office, assisting in responding to OIA requests and media enquiries requesting the report. In the case of draft documents, we consider it necessary to withhold this information under s 9(2)(g)(i) of the Act (relating to the free and frank expression of opinions by officials to the Ministers of the Crown). Where we have withheld documents we do not consider that the need to withhold is outweighed by any countervailing public interest in disclosure.

For your information, the only documents we have identified as relevant to your inquiry are drafts prepared in March 2001, relating to a response to a media inquiry and press release regarding the report. Again, we only hold draft copies of these documents, but you can find the finalised press release at the following address: <https://www.beehive.govt.nz/release/thorp-report-not-secret-anmd-doesnt-cast-doubt-ellis-conviction>. This may assist in answering your underlying questions about the release of the report.

5. *How long did it take for Sir Thomas Eichelbaum's report, dated 28 February 2001, to become publicly available?*

This has been available on the Ministry's website since February/March 2003. Prior to that, our records indicate that a copy of the report was released on 13 March 2001 at the time that the Governor General's decision on Mr Ellis' application was announced.

6. Please provide a link to both reports from the Ministry's website.

We have already provided you with both of these documents. The nature of this request is such that the information is either publicly available (and you already know of its location) or does not exist. In either case, we are not required to provide this information and consider this request vexatious.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jeff Orr', is written over a faint, illegible printed name.

Jeff Orr
Chief Legal Counsel