

29 February 2008

Ross Francis
PO Box 12-603
WELLINGTON

Dear Ross Francis

Peter Ellis case

I refer to your letter of 30 November 2007 to the Minister of Justice Hon Annette King regarding Mr Peter Ellis's case. Your letter included a series of questions, which, to the extent that they related to official information, were transferred to the Ministry of Justice for response under the Official Information Act 1982 (the Act) on 18 December 2007.

I have since extended the timeframe under the Act for response to this request until 29 February 2008.

Questions

Some of the questions you have asked (1, 7, 8, 9, 10, 13, 14, 15 and 16) are requests for comments on matters relating to Mr Peter Ellis's case.

As the Office of the Ombudsmen has previously explained, a government department is not obliged to create new information or provide opinions in order to respond to a request.

Questions to which I can provide answers are set out below.

2. *In what way and to what extent did Sir Thomas Eichelbaum contribute to the formulation of the Ministerial Inquiry's terms of reference?*
and
3. *In what way and to what extent did the Justice Ministry contribute to the formulation of the Ministerial Inquiry's terms of reference?*

Sir Thomas was consulted on the draft terms of reference prepared by Ministry of Justice officials.

Ministry of Justice officials prepared the terms of reference for the Inquiry. In doing so, officials consulted with Sir Thomas Eichelbaum.

4. *Did officials advise Sir Thomas to select more than two experts?
and*
5. *How did officials come to the conclusion that "about six" experts were to be appointed?*

Officials advised then Minister of Justice, Hon Phil Goff, in a briefing regarding options for an inquiry in March 2000, that "about six" experts could be appointed to assist the Inquiry. Cabinet subsequently agreed to one of the options canvassed in this briefing and Minister Goff announced that at least two experts would be appointed. I note that the briefing to Minister Goff dated 1 March 2000 has previously been released to you under the Act.

6. *Did officials advise Sir Thomas to subject the opinions of the expert advisors to peer review?*

No.

11. *What exactly did officials tell Sir Thomas about Dr Sas?*

Sir Thomas Eichelbaum requested that the Ministry provide him with assistance in identifying suitable experts to assist with this Inquiry. Accordingly, the Ministry provided Sir Thomas with published material, curriculum vitae and contact details of several international experts, including those nominated by the people with whom Sir Thomas was required to consult. Dr Sas was just one of these experts. Sir Thomas then consulted with Dr Lyon, an American professor who was familiar with the work and reputation of many of those being considered. Following this consultation, Sir Thomas selected the two experts to assist him in the inquiry.

I attach to this letter:

- A file note dated 13 June 2000 regarding a meeting between Sir Thomas Eichelbaum, Val Sim and Michael Petherick;
- An article co-written by Louise Sas titled *Children and the Courts in Canada* which officials provided to Sir Thomas;
- An article written by Louise Sas titled *Empowering Child Witnesses for Sexual Abuse Prosecution* which officials provided to Sir Thomas; and
- A Selected Bibliography of Louise Sas.

These documents are released to you under the Act.

12. *Did officials advise Sir Thomas that Dr Sas' selection could impact negatively on the credibility of his Inquiry?*

No.

17. Are you concerned that Ministry of Justice officials appear to have lost a number of important and sensitive documents pertaining to the Peter Ellis case?

You allege in your letter to the Minister that Ministry of Justice officials appear to have 'lost' a number of documents pertaining to Mr Peter Ellis's case. You also allege that the Ministry has been unable to locate several documents which you have previously requested under the Act.

The Ministry has not "lost" documents pertaining to Mr Peter Ellis's case.

As you will be aware, the Ministerial Inquiry was an independent inquiry carried out by Sir Thomas Eichelbaum, with some research and administrative assistance from the Ministry of Justice. Accordingly, the Ministry files hold some of the documentation relating to the Ministerial Inquiry but do not contain complete copies of all the documentation sent, received or otherwise recorded by Sir Thomas.

The Ombudsman has accepted that the Ministry is not required to seek documents or information from Sir Thomas as, since the conclusion of the Inquiry, Sir Thomas is no longer subject to the Act.

Letter of 4 May 2000

On 24 September 2007 you requested from the Ministry a letter dated 4 May 2000, written by Sir Thomas Eichelbaum, addressed to the Ministry of Justice.

When we replied to your request on 26 October 2007 we were unable to locate the document you requested. This document has now been located and is released to you under the Act.

Yours sincerely


Jeff Orr
Chief Legal Counsel
Office of Legal Counsel