

14 October 2008

Ross Francis

Dear Mr Francis

**OFFICIAL INFORMATION ACT 1982 COMPLAINT – W59583 – ROSS FRANCIS**

I refer to your request for official information dated 1 April 2008 and your subsequent complaint to the Office of the Ombudsmen following the Ministry's response of 29 April 2008.

I understand that your complaint relates to the Ministry's response to your third question as follows:

*Has the Ministry advised the Hon Rick Barker [Associate Minister of Justice] following his appointment last year, of the benefits that might be expected to accrue from conducting a commission of inquiry into the Peter Ellis case, and, if so, what are these benefits?*

In response to the above question the Ministry summarised material provided to the Associate Minister of Justice, Mr Rick Barker, from the report of the Justice and Electoral Committee as to whether there should be a Royal Commission of Inquiry into the Christchurch Civic crèche case (Petitions 2002/55 and 2002/70).

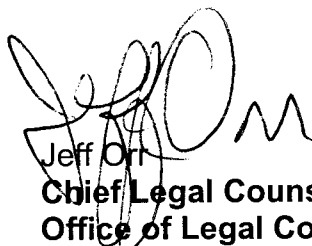
As you know the select committee's report contains a complete discussion of the question of whether there should be a Commission of Inquiry into Mr Ellis's case, which can be found on the Parliament website at the following link:

[http://www.parliament.nz/NR/rdonlyres/CF41B957-D540-4370-8D6F-7F273E808214/15154/DBSCH\\_SCR\\_3225\\_32291.pdf](http://www.parliament.nz/NR/rdonlyres/CF41B957-D540-4370-8D6F-7F273E808214/15154/DBSCH_SCR_3225_32291.pdf)

In light of your complaint, the Chief Ombudsman has requested that the full text of the relevant part of the briefing be released to you. The relevant excerpt from the briefing is as follows:

- “The question of whether there should be a Royal Commission of Inquiry into the Ellis case was considered in great detail by the Justice and Electoral Select Committee. Explicitly, the Committee did not recommend that the Government establish a Royal Commission of Inquiry into Peter Ellis’ case.
- The Report of the Select Committee on the petition of Don Brash and Lynley Hood stated that it was unlikely that a Royal Commission of Inquiry conducted in 2005 could be expected to reach a better view of the facts than was achieved in 1993, given the effect of the lapse of time on the availability and quality of the evidence.
- The Committee was also concerned about the potential impact on the child complainants and their families who may be required to re-live their experiences by giving evidence to an inquiry. The Committee considered that the children and their families were entitled to expect that if the formal legal process found no miscarriage of justice, then that was the end of the matter.
- Given the further passage of time it would seem that the Select Committee’s conclusions are even more relevant.
- The Committee also noted that a Commission of Inquiry cannot exercise judicial functions, such as the determination of criminal responsibility. That is, a Commission cannot be convened to determine the guilt or innocence of an individual as its primary purpose.”

Yours sincerely



Jeff Orr  
**Chief Legal Counsel**  
**Office of Legal Counsel**