

24 FEB 2014

Rob Carr
Office of Leader of the Opposition
rob.carr@parliament.govt.nz

File Ref: 14/00051

Dear Mr Carr

I refer to your official information request dated 5 February 2014, requesting:

On page 12 of the PDF paragraph 25(e) it refers to an open letter superseding the confidential/without prejudice one. I wish to request a copy of the letter if it has been produced.

On 16 October 2013, the Ministry of Business, Innovation and Employment (MBIE) received a confidential and without prejudice letter from Stuart Grieve QC acting for Mr Whittall. This letter outlined a proposal for the resolution of the prosecution against Mr Whittall including the making of a payment to Pike River families.

This was considered by MBIE as noted in the record of decision documentation you have already received from us. It appeared to MBIE that there would be public interest in understanding the terms of the proposal made by Mr Grieve but because of its confidential and without prejudice status it could not be made public. On that basis Mr Grieve was asked to prepare a version of this letter that would be able to be disclosed if necessary (ie, an "open letter").

Mr Grieve did so, and that was received by MBIE on 7 December 2013 although it was dated 16 October 2013. A copy of that letter is attached.

I wish to make it very clear that MBIE did not then and does not now agree with the content of the letter and nor does WorkSafe NZ now. It is nothing other than a statement of position by the defence. It has no legal status.

In general, I refer you also to the public statements made by the Acting Deputy Chief Executive, Health and Safety of the Ministry at the time the charges were withdrawn by the Ministry.

Mr Podger made a number of critical points which have relevance to Mr Grieve's letter:

- The offer of payments to the families was a part, but only a part, of the Ministry's considerations about the status of the charges laid against Mr Whittall. Mr Podger carefully stated that the critical determinants for the Ministry were those of witness availability and public interest considerations and that the offer made by Mr Grieve on behalf of Mr Whittall was a lesser consideration. You will note that Mr Grieve's position in this letter is that withdrawing the charges against his client was a precondition to the offer to the families going forward. That was not accepted by MBIE and is not now accepted by WorkSafe NZ. It is a statement of position by the

position in this letter is that withdrawing the charges against his client was a precondition to the offer to the families going forward. That was not accepted by MBIE and is not now accepted by WorkSafe NZ. It is a statement of position by the defence. The offer itself was considered by MBIE within the broad terms of the public interest considerations required by the Solicitor General's guidelines and as described publicly by Mr Podger.

- Mr Grieve's letter at point 12 makes a number of allegations about MBIE's investigation and the subsequent legal discovery process. These comments were repeated in part or in whole by Mr Grieve in court on the day of the withdrawal of the charges against Mr Whittall. Mr Podger specifically noted in his public statements that MBIE rejected his allegations. You should note that none of his allegations about MBIE's performance have been tested in court. On that basis they should not be relied on as anything other than positional views of Mr Whittall's defence team.
- Mr Podger also publicly stated many of the points raised in the discussion summary document released to you earlier, and you should take those comments and that statement into account when considering Mr Grieve's letter.

I do not wish to overstate the MBIE and WorkSafe NZ position on the offer to the families. However, I am aware that there have been wildly inaccurate allegations made by a number of people (and repeated as "fact" by media and others) that there was some sort of "backroom deal" done between the defence and the prosecution which "let Mr Whittall off in return for these payments". Mr Grieve's point at 6a of his open letter could lead to further suggestions of this kind and I wish to make it very clear, again, that there was no such arrangement between the defence and prosecution.

You have the right to seek an investigation and review of our decision to extend the time 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 Brett Murray, General Manager High Hazards and Specialist Services, at brett.murray@worksafe.govt.nz.

Yours sincerely



Brett Murray
General Manager, High Hazards & Specialist Services