



Committee on the Scottish Government Handling of Harassment Complaints

John Swinney MSP
Deputy First Minister

c/o Clerk to the Committee
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BY EMAIL

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Dear Mr Swinney

I am writing to inform you that the Committee has now considered the former DGODO report referred to in your letter dated 21 December and accompanying documents.

The Clerks have highlighted to your officials which confidential elements of the report the Committee would wish to be able to refer to in public session when questioning witnesses. The Committee looks forward to receiving the paraphrased text of the redactions to inform all future evidence sessions.

The Committee has asked me to highlight that it wishes to see the unredacted report again in the New Year in a further 'reading room' in part to ensure the paraphrased wordings provided by the Government encapsulates the redacted text. I appreciate that any such paraphrasing will be framed to take account of the fact that the Government continues to assert legal privilege over the text.

The reading room and the ability to view information of relevance to the inquiry's remit is progress. However, there are elements of the legal advice which the report does not cover, for example any counsel advice from August to the beginning of October 2018 including counsel advice on the initial petition. There are also elements of the judicial review process that the Committee understands to have been key moments, about which the report goes into very little detail. For example, details of legal advice around the 19 October 2018 when, the Committee understands from evidence, prior contact of the investigating officer with the complainers became a focus for internal and external lawyers.

Given the Committee's unanimous agreement that sight of the legal advice itself is required, you will be unsurprised to hear that the Committee remains determined to see further advice, in line with the terms of the motion agreed on 15 December which states:

That the Committee considers that in order to discharge its duties, it needs to see the legal advice from counsel and associated minutes of meetings relating to the Judicial Review with LPP waived and that this needs to be published in the interests of transparency; agrees to continue discussions with the Scottish Government including to secure access to this legal advice in a reading room to be provided by 14 January 2021; in the interim accepts the Scottish Government offer to read the former DGODO's report of 29th December 2018; subject to agreement that notes can be taken to refer to in questioning Scottish Government witnesses and that these witnesses should not refer to legal privilege in answering questions relating to the report; insists that the SG waives LPP over the document so as to enable publication of whatever contents the Committee deems fit.

As such, I should be very grateful if you could confirm the Government's position on the remainder of the motion and in particular the Government's position on the Committee viewing the legal advice referred to in the motion by 14 January 2021.

The Committee seeks confirmation that the Government is amenable to such a request given the terms of recent negotiations. In addition, given the restrictive timescales the Committee is working to, in order to complete its inquiry before the end of the Parliamentary session, I would be grateful for an indication as soon as is practicable as to whether viewing these documents in a reading room would be possible in mid-January as per the Committee's motion.

Yours sincerely

Linda Fabiani MSP

Convener, Committee on the Scottish Government Handling of Harassment Complaints