

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA



David McGill
Clerk/ Chief Executive
The Scottish Parliament
Edinburgh
EH99 1SP

RNID Typetalk prefix: 18001

DX: 540310 Edinburgh 38

Your ref:

Our ref: KD/GS/ ED19004183

29 January 2021

Dear Mr McGill

Notice under section 24 of the Scotland Act 1998 Committee on the Scottish Government Handling of Harassment Complaints

I write in response to the Notice under section 24 of the Scotland Act 1998 dated 22 January 2021 which you served on me as a representative of the Crown Office and Procurator Fiscal Service (COPFS) on behalf of the **Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints** (the Committee). You set a deadline on this notice of seven days.

As I explained in my letter dated 10 November 2020 to the convener of the Committee, the material held by COPFS in relation to the criminal investigation and prosecution of Alex Salmond, as in any case, was obtained and is held by COPFS for that sole purpose. I also explained that for COPFS to process or disclose that material there required to be a legal basis and that Section 23 of the Scotland Act 1998 could provide such a basis in the event that the Committee sought to recover any data held by COPFS.

In applying the law as set by both the Scottish and United Kingdom parliaments, COPFS has the responsibility of protecting and respecting the sensitive and personal nature of the information it holds, and is keenly aware of the trust that is placed in police and prosecutors by those who come forward to complain of a crime or otherwise to provide evidence in support of a criminal investigation and prosecution.

It is vitally important that people who believe that they have been the victim of crime, and those who can provide evidence as witnesses to crime, feel able to come forward to report that to the police in the confidence that they will be treated with respect, sensitivity and confidentiality by the police and COPFS. In order to protect that public confidence and trust, COPFS must process the information it holds carefully, thoughtfully and lawfully.

In my said letter dated 10 November 2020, in which I explained that an application under section 23 of the Scotland Act could provide a legal basis for the Crown to provide the committee with information it holds, I also explained that COPFS cannot simply produce any document on receipt of a section 23 requirement from the Committee. Instead Crown Counsel, on behalf of the Lord Advocate, needs to consider

whether producing the document sought would be contrary to the public interest in accordance with section 23(10) of the said Act.

In making such an assessment Crown Counsel must consider the relevant public interests, including, but not limited to, the relevance of the document to the work of the Committee, the interests of the owner of the document or anyone named in it, and the public interest in maintaining trust and confidence as I have described above. Each document needs to be considered on its own merits.

Crown Counsel has now considered your notice and, as in all matters, has acted with impartiality and fairness to apply the law, and the public interest test, professionally and independently.

In terms of the Notice, the Committee has asked COPFS to produce two classes of documents which it holds. I will now address each of those classes of documents separately in the order in which they appear in the Notice.

1. Any text or WhatsApp communications between Ms Ruddick, Chief Operating Officer of the Scottish National Party and members of the Scottish Government, Scottish Government civil servants and Scottish Government Special Advisers during the time frame of August 2018 to January 2019 and relevant to the Committee's Inquiry, including the Judicial Review by Alex Salmond, former First Minister.

In compliance with this part of the notice COPFS has reviewed all such messages which it has in its possession including those which were not disclosed in the criminal proceedings against Mr Salmond.

Any messages outwith the time frame specified in the Notice, namely 1 August 2018 to 31 January 2019 have been disregarded. Further, any messages which involve persons who are not members of the Scottish Government, Scottish Government civil servants and Scottish Government Special Advisers have also been disregarded. In that regard, I have interpreted the Notice as meaning individuals who were in post in those specified roles during the time frame specified in the Notice of August 2018 to January 2019.

[Redacted]

[Redacted] All other messages sent by other members of the chat group have been disregarded.

Finally, any messages which were patently irrelevant to the Committee's Inquiry, including those which were clearly of a personal nature, and on no view could have any bearing on the Committee's remit, have also been disregarded.

[Redacted]

In an effort to assist the Committee I have sought to differentiate communications between Ms Ruddick and other individuals in a way which allows the Committee to understand the context of conversations but which does not compromise the entitlement of anyone involved to have their identity protected. In short, the background to the messages are colour coded based on the identity of the other party to the messages.

As I indicated above, COPFS takes its responsibilities to victims and witnesses seriously, and in particular for current purposes our duty to maintain their confidence and trust by managing the data they provide to us lawfully, sensitively and confidentially. Having carefully considered this matter, including the rights of the individuals involved, Crown Counsel has decided that there is not an overriding public interest which would justify COPFS departing from our obligation to comply with this statutory notice from the Scottish Parliament in order to assist the important work of the Committee. However, the fact remains that these are private messages. Whilst I recognise and appreciate that it is a matter for the Committee, I would respectfully request that the Committee gives careful consideration as to whether or not it is appropriate and in the public interest for such private messages to be published.

2. Documents relevant to the circumstances in which details of complaints under the Scottish Government procedure on sexual harassment complaints was leaked to the Daily Record newspaper in August 2018, following the investigation by the Scottish Government and preceded by the judicial review by Alex Salmond.

As I am sure that the Committee will appreciate, the leak of details of the complaints was not a material consideration for COPFS in the investigation and conduct of the criminal proceedings. As such, it is not something for which we had a readily available record of any documents which may fall under this part of the Notice and which may be relevant to the Committee's Inquiry. In the short time available since service of the Notice a review has been carried out of all of the records that we hold to identify any documents which may be covered by this part of the Notice.

With respect to those involved in drafting the Notice it is not immediately apparent to COPFS what exactly the Committee were looking for in this regard and we have accordingly taken a broad approach to identifying such documents.

Eleven documents, or groups of documents, have been identified which meet the requirements of this part of the Notice as it has been interpreted. Those documents which have been identified required to be redacted to remove any information which may lead to the identification of the complainers and also in relation to material which was not covered by the notice or was patently not relevant to **the Committee's Inquiry**. The redacted copies of said documents are produced at Annex B to Annex L inclusive.

I have appended an index of the documents which are attached for ease of reference.

I hope that this is helpful.

Yours sincerely

[Redacted]

Kenny Donnelly
Procurator Fiscal, High Court

NOTICE UNDER SECTION 24 OF THE SCOTLAND ACT 1998

REQUIREMENT UNDER SECTION 23 OF THE SCOTLAND ACT 1998 TO PRODUCE DOCUMENTS TO THE COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

INDEX OF DOCUMENTS PRODUCED BY COPFS

1.	ANNEXE A	[Redacted]
2.	ANNEXE B	ICO – COPFS email chain dated March 2020 and two attachments <ul style="list-style-type: none">• Closing Letter to L&M• Closing Letter to SG
3.	ANNEXE C	Email chain – Nicola Richards dated 28/29 August 2018
4.	ANNEXE D	Email chain - Judith Mackinnon dated 30 August 2018
5.	ANNEXE E	[Redacted]
6.	ANNEXE F	Email chain – Judith Mackinnon 28 September 2018
7.	ANNEXE G	[Redacted]
8.	ANNEXE H	Email from Judith Mackinnon dated 28 September 2018
9.	ANNEXE I	Email from Judith Mackinnon dated 28 September 2018
10.	ANNEXE J	Letter from Levy & McRae to Permanent Secretary dated 27 August 2018
11.	ANNEXE K	Email enclosing letter from Levy & McRae to Permanent Secretary dated 27 August 2018
12.	ANNEXE L	[Redacted]

ANNEXE B

[REDACTED]

From: [REDACTED]
Sent: 05 March 2020 18:40
To: [REDACTED]
Subject: RE: Contact Request [Some links may be disabled. For full links contact Service Desk] [Some links may be disabled. For full links contact Service Desk] [Some links may be disabled. For full links contact Service Desk]

External: This email originated outside the ICO.

Dear [REDACTED]

Many thanks for your email and for attaching copies of the draft letters to the Scottish Government and to Levy & McRae.

I confirm that the Crown does not have any concerns with what you propose and is content for you to proceed as you suggest. I also acknowledge the basis upon which the information was disclosed to the Crown.

Please do not hesitate to contact me again should anything arise in future in connection with this matter.

Kind regards

[REDACTED]

[REDACTED]

Principal Procurator Fiscal Depute
National High Court Sexual Offences Team

Email: [REDACTED]

From: [REDACTED]
Sent: 05 March 2020 14:13
To: [REDACTED]
Subject: RE: Contact Request [Some links may be disabled. For full links contact Service Desk] [Some links may be disabled. For full links contact Service Desk] [Some links may be disabled. For full links contact Service Desk]

Dear [REDACTED],

Thank you for your response and apologies for the delay in replying.

Please find attached draft letters that have been prepared for the Scottish Government and also for Levy & McRae who represent Mr Salmond.

It is my intention to send the letters tomorrow (Friday 6 March) unless you raise any issues or concerns in the meantime. This information has been provided in light of the trial which commences on Monday 9 March, to ensure that there is nothing in the letters and the proposed actions of the ICO that would prejudice the criminal proceedings. The material is provided only for the exercise of COPFS's official law enforcement purposes/discharge of its statutory function; and is to be maintained in strict confidence.

It is not our intention to proactively publish the findings of our investigation. However we have prepared a reactive media line in the event of any enquiries, as the ICO involvement in this matter is already known to the media. The reactive line is as follows:

An ICO spokesperson said: "After conducting thorough enquiries with the Scottish Government, the ICO found no evidence that a third party or an employee from the Scottish Government unlawfully obtained or disclosed personal data relating to Mr Alex Salmond. We also found no evidence that Mr Salmond's personal data was processed unfairly.

"However, during the course of our investigation, we identified some concerns in relation to the Scottish Government's data protection practices, and we have given them recommendations to improve their compliance with data protection law.

"This matter is now closed and we won't be taking further action."

Please let me know if there is anything further you require and thank you for your assistance in this matter.

Regards,



[Redacted]
Criminal Investigations Team
Regulatory Supervision Service

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire SK9 5AF

[Redacted]

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From: [Redacted]

Sent: 03 March 2020 15:29

To: [Redacted]

Subject: RE: Contact Request [Some links may be disabled. For full links contact Service Desk] [Some links may be disabled. For full links contact Service Desk]

External: This email originated outside the ICO.

Dear [Redacted]

Thank you very much for your helpful and considerate email. I cannot see any impediment to what you propose and, given the criminal trial is due to commence on 9 March 2020, I agree that Mr Salmond's legal representatives, and the Scottish Government, should be advised without delay.

There is, of course, the potential that the conclusions of the ICO investigation will be relevant to the evidence at the criminal trial and it would be useful for the Crown to be aware of that in advance. On that basis, particularly in light of the proximity of the trial, would the ICO consider also disclosing a copy of the conclusions to the Crown in order that an assessment can be made in that regard?

Finally, may I take this opportunity to remind you that proceedings are live for the purposes of the Contempt of Court Act 1981. As such, whilst there is no legal impediment to the ICO intimating the result to parties, if it is your practice to publish the decision in any way then you will require to be mindful that in so doing nothing is published which could give rise to a substantial risk of prejudice to the criminal proceedings. You should also be aware that the courts in Scotland have tended to interpret the laws of contempt more strictly than elsewhere in the UK.

Kind regards


Principal Procurator Fiscal Depute
National High Court Sexual Offences Team

Email: 



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

From: 

Sent: 03 March 2020 07:11

To: 

Subject: RE: Contact Request [Some links may be disabled. For full links contact Service Desk] [Some links may be disabled. For full links contact Service Desk]

Dear ,

Good morning and thank you for responding to my email.

In October 2018 the ICO received a complaint on behalf of Mr Salmond of a potential criminal breach of the Data Protection Act 2018 by unknown persons within the Scottish Government. It is alleged that information relating to an internal misconduct investigation had been leaked to the press, and only those involved in the investigation and a small number of staff within the Scottish Government knew about the allegations being made against Mr Salmond. If proven these would be offences contrary to s170 DPA 2018.

We have concluded our enquiries and we will be sending finalisation letters to Mr Salmond's legal representatives and to the Scottish Government. We were conscious of the ongoing criminal proceedings and a caveat in the responses we received from the Scottish Government "*that nothing is done that would risk interfering with or prejudicing any ongoing police investigation and criminal proceedings*". We informed the Scottish Government that in our closing letter to Mr Salmond's solicitors that the material (listed below) was reviewed during the course of the investigation, which we describe in the following terms -

- *Media lines published by the Scottish Government*
- *The Scottish Government's Data Handling Review dated 4 September 2018 , which includes their response to our questions regarding their information handling procedures, accesses and disclosure controls to their systems.*
- *Information relating to the searches conducted by the Scottish Government of their IT systems, which were conducted to identify any unlawful obtaining or disclosure of personal data relating to Mr Salmond.*

- Interview records conducted with staff who had access to relevant material
- Details of the consultation conducted with the Lord Advocate's Office
- A review of the forensic examination conducted by the Scottish Government of employees personal mailboxes to identify any material potentially linked to the unlawful obtaining or disclosure of personal data relating to Mr Salmond.

We were clear that the source material/documents will not be disclosed and if later, these are requested by Mr Salmond, the ICO will liaise with the Scottish Government to discuss any potential disclosure. In their response the Scottish Government advised that they were not a party to the criminal proceedings but strongly urged us to make contact with COPFS to seek guidance on any prejudice to the criminal proceedings.

It is our intention to send the closing letters as soon as possible. We contacted COPFS on advice of the Scottish Government, and as the Scottish Government are not parties to the criminal proceedings I can see no reason to delay sending the letters.

Can you advise whether you believe these actions will have an adverse effect on the ongoing criminal proceedings?

Kind regards,



Criminal Investigations Team
Regulatory Supervision Service

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire SK9 5AF

[Redacted]

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From: [Redacted]

Sent: 02 March 2020 14:36

To: [Redacted]

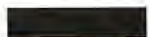
Subject: FW: Contact Request [Some links may be disabled. For full links contact Service Desk]

External: This email originated outside the ICO.

Dear [Redacted]

I refer to your email correspondence which has been passed to me today. I am happy to assist if I can. Please send any request for information relating to this case to my email address.

Kind regards



Principal Procurator Fiscal Depute
National High Court Sexual Offences Team

Email: [REDACTED]



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

From: [REDACTED]
Sent: 27 February 2020 16:13
To: _Enquiry Point
Subject: RE: Contact Request [Some links may be disabled. For full links contact Service Desk]

Good afternoon [REDACTED],

It is the Alex Salmond case which is due for trial next month.

Kind regards,

[REDACTED]



[REDACTED]

Criminal Investigations Team
Regulatory Supervision Service

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire SK9 5AF

[Redacted]

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From: _Enquiry Point <EnquiryPoint@copfs.gov.uk>
Sent: 27 February 2020 15:31
To: [REDACTED]
Subject: FW: Contact Request

External: This email originated outside the ICO.

Good Afternoon

Would you be able to provide more details of the case ie reference number, name of accused etc.

Kind Regards

[REDACTED]

National Enquiry Point

From: [REDACTED]
Sent: 27 February 2020 14:45

To: _Enquiry Point
Subject: Contact Request

Good afternoon,

I have been in touch with the Scottish Government regarding an ongoing ICO case.

We have been advised to contact the Crown Office and Prosecutor Fiscal Service regarding ongoing criminal proceedings. I have been advised that the Prosecutors Fiscal in charge of the case are [REDACTED] and [REDACTED]. Would it be possible to have a contact number so that I may speak with them?

Thank you,

[REDACTED]



Criminal Investigations Team
Regulatory Supervision Service

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire SK9 5AF

[Redacted]

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Information Commissioner's Office

Upholding information rights

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel. 0303 123 1113 Fax. 01625 524 510 www.ico.org.uk

**Scottish Government
3D North
Victoria Quay
Leith
Edinburgh EH6 6QQ**

By email only to: [Redacted]

Date **TBC**

Dear [Redacted]

ICO Incident Ref: IC/0295/2018

Further to previous correspondence on this matter.

I write to inform you that the ICO has now completed its investigation into the complaint made on behalf of Mr Alex Salmond that information relating to an internal misconduct investigation had been leaked to the press in breach of data protection legislation.

This case has been considered under s170 Data Protection Act 2018 and the provisions of the General Data Protection Regulation (the Regulation) due to the nature of the processing involved. We refer to the GDPR and the DPA 2018 together as the 'data protection legislation'.

For more information about our powers under the data protection legislation please see the attached leaflet - ICO Enforcement leaflet - GDPR and DPA 2018.

Criminal Investigation

The matter was referred to the Criminal Investigation Team to investigate whether there was evidence that an offence under s170 DPA 2018 offence had been committed by an unknown employee of the Scottish Government, specifically that an employee had unlawfully obtained and disclosed personal data relating to Mr Salmond.

The complaint makes reference to information published in articles that appeared in the media between 23 August 2018 and 26 August 2018.

Section 170 creates a criminal offence (extract): It is an offence for a person knowingly or recklessly –

(a) to obtain or disclose personal data without the consent of the controller,

(b) to procure the disclosure of personal data to another person without the consent of the controller

Therefore, the section 170 offence is committed against the controller for the purposes of the Act. To clarify, it is the personal data belonging to the Scottish Government that may have been unlawfully obtained or disclosed without their consent.

We conducted enquiries with the Scottish Government to establish whether there was any evidence to corroborate the complaint made on behalf of Mr Salmond.

Upon review and assessment of the material supplied, the ICO has determined that there is no evidence to show that an offence contrary to s170 DPA 2018 has been committed by an employee of the Scottish Government or by a third party unlawfully accessing Scottish Government systems.

Civil Investigation

In addition to an investigation into a potential criminal offence under s170 DPA 2018, we have also considered matters arising from the complaint made on Mr Salmond's behalf which relate to the processing of his personal data and the obligations of the Scottish Government as a controller under data protection legislation.

Article 5(1) of the GDPR says:

"1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, transparency')"

With regards to the articles published in media outlets and attributed to the Scottish Government, we have reviewed the media releases issued and we are satisfied that there is no evidence to show that Mr Salmond's personal data was unfairly or unlawfully processed in connection with these releases.

Conclusion

Based on the information gathered during our investigation, we are satisfied that we can close our investigation into the s170 DPA 2018 allegation and any potential breach of Article 5 (1) of the GDPR. We are satisfied that there is no evidence to corroborate the complaint that an employee of the Scottish Government unlawfully obtained and disclosed personal data relating to Mr Salmond. We are also satisfied that there is no evidence that the Scottish

Government acted in breach of Article 5(1) of the Regulation in relation to the processing of Mr Salmond's personal data.

We may review this decision if we receive any further relevant information about this matter.

Other matters

The Scottish Government conducted a Data Handling Review on 4 September 2018 in response to Mr Salmond's allegations.

The Commissioner considers that the Scottish Government needs to take certain steps to improve its data protection compliance and we recommend that the Scottish Government considers implementing the following measures:

1. Undertake a review of DPIA's, general policies and procedures to ensure they are compliant with current guidance
2. The GDPR training materials may benefit from a refresh to ensure they are compliant with current guidance
3. The Data Sharing Document may benefit from a review to ensure the reasonableness of the 'articles' relied on for information sharing.
4. Port End Controls – it appears from your response of 12 April 2019 (section 2D) that port end controls are not in place for all equipment and an improvement in this regard is advised.
5. The Policies mentioned in your letter 12 April 2019 Section 2 (e):
 - a) Handling Sensitive Information – this is shown as last updated in July 2015 and this should be refreshed in line with current guidance.
 - b) Clear desk policy – it's not clear when this document was created or what version it is and again should be refreshed in line with current guidance.

If you require any assistance with any of the above points, please make contact with the ICO's Assurance and Policy Teams.

Please note that if further information relating to this matter comes to light, or if any further incidents involving the Scottish Government are reported to us, we will revisit this matter, and enforcement action may be considered as a result.

Further information about compliance with the GDPR can be found at the following [link](#).

Please note that Mr Salmond's Legal Team have been informed of this outcome.

Thank you for your co-operation and assistance during the course of our investigation.

We now consider the matter closed.

Yours sincerely,

SIGN

Please note that we are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the General Data Protection Regulation, the Data Protection Act 2018 and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk).

The ICO publishes the outcomes of its investigations. Examples of published data sets can be found at this link (<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/>).

Please say whether you consider any of the information you send us is confidential. You should also say why so that we can take that into consideration. However, please note that we will only withhold information where there is good reason to do so.

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice



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Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
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Our Ref: IC/0295/2018

**Mr David McKie
Levy & McRae
Pacific House
70 Wellington Street
Glasgow
G2 6UA**

By email only: [Redacted]

Date **TBC**

Dear Mr McKie,

**Your ref: DMK /LL/STE039-0001 - Complaint under section s165
of the Data Protection 2018 (the Act)**

I write to inform you of the decision taken by the Information Commissioner's Office (ICO) in relation to the case referenced above.

You notified this office on 29 October 2018 of a potential criminal breach of the Act by unknown persons within the Scottish Government. In the complaint, submitted on behalf of your client Mr Alex Salmond, it is alleged that information relating to an internal misconduct investigation had been leaked to the press and only those involved in the investigation and a small number of staff within the Scottish Government knew about the allegations being made against Mr Salmond.

Specifically, your allegation is detailed in letters dated:

- 29 October 2018 - that an employee of the Scottish Government *'must have provided the detailed data relating to our client to the Daily Record'*
- 6 February 2019 - that Scottish Government employees *'had access to a particular document of which the Daily Record claimed on 25 August that they had seen the wording of a detailed complaint'*.

and relate to articles published on:

1. 23 August 2018 in the Daily Record



2. 25 August 2018 in the Daily Record
3. 26 August 2018 in the Sunday Post

Furthermore, you asked the ICO to:

4. Establish the circumstances and origin of the breach;
5. Explain the powers available to the ICO in terms of that investigation;
6. Provide guidance as to the remedies available to Mr Salmond; and
7. Confirm the sanctions open to the ICO in the event a breach is admitted or established.

Subsequently, you provided further information to the ICO to assist in our assessment of this matter:

8. A letter dated 8 February 19 , which included a list of individuals employed by the Scottish Government that may be able to assist our investigation.
9. On 28 and 29 October 19 provided a redacted statement from Detective Chief Superintendent [Redacted] indicating that this statement identified a number of points of importance:

In particular, that at a meeting on 21st August 2018 at approximately 11am, the Crown Agent was in possession of, and offered to the Chief Constable of Police Scotland, the document produced by the Scottish Government containing the conclusions of the internal investigation into our client. As the Chief Constable refused to accept that document you allege that any subsequent leak of that document prior to the articles in the Daily Record on 23rd and 25th August 2018 was not at the instigation of Police Scotland.

At the same meeting, the Crown Agent intimated to the Chief Constable and Detective Chief Superintendent [Redacted] that the Scottish Government may be making a public statement in relation to the outcome of their investigation and potentially refer to information being provided to Police Scotland and that the Chief Constable immediately advised against the Scottish Government doing so.

During the correspondence with the ICO you make a number of observations on this statement and you conclude: "*Given that timeline, and the express and repeated intention of the Scottish*

Government to make public the fact and findings of a confidential internal investigation, it is in our submission stretching credulity to suggest that the Scottish Government was not directly responsible for that data breach”.

Our investigation in relation to the allegations (Points 1–3 and 8)

Section 170 of the Act creates a criminal offence (extract): It is an offence for a person knowingly or recklessly—

- (a) to obtain or disclose personal data without the consent of the controller,
- (b) to procure the disclosure of personal data to another person without the consent of the controller.

Therefore, the section 170 offence is committed against the controller for the purposes of the Act. To clarify, it is the personal data belonging to the Scottish Government that may have been unlawfully obtained or disclosed without their consent. Put simply, the Scottish Government would also be classed as the victim.

We have conducted enquiries with the Scottish Government to establish whether there is evidence to show that an offence contrary to section 170 has been committed.

Our investigation has consisted of gathering all relevant information from the Scottish Government to enable the fullest review of the material supplied so we could determine if there is any evidence to corroborate the allegations being made.

The material reviewed during our investigation included:

- Media lines published by the Scottish Government
- The Scottish Government’s Data Handling Review dated 4 September 2018 , which included their response to our questions regarding their information handling procedures, accesses and disclosure controls to their systems.

Our review prompted further requests for information from the Scottish Government. The material supplied as result of these further requests included:



Information Commissioner's Office

- Information relating to the searches conducted by the Scottish Government of their IT systems, which were conducted to identify any unlawful obtaining or disclosure of personal data relating to Mr Salmond.
- Interview records conducted with staff who had access to relevant material
- Details of the consultation conducted with the Lord Advocate's Office
- A review of the forensic examination conducted by the Scottish Government of employees personal mailboxes to identify any material potentially linked to the unlawful obtaining or disclosure of personal data relating to Mr Salmond.

Having conducted a review of all the information received from the Scottish Government, we found no evidence to substantiate that an employee from the Scottish Government had unlawfully obtained or disclosed personal data relating to Mr Salmond. We have also found no evidence to substantiate that a third party unlawfully accessed the Scottish Government systems.

We were unable to establish from the Daily Record who provided the information regarding the misconduct investigation, shortly after 8pm on 23 August 2018, as they stated that to reveal the source would be contrary to the Journalistic exemption in the Data Protection Act 2018, Clause 14 of the Editor's Code of Practice and Section 10 of the Contempt of Court Act 1981.

In respect of Point 8, from the information gathered during our investigation there is no evidence to implicate the list of individuals you provided in the matters alleged or that they can provide any information to assist in identifying the source of the breach.

Therefore, in conclusion, the ICO has determined that there is no evidence to substantiate the allegation that an offence contrary to section 170 of the Act was committed.

We are satisfied that the Scottish Government has undertaken a thorough review and that they have been unable to detect any evidence of a data breach on their systems.

Fair Processing of Mr Salmond's Data

We have also considered whether the Scottish Government were in breach of data protection legislation in relation to the processing of

Mr Salmond's data in relation to the press releases that were issued by the Scottish Government between 23 August and 29 October 2018.

Article 5(1) of the GDPR says:

"1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, transparency')"

With regards to the articles published in media outlets and attributed to the Scottish Government, we have reviewed the releases issued and confirm that the only release issued by the Scottish Government on 23 August was at 11.40pm. Having reviewed the content of this release, we are satisfied that the Scottish Government did not act in breach of data protection legislation by issuing this release.

All other Scottish Government press releases from 24 August to 29 Oct 2018 have also been reviewed and we are satisfied that the Scottish Government has not acted in breach of data protection legislation by issuing these releases.

In respect of Point 9, there is no evidence to indicate that the Scottish Government didn't follow standard investigatory procedures in referring the matter to the Crown Office & Procurator Fiscal Service (COPFS) for their view and their actions in doing so were in compliance with the Act.

However, we did identify some minor concerns with regards to the Scottish Government's data handling practices. We have made a number of recommendations to ensure their compliance with the Act.

Response to Further Queries (Points 4 to 7)

4. As indicated above, there was no evidence to establish or identify the source of the alleged breach.
5. The Scottish Government disclosed the information to the ICO under section 131 of the Act – Disclosure of information to the Commissioner.



Information Commissioner's Office

6. If Mr Salmond believes his data protection rights have been breached by the Scottish Government then he can make a claim for compensation to the court – further information can be found here: <https://ico.org.uk/your-data-matters/data-protection-and-journalism/taking-your-case-to-court-and-claiming-compensation/>
7. There was no requirement to utilise our enforcement powers or impose sanctions as the Scottish Government was co-operative throughout and any compliance issues were minor.

Conclusion

In summary, there is no evidence to substantiate the allegation in respect of a s.170 DPA offence or a potential breach of Article 5 GDPR.

Whilst we understand that your client will be disappointed by this decision, we are satisfied that we have undertaken a thorough investigation and have not been able to identify evidence or information that would enable us to take further action in respect of Mr Salmond's allegations.

In accordance with the Victimsⁱ code you are entitled to request a review of this decision within three months of the date of this letter.

Further information on the Right to Review Scheme can be found at:

<https://ico.org.uk/media/about-the-ico/policies-and-procedures/1560152/ico-right-to-review-scheme-for-victims-of-crime.pdf>

Further guidance and information can be found on the ICO website www.ico.org.uk in relation to:

- *The ICO Regulatory Action Policy*
- *Victims code*
- *ICO privacy notice*

If you require any assistance regarding the above or would like to receive the information in an alternative format, please let me know.

Yours sincerely,

SIGN OFF



Information Commissioner's Office

ⁱ Victim: a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. This definition can include close family members, where the victim is a minor. We will also include businesses where there is an identifiable person who can represent the business. In data protection offences, this will often be the data controller.

ANNEXE C

RE: Re:

[Redacted]

[Redacted]

From: [Redacted]

Sent: 29 August 2018 09:42

To: Richards N (Nicola) [Redacted]

Subject: Re: Re:

Thanks for this update Nicky, this is really helpful.

[REDACTED]

Also, on the leaks, yes that makes total sense. Again, I know how frustrating this must be for everyone involved.

Thanks, as always,

Best Wishes

[REDACTED]

On Tue, Aug 28, 2018 at 6:19 PM [REDACTED] wrote:

Hi [REDACTED]

[REDACTED]

[REDACTED]

On how material got in the public domain – as you're aware we had this material for many months with no issue. We will continue to do whatever is necessary to ensure that our own handling of the information is above reproach. However, as you're aware this information has also gone beyond SG to you as complainers and to FFM's representatives, and put to the police for their investigation – so it is not all within our control.

Does that make sense?

Best wishes

Nicky

From: [REDACTED]
Sent: 28 August 2018 15:20
To: Richards N (Nicola) [REDACTED] Mackinnon J (Judith)
Subject: Re:

Thanks Nicky, that would be really helpful.

From my perspective, what would be really useful to get some more information on is what, if anything, the SG can put into the public domain to make clear that the complaints procedure was followed (and therefore the FFM had access to due process) and also if there is anything that can be known about the source of leaks (which I know will have been of huge frustration to SG as well as us)

Thanks so much
[REDACTED]

[REDACTED]

Hi Nicky,

I hope you're well.

I know that there is obviously a lot happening behind the scenes at the moment while there is so much playing out in the media, so I wondered if it was possible to move to a regular check-in with you.



Thanks, as always



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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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ANNEXE D

Re: Update

From: [REDACTED]
To: Mackinnon J (Judith) [REDACTED]
Date: Thu, 30 Aug 2018 15:13:26 +0100

[REDACTED]

From: [REDACTED]
Sent: 30 August 2018 14:18
To: Mackinnon J (Judith) [REDACTED]
Subject: Re: Update

Hi Judith,

[REDACTED]

[Redacted]

[Redacted] and thanks as always,

Take care

On Thu, Aug 30, 2018 at 8:17 AM [Redacted] wrote:

[Redacted] hello – hope you are ok?

Just a check in with you this morning after last night's announcement. We don't have any further information, other than what is in the press, but if things develop further today, I will update you later.

If you want to catch up, please let me know. I am available for a call today at any time, so just let me know.

Be in touch – in the meantime, take care.

Best wishes

Judith

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agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdalreachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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ANNEXE F

RE: Update

From: Mackinnon J (Judith) [Redacted]
[Redacted]

To: [Redacted]

Date: Fri, 28 Sep 2018 18:20:33 +0100

[Redacted]

[Redacted]

On 28 Sep 2018 17:57, <Judith.Mackinnon [Redacted]> wrote:

[Redacted] We still do not know where the press are getting their information I am afraid, so will be interesting, if it does run, what is said about it.

[Redacted]

Judith

From: [Redacted]
Sent: 28 September 2018 17:52
To: Mackinnon J (Judith) [Redacted]
Subject: Re: Update

Thanks for the heads up, Judith. Nicky had previously speculated that - based on the material used by the Record - the press might only have seen the list of causes for concern. However, I don't believe that list explicitly covers [Redacted], so does this seem to suggest that they have seen something more?

On 28 Sep 2018 17:37, [Redacted] wrote:

Hello [Redacted] - I hope this finds you well.

Two updates of note today:

1. There has been an enquiry from the Daily Mail today about [REDACTED] and specifically that [REDACTED] In line with all of our responses to the media until now, we will maintain our position and respond as follows:

"At the heart of this issue are two complaints which could not be ignored or swept under the carpet.

"The Scottish Government has a clear commitment to ensuring that there is no place for harassment of any kind in the workplace.

"As we have said previously, we are confident our processes are legally sound and we will vigorously defend our position.

"There are a number of inaccuracies in Mr Salmond's public statements and we will address those matters in court.

"For legal reasons the Scottish Government can make no further comment on the issues relating to Mr Salmond at this time."

[REDACTED]

Needless to say, get in touch with me if you have any concerns or issues. The Daily Mail, may not run the article, but better that you are forewarned.

Take care in the meantime.

Best wishes

Judith

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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ANNEXE H

Update

From: Mackinnon J (Judith) </o=tse/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mackinnon j (judith)587">
To: [REDACTED]
Date: Fri, 28 Sep 2018 17:47:19 +0100

Hello [REDACTED] – I hope this finds you well.

Two updates of note today:

1. There has been an enquiry from the Daily Mail today about the incident which was reported in the Daily record in detail. In line with all of our responses to the media until now, we will maintain our position and respond as follows:

“At the heart of this issue are two complaints which could not be ignored or swept under the carpet.

“The Scottish Government has a clear commitment to ensuring that there is no place for harassment of any kind in the workplace.

“As we have said previously, we are confident our processes are legally sound and we will vigorously defend our position.

“There are a number of inaccuracies in Mr Salmond’s public statements and we will address those matters in court.

“For legal reasons the Scottish Government can make no further comment on the issues relating to Mr Salmond at this time.”

[REDACTED]

Needless to say, get in touch with me if you have any concerns or issues. The Daily Mail, may not run the article, but better that you are forewarned.

Take care in the meantime.

Best wishes

Judith

ANNEXE I

Update

From: Mackinnon J (Judith) <"/o=tse/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mackinnon j (judith)587">
To: [REDACTED]
Date: Fri, 28 Sep 2018 17:48:52 +0100

Hello [REDACTED] – I hope this finds you well.

Two updates of note today:

1. There has been an enquiry from the Daily Mail today about the incident which was reported in the Daily record in detail. In line with all of our responses to the media until now, we will maintain our position and respond as follows:

“At the heart of this issue are two complaints which could not be ignored or swept under the carpet.

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“There are a number of inaccuracies in Mr Salmond’s public statements and we will address those matters in court.

“For legal reasons the Scottish Government can make no further comment on the issues relating to Mr Salmond at this time.”

[REDACTED]

Needless to say, get in touch with me if you have any concerns or issues. The Daily Mail, may not run the article, but better that you are forewarned.

[REDACTED]

Take care in the meantime.

Best wishes

Judith

ANNEXE J



Pacific House,
70 Wellington Street,
Glasgow,
G2 6UA

[Redacted]

DX GW 149 Glasgow

www.lemac.co.uk

[Redacted]

27 August 2018

Our Reference: DMK/LL/STE039-0001

Your Reference:

FAO: Leslie Evans
Permanent Secretary
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear Ms Evans,

This letter follows events since Thursday 23 August.

In our email to you at 22:38pm, we stated, inter alia, the following:

Our client is extremely concerned at the level of detail which the Daily Record appeared to have acquired on the story and is strongly of the view that the detail can only have been provided by a member of the Scottish Government.

Our client formally calls upon the Scottish Government to institute an immediate inquiry into the source(s) of this information standing the Government's assurances on confidentiality.

We did not receive a reply to that aspect of the letter and would be grateful to receive a formal response without further delay.

Since then, there appear to have been further significant breaches of confidentiality of the process.

In the first instance, the Daily Record published on Saturday very specific details of the inquiry including one of the allegations, which has been repeated extensively (which was only to be expected once published). Our client is clearly and legitimately concerned that further details will given to the media, and in particular the Daily Record. Some of the detail involved in the leaks can only have come from those working within the Scottish Government. Such concerns further underscore the need for you urgently to stem those briefings and investigate their origin.

Our client was advised by one newspaper reporter (Mail on Sunday) that the government did not intend to undertake an inquiry into these clear breaches of confidentiality. Is that your position? We would appreciate the courtesy of a response direct from the Government as opposed to through the media.

If you do not intend to instigate such an inquiry, please set out the reasons why not? If you have already dealt with his request and are investigating the issue, please advise us on what steps have been taken to date. Your failure to do so will be founded upon in the proceedings which our client has already commenced.

[Redacted]

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Thirdly, these breaches have legal consequences. We have already set out in detail and throughout this process our client's rights of privacy, the duties of confidentiality owed to him (and indeed apparently agreed in the process) as well as the statutory obligations imposed by the Data Protection Act 2018 and FOISA 2002. Given the leaks of data (including in relation to the Daily Record story on Saturday, data clearly covered by 'sensitive processing' in Section 35), we would welcome confirmation of what steps you have taken to comply with your obligations under the 2018 Act in response to those data breaches?



Yours sincerely,

[Redacted]

David McKie
Levy & McRae

ANNEXE K

FAO: Permanent Secretary

From: David McKie <[Redacted]>
To: [Redacted] <[Redacted]>
Date: Mon, 27 Aug 2018 16:29:18 +0100
Attachments: 270818 L M(STE0390001.283.A8488).pdf (950.44 kB)

Dear [Redacted]

I enclose a letter for the attention of the permanent Secretary.

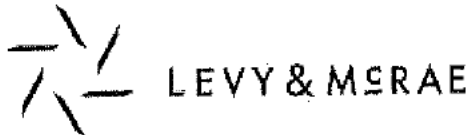
Please acknowledge safe receipt.

Regards

David

David McKie
 Partner
 Levy & McRae Solicitors LLP
 Pacific House
 70 Wellington Street
 Glasgow G2 6UA
www.lemac.co.uk

Mobile: [Redacted]
 DD: [Redacted]
 Tel: [Redacted]
 Fax: [Redacted]



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[Redacted]

27 August 2018

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Your Reference:

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Permanent Secretary
Scottish Government
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EH1 3DG

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Yours sincerely

[Redacted]

David McKie
Levy & McRae