



Linda Fabiani MSP
Convener, Committee on the Scottish Government
Handling of Harassment Complaints

8th February 2021

Dear Convener

Thank you for your letter of 3 February to the Lord Advocate. You seek confirmation on a number of matters relevant to the processing and sharing of documents with the Committee. I am replying, in my capacity as the Scottish Government's Senior Information Risk Owner (SIRO), with specific responsibilities with reference to arrangements for the oversight and promotion of the appropriate management and handling of data within the Scottish Government. I confirm that the contents of this letter have been cleared with the Lord Advocate in advance. The Lord Advocate is replying separately on the Committee's questions about the transfer of information to the Crown Office.

The provision by the Scottish Government of information to the Committee on the Scottish Government Handling of Harassment Complaints has reflected and complied with:

- The Committee's remit and its written statement on handling of information and evidence, published after its meeting on 22 June 2020.
- The data handling approach by the Scottish Government set out in the Permanent Secretary's letter to the Committee of 3 June 2020.
- Scottish Ministers' commitment that the Scottish Government will provide relevant documentation requested by the Committee, within legal and other restrictions.
- The Government's obligations as a data processor under the data protection law and the requirements of a Contempt of Court Act order.

Redaction of evidence provided by the Scottish Government to the Inquiry

You ask about the arrangements for the selection and redaction of documents for sharing with the Committee. As you note, the Permanent Secretary's letter of 3 June 2020 provided the Committee with advice about the general approach to documents, including the need to redact information that could contribute to the identification of complainers, where legal professional privilege is asserted or where information is covered by the undertaking from the judicial review. The Committee indicated that it did not want to receive the names of civil servants below Senior Civil Service grade, which have also been redacted. The Government's approach to the selection and redaction of relevant documents has been restated in each of the written submissions provided to the Committee alongside each tranche of documents released.

I can confirm that the process for selecting and redacting documents has been conducted in line with the approach already set out by the Permanent Secretary.

All decisions about the provision and redaction of documents have been taken at official level by civil servants. All civil servants are bound by the requirements of the Civil Service Code, to act with integrity, honesty, impartiality and objectivity. Legal advice has been available throughout, and taken account of, by officials responsible for collating and redacting the documents ahead of their release to the Committee, including in relation to whether documents are covered by legal professional privilege or the Law Officers' Convention. The documents prepared for release have also been subject to necessary data protection checks and notifications, which I have approved as SIRO. I confirm that the overall process of document management has been subject to appropriate legal oversight at all stages.

No unnecessary redactions or omissions have been made outwith the process already described that would prevent the Committee from seeing the evidence it has requested relevant to its remit.

As documents released to the Committee have been provided on behalf of the Scottish Government, final approval for their release (once collated and appropriately redacted per the above approach) was sought from the Deputy First Minister. This is entirely normal for any documents being provided by the Government to the Parliament. This process of approval for release has not resulted in changes to the identification of documents being released or to the redactions made to them. The purpose of the approval process has been to provide assurance by officials to Ministers that the approach set out above has been complied with, has been consistent with Ministers' commitment to share relevant information with the Committee, and that the arrangements for release have complied with all relevant legal obligations on the Scottish Government.

For completeness, the Committee is also aware of its Agreement of December 2020, approved by the Deputy First Minister and Law Officers, which resulted, exceptionally, in the provision to the Committee on a confidential basis of a summary of the Government's legal advice during the judicial review.

Your letter notes the documents provided by the Scottish Government relevant to the four phases of the Committee's inquiry. As you are aware, in line with the commitment made in the Deputy First Minister's letter of 26 October 2020, a fifth and final tranche of documents from the productions and recoveries from the judicial review are also being shared with the Committee, once necessary checks and redactions have been completed. This covers documents which had not previously been included as part of any of the previous tranches or covered by specific questions raised by the Committee. These are being shared with the Committee to ensure that relevant documents from the productions and recoveries from the judicial review have been provided. The information contained in the documents does not add to the written statements and timelines already provided by the Scottish Government to the Committee.

As you are also aware, there are a small number of documents which were part of the consideration for the Complaints Handling phase of the Committee's remit, which the Scottish Government considers would have been relevant to the Committee's work, but which, it has been asserted, cannot be released to the Committee due to the undertaking given to the Court of Session following the judicial review. The Committee has indicated, including in your letters to the Deputy First Minister of 6 and 12 November 2020, that it did

not want to receive documents that the Scottish Government would require a Court order to release, so these documents have not been released.

Staff have worked to identify relevant documents from the large volume of records retained on Scottish Government systems. We are not aware of any other documents that we hold that would be relevant to requests made by the Committee for information required to fulfil its remit. There have been no attempts or actions by officials, Ministers or Special Advisers to conceal or otherwise withhold documents outwith the approach described above. Where submissions and timelines have been provided to the Committee, the Scottish Government has ensured throughout that these were factual in nature, and were supported by references to relevant, specific and contemporaneous documents.

I hope this reply provides reassurance to the Committee.

Yours sincerely

Lesley Fraser
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SIRO