



CROWN OFFICE
25 CHAMBERS STREET
EDINBURGH EH1 1LA

Telephone: 0300 020 3000

Linda Fabiani MSP
Convener

Committee on the Scottish Government Handling of Harassment Complaints

By email to: SGHHC@parliament.scot

8 February 2021

Dear Convener

Thank you for your letter of 3 February. In that letter you seek confirmation about various matters in relation to the selection and redaction of documents for sharing with the Committee, and ask some specific questions about the decision to send certain material to COPFS.

A separate reply will be issued to your questions about the process for selecting and redacting documents for sharing with the Committee. I can confirm, on behalf of the Government, that those involved in this process have had access throughout to legal advice and that the process has been subject to legal oversight. I am replying on the matters you have raised with me about the transfer of information to the Crown Office.

The Scottish Government has already provided evidence in its written submissions, oral evidence and subsequent letters about the decision to refer three of the complaints raised with the Government to the Crown Office for onward transmission to Police Scotland. Reference to the specific material passed to the Crown Office is included in the letter dated 20 August 2018 which was provided to the Committee as part of the documents for the Complaints Handling phase of its remit¹.

As set out in the letter, the information passed to the Crown Office included copies of the original complaints and witness statements. The Decision Report, rather than the Investigation Officer's Report, was also passed to the Crown Office. It was for the Crown Office and Police Scotland to consider the relevance, if any, of the various documents provided by the Scottish Government.

¹ [SP_SGHHC - FN45.pdf \(parliament.scot\)](#)



You ask whether I had any involvement in the decision to pass these documents to the Crown Office. As I explained in my initial letter to the Committee, and in evidence on 17 November 2020, in response to questions from the Deputy Convener, it would not be consistent with the Law Officer Convention for me to confirm my involvement or non-involvement in this, or any other aspect, of the Government's consideration of this matter. However, that does not prevent me from answering, on behalf of the Government, your substantive question about the deliberations that informed this decision. The Scottish Government concluded that criminal behaviour may have occurred and that it was appropriate that this should be brought to the attention of the police so that it could be considered by them. The Government took into account the attitude of the complainers to the question of a referral to the police but concluded that the matter should nevertheless be referred. That decision was consistent with the strong policy stance which the Scottish Government had taken in relation to sexual offences. It was also consistent with the general responsibility of the Scottish Government to support the rule of law.

The Law Officer Convention (which relates to the decision-making processes of the Scottish Government) does not apply to questions about the exercise of my prosecutorial functions and, as I have previously made clear, neither the Solicitor General for Scotland nor I was personally involved in any part of the Crown Office's consideration of Mr Salmond's case. That was dealt with by senior professional prosecutors, with full authority to act independently of, and without reference to, the Law Officers.

You have asked me for any further information or explanation, including from my perspective, on the investigating officer's final report being offered to the Police as evidence. Scottish Government officials provided a copy of the Decision Report – not the investigating officer's report – to the Crown Agent when it referred the matter to COPFS for criminal investigation. I am advised that the Crown Agent did not read this report; that the Crown Agent advised Police Scotland that he was in receipt of the Decision Report and that, after discussion with them, it was agreed that he would not provide Police Scotland with a copy.

The primary evidence in any criminal proceedings would be evidence collected and statements taken directly by Police Scotland. The Decision Report would not be of evidential value in itself in the context of criminal proceedings. However, at the stage of an initial referral to the police, there was nothing untoward about offering the police material such as the Decision Report, which could potentially inform them about the context for the referral to them; nor indeed would there have been anything untoward if Police Scotland had, in fact, been given, or decided to receive, a copy of that Report. As I have observed above, it was for the Crown Office and Police Scotland to consider the relevance, if any, of the various documents provided by the Scottish Government.



I hope this reply is helpful to the Committee.

Yours Sincerely

W. JAMES WOLFFE, QC