



The Scottish Parliament
Pàrlamaid na h-Alba

Kenny Donnelly, Procurator Fiscal
Crown Office and Procurator Fiscal Service
Crown Office
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Clerk/Chief Executive
The Scottish Parliament
Edinburgh
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SENT BY EMAIL AND RECORDED DELIVERY

11 March 2021

Dear Mr Donnelly

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 HARRASSMENT COMPLAINTS**

Background

Sections 23 and 24 of the Scotland Act 1998

Under section 23 (1) of the Scotland Act 1998, the Scottish Parliament may require any person to produce documents in his custody or under his control, concerning any matter for which any member of the Scottish Government has general responsibility. Under section 23(8) of the Scotland Act 1998 and Rule 12.4 of the Parliament's Standing Orders, such a requirement may be imposed by a committee of the Parliament. In this case, this is the Committee on the Scottish Government Handling of Harassment Complaints.

The Clerk to the Parliament is authorised to impose this requirement by giving this Notice under section 24(1) of the Scotland Act 1998.

Information about the statutory provisions relevant to this requirement and the consequences of failing to comply with this Notice can be found in the Annex.

Committee on the Scottish Government Handling of Harassment Complaints

The Committee considers that the Crown Office and Procurator Fiscal Service (COPFS) holds a further document which is relevant to the Committee's remit. The requested document and the anticipated relevance of this to the Committee's work is detailed below. Having taken into account the terms of its remit, the anticipated relevance of the requested document and the correspondence with COPFS to date, the Committee has concluded that it is necessary for the requested document to be produced.

Relevance of the Document to the Committee's work

The Committee was established with the following remit:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's “Handling of harassment complaints involving current or former ministers” and procedure and actions in relation to the Scottish Ministerial Code.”

The timeframe for the Committee to fulfil its remit and report to Parliament is limited. With elections due to take place in May, the Committee must report before the Parliament enters recess on the 25th March 2021.

The Committee took evidence from the Lord Advocate and the Crown Agent on 2 March 2021 including evidence in relation to the transfer of information relating to complaints from the Scottish Government to COPFS and discussions with Police Scotland regarding the handling of that information. The Official Report of those proceedings can be found at:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=13167&mode=pdf>

It is in the public interest to establish how this information was handled in order to inform the conclusions of the Committee in line with its remit.

Document to be produced

This Notice seeks the following document relevant to the Committee's remit as described above:

The statement from the Detective Chief Superintendent attesting to the conduct of the meeting which they attended on 21 August 2018 with the Chief Constable of Police Scotland and the Crown Agent which included discussion of the handling of documentation in possession of the Crown Agent containing the conclusions of the Scottish Government investigation into complaints about the former First Minister Alexander Salmond.

The Committee's [statement on the handling of information and evidence](#) confirms that the Committee will treat all information in accordance with the relevant court orders and data protection law. **In line with this statement the Committee does not seek any information likely to identify the complainers, including information as to**

the substance of the complaints. Furthermore, the Committee will not revisit the criminal trial.

Date by which the Documents must be produced

In light of the Committee's timescales referred to above you are required to produce the above documents **by 12 noon on 15 March 2021.**

Should you have any questions regarding the contents of this Notice please contact the Clerk to the Committee at SGHHC@parliament.scot.

Yours sincerely

David McGill
Clerk/ Chief Executive of the Scottish Parliament

Annex

Provisions relevant to the requirement to produce documents

Definition of “document”

In accordance with section 126(1) of the Scotland Act 1998 “document” means anything in which information is recorded in any form (and references to producing a document are to be read accordingly).

Restrictions of section 23(1) power

There are certain restrictions on the power in section 23(1) of the Scotland Act 1998. These include:

- Section 23 (9) of the Scotland Act 1998: A person is not obliged to produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- Section 23 (10) of the Scotland Act 1998: A procurator fiscal is not obliged to produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate (a) considers that producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and (b) has authorised the procurator fiscal to decline to produce the document on that ground.

Consequences of failure to produce documents

Section 25(1) of the Scotland Act 1998 sets out offences in relation to this Notice, punishable by a fine of up to £5,000 or 3 months imprisonment:

- refusal or failure to produce any document specified in this Notice, without reasonable excuse;
- deliberately altering, suppressing, concealing or destroying any document required to be produced by this Notice.

Given the legal implications of this Notice you are advised to refer to these provisions in full and seek legal advice as necessary.