



The Scottish Parliament  
Pàrlamaid na h-Alba

Kenny Donnelly, Procurator Fiscal  
Crown Office and Procurator Fiscal Service  
Crown Office  
25 Chambers Street  
Edinburgh  
EH1 1LA

Clerk/Chief Executive  
The Scottish Parliament  
Edinburgh  
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SENT BY EMAIL AND RECORDED DELIVERY

15 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 documents relevant to the Committee's remit. The requested documents and the anticipated relevance of this to the Committee's work are detailed below. Having taken into account the terms of its remit, the anticipated relevance of the requested documents and the correspondence with COPFS to date, the Committee has concluded that it is necessary for the requested documents to be produced.

### **Relevance of the documents 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” 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 25<sup>th</sup> March 2021.

As COPFS is aware from previous correspondence it has been asserted to the Committee that the documents include evidence that elements of the Scottish Government (including special advisers) used the Scottish Government's Harassment complaints procedure and complaints considered through the same to damage the reputation of Alex Salmond, former First Minister.

It is in the public interest to establish the veracity of these claims in order to allow the Committee to understand fully the actions of the Scottish Government in handling the complaints and in order to inform the conclusions of our Committee in line with its remit.

The Committee sought material from the COPFS on 22 January, 26 February and 11 March 2021. It is now seeking additional documents as set out in this notice to inform its understanding as to the actions of the Scottish Government.

### **Documents/ types of documents to be produced**

This notice seeks the following documents relevant to the Committee's remit as described above:

**All documents the COPFS possesses that represent correspondence between Barbara Allison, Director, Communications, Ministerial Support and Facilities, Scottish Government and any of Leslie Evans, Permanent Secretary to the Scottish Government, Nicola Richards, Director of People, Scottish Government or Judith Mackinnon, Head of People Advice, Scottish Government from 1 January 2018 to 28 February 2018:**

- Relating to the development and implementation of the Scottish Government's "Handling of harassment complaints involving current or former ministers" procedure; or
- Relating to the handling of complaints made about Alex Salmond, former First Minister under the procedure.

For the purpose of this request, correspondence includes letters, emails (official, formal, private, personal or party), text messages, WhatsApp messages and all other electronic forms of correspondence) as well as handwritten notes, copies of handwritten notes and handwritten notes that have been transcribed into official communications.

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 individual as 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 5pm on **Wednesday 17 March 2021**.

Should you have any questions regarding the contents of this Notice please contact the Clerk to the Committee at [SGHHC@parliament.scot](mailto: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.**