



John Swinney BPA/MSP

Linda Fabiani MSP  
Convener – Committee on the Scottish  
Government Handling of Harassment Complaints  
c/o Clerk to the Committee  
Room T1.03  
The Scottish Parliament  
Edinburgh  
EH99 1SP

22 March 2021

Dear Convener

### Legal advice

In your letter of 9 March, the Committee asked for further information in addition to the legal advice already published by the Scottish Government.

We have published all the written notes of advice from Counsel and a number of other relevant legal documents, as well as the unredacted version of the former Director General of Organisational Development and Operation's (DGODO) submission of 29 December 2018. We published earlier this week emails relating to meetings with Counsel on 2 and 13 November 2018, which Committee Members had asked about.

I confirmed last week that we do not hold minutes of the 17 meetings with Counsel held during the judicial review. Senior Counsel in the judicial review has confirmed that he does not hold notes of these meetings. As is normal, individual Scottish Government lawyers will have taken personal notes and aide memoires for their own use, as necessary. The outcome of these meetings is reflected in the formal written notes from Counsel, the arguments in the pleadings for the judicial review and in the final interlocutor and joint minute submitted to the court. All of these have been seen by the Committee.

We have not identified any notes made during the meeting of the Lord Advocate, Permanent Secretary and First Minister on 19 December 2018. This meeting is likely to have been an oral update on the events of the Commission hearing that day. The views of external Counsel following the Commission hearing are set out clearly in the written advice note sent that day, already shared with the Committee.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire  
Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh [www.lobbying.scot](http://www.lobbying.scot)

Scottish Ministers, special advisers and the Permanent Secretary are covered  
by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)



The Committee asked for a record of all phone consultations with Counsel. Throughout the judicial review there was ongoing engagement with Counsel by phone, with key legal advice provided by Counsel in the form of the formal notes which you have already seen.

It is for the Committee to consider the published legal documents. I confirm Scottish Ministers' view that nothing in the published legal documents contradicts the evidence already provided to the Committee in the Scottish Government's written statement and timelines; the Lord Advocate's oral evidence and the DGODO's submission seen by the Committee in December 2020.

**JOHN SWINNEY**

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