



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

24 November 2020

Dear Ms Fabiani

### **Committee on the Scottish Government Handling of Harassment Complaints**

The Scottish Government is committed to ensuring that the Committee has access to the documents and evidence it needs to fulfil its remit, within the legal and other restrictions that apply.

In my letter of 19 November, I explained the risks of allowing Scottish Government staff to give evidence to the Committee in the absence of a clear picture from Mr Salmond's legal team about which information, relevant to the committee's inquiry, they consider cannot be disclosed. Without that clear picture, the Government cannot produce the comprehensive statement and timeline of events that the Government wants to provide and believes would assist the committee. Although we have received some feedback, I regret to update you that we are still awaiting a full response from Mr Salmond's legal team.

In the absence of that clear picture there is a serious risk that Scottish Government would, in providing our staff to give evidence to the Committee, inadvertently breach the undertaking.

The Scottish Government considers that a number of documents that are critical to this phase of the Committee's inquiry - which evidence how the Government handled the complaints and how the investigation was conducted - are not covered by the undertaking. We have been seeking Mr Salmond's legal team's agreement in respect of each document so that the material can be disclosed and referenced in the Government's timeline and statement. Knowing what the documents in question actually are, the Scottish Government considers the inclusion of them (redacted as appropriate) is vital to the explanation of our actions during the investigation of the complaint phase of the Committee's remit. Our intention is to release all relevant documents that both we and Mr Salmond's representatives

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recognise and accept as being not covered by the undertaking. To be absolutely clear, contrary to suggestions which have been made, none of the documents would contain any information about the substance of the complaints (which we know is not of interest to the committee) or which could identify the complainers. Where agreement cannot be reached with Mr Salmond's legal team, the Scottish Government will be forced to ask the court to confirm whether those disputed documents can be provided to the committee as we want to.

I understand that the Committee plans to invite Scottish Government officials to appear before the Committee on 1 December to give oral evidence. Despite the legitimate concerns I have expressed, and in light of my desire to assist the Committee as much as possible, I am prepared in principle to agree for witnesses to appear with two key mitigations: firstly, the Scottish Government will provide the Committee with a timeline and statement (in advance of 1 December) which can only address the facts and events supported by documents which Mr Salmond's legal team have agreed to the disclosure of. Secondly, where the Committee asks the witnesses about any other facts and events, outwith these documents, the witnesses will only be able to respond that they cannot answer questions due to the risk of being in contempt of court. As this is a highly complex landscape for any witness to navigate, witnesses may wish to ask the Government to provide their answers to some questions in writing so that the risk of contempt of court can be considered fully. I trust this is acceptable. It is the only practical and appropriate way in which we can ask officials to give evidence to the Committee before we receive the full response from Mr Salmond's legal team mentioned above or, short of that, our legal obligations are conclusively settled in court.

**JOHN SWINNEY**

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