

[REDACTED]

Subject: FW: COMPLAINT AGAINST DAVID STERLING - HEAD OF THE NORTHERN IRELAND CIVIL SERVICE

From: [REDACTED]
Sent: 02 July 2018 13:25
To: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: COMPLAINT AGAINST DAVID STERLING - HEAD OF THE NORTHERN IRELAND CIVIL SERVICE

[REDACTED]

Many thanks. Will phone between 2.30 and 3.

[REDACTED]

From: [REDACTED] On Behalf Of PermanentSecretary@gov.scot
Sent: 02 July 2018 12:57
To: [REDACTED]
Subject: RE: COMPLAINT AGAINST DAVID STERLING - HEAD OF THE NORTHERN IRELAND CIVIL SERVICE

Hi [REDACTED]

Happy to discuss. I am free for a call anytime this pm after 14:00 if you want to call me on number below?

[REDACTED]

[REDACTED] | Office of Permanent Secretary | Scottish Government | Room 1N.07 | St Andrew's House | Regent Road | Edinburgh
| EH1 3DG | perm.sec@gov.scot | 0131 244 [REDACTED]

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From: [REDACTED]
Sent: 02 July 2018 11:52
To: [REDACTED]
Subject: COMPLAINT AGAINST DAVID STERLING - HEAD OF THE NORTHERN IRELAND CIVIL SERVICE

Dear [REDACTED]

As you may be aware, our Head of the Civil Service and your Permanent Secretary have agreed that any complaints made against the former under our Top Management complaints procedure would be considered by Ms Evans.

We have now received one such complaint and I would welcome an opportunity to discuss handling before any referral of papers takes place.

Would it be possible to fix a time for a phone call?

Best wishes

154

[REDACTED] | The Executive Office | Stormont Castle | Stormont Estate |
Belfast BT4 3TT

Ext: [REDACTED]

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[REDACTED]
From: Permanent Secretary
Subject: FW: [REDACTED] COMPLANT

From: [REDACTED] >
Sent: 11 October 2018 09:08
To: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: [REDACTED] COMPLANT

[REDACTED]
Thanks – I'll give you a call this afternoon.

From: [REDACTED] On Behalf Of PermanentSecretary@gov.scot
Sent: 10 October 2018 19:21
To: [REDACTED]
Cc: PermanentSecretary@gov.scot
Subject: RE: [REDACTED] COMPLANT

Hi [REDACTED]

Very happy to have a conversation. Fairly free after 15:00 tomorrow if that's any use to you – or most of Friday?

[REDACTED] | Office of Permanent Secretary | Scottish Government | Room 1N.07 | St Andrew's House | Regent Road | Edinburgh
| EH1 3DG | perm.sec@gov.scot | [REDACTED]

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From: [REDACTED]
Sent: 10 October 2018 09:58
To: [REDACTED]
Subject: [REDACTED] COMPLANT

[REDACTED]
Could we have a chat about [REDACTED] complaint – I'm afraid there has still been no definitive conclusion by the Ombudsman on any future role for them in [REDACTED] complaint, so I think we may need to come some conclusion now on the Scottish Government Perm Sec dimension.

Best wishes

15/4

[REDACTED] The Executive Office | Stormont Castle | Stormont Estate |
Belfast BT4 3TT

Ext: [REDACTED]

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Subject:

FW: Complaint Against the Head of the Northern Ireland Civil Service

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 10 December 2018 15:10

To: [REDACTED]

Cc: Permanent Secretary <PermanentSecretary@gov.scot>

Subject: Complaint Against the Head of the Northern Ireland Civil Service

To: [REDACTED]

Complaint Against the Head of the Northern Ireland Civil Service

Thank you for your letter of 4 July 2018 concerning the complaint by [REDACTED] against David Sterling, Head of the Northern Ireland Civil Service (HOCS). You asked that our Permanent Secretary, Leslie Evans, consider the complaint, in accordance with your Top Management Complaints procedure.

You and I have spoken by phone since then and, in addition to reviewing all the paperwork, I've also discussed the matter with colleagues who lead on propriety issues here in the Scottish Government. I have set out below our reading of the background to [REDACTED] complaint against Mr Sterling and why we do not currently see that there is a role for Leslie Evans in this complaint.

To recap, the history to this matter is clearly very long and complex but, in essence, I would summarise it as follows:

2004	[REDACTED] first complains to the Rivers Agency about works to the watercourse at Waringston
2008	The Rivers Agency serves an enforcement order on the landowner and in March that year the Agency declares that the matter has been concluded.

Around 2016/17, [REDACTED] complaints about the handling of the original issue re-emerged resulting in the most recent chain of events, as follows.

4 Aug 2017	[REDACTED] raises a formal 'Top Management Complaint' against David Murray, Deputy Secretary, Department for Infrastructure. Mr Sterling (HOCS) asks for an investigation and in the first instance, Nick Perry (Perm Sec of Dept of Justice) prepares an investigative report for consideration by a Board of Inquiry. The report is completed on 3 November 2017.
9 Feb 2018	The Board of Inquiry reports with recommendations that neither of the two complaints against Mr Murray are upheld. The report notes, however, that the final decision is for HOCS (Mr Sterling).
2 Mar 2018	Mr Sterling writes to [REDACTED] to confirm that he accepts the Board of Inquiry recommendations not to uphold his complaints. Mr Sterling informs [REDACTED] that he has recourse to the Northern Ireland Public Service Ombudsman (NIPSO) if he is not satisfied.

May-Jun 2018	Various exchanges of correspondence involving [REDACTED] and different NI officials.
22 Jun 2018	David Crabbe from the Department for Infrastructure forwards material relating to [REDACTED] continuing complaints to the NIPSO.
23 Jun 2018	[REDACTED] lodges his complaint against Mr Sterling, as HOCS.

So, the current position is that [REDACTED] is now seeking to pursue a complaint against David Sterling in his role as HOCS. Your letter to me of 4 July asks that our Perm Sec investigates [REDACTED] latest complaint under your Top Management Complaints procedure. However, as set out by Mr Sterling in his letter of 2 March 2018 to [REDACTED] should Mr Spence wish to pursue his complaint further, the next appropriate step would be for him to appeal to the NIPSO. By, instead, lodging a complaint against Mr Sterling, it seems clear that [REDACTED] is seeking to bypass due process. Therefore, the existing and appropriate appeal mechanism is not complete.

A broader observation would be that [REDACTED] is seeking to pursue his original complaint by another avenue and that avenue is not open to him in the current circumstances. For Leslie Evans to become involved on the basis of [REDACTED] action against Mr Sterling would result in her being drawn into considering the basis of the previous complaint against Dr Andrew Murray - or indeed, the original complaint regarding the watercourse works at Warington. This is not what we think was envisaged when Leslie took on the role.

In 2016, when Leslie was originally asked to accept a role in investigating complaints against the Northern Ireland HOCS, we understood the role she agreed to play would be in relation to complaints bearing directly on the *conduct* of that individual. It was not, we think, envisioned that she would become part of an additional "appeal mechanism" in day-to-day operational disputes.

It seems to us that [REDACTED] complaint against Mr Sterling is predicated entirely on the basis of the failure to have his earlier complaints against Mr Murray upheld. This latest complaint against Mr Sterling does not seem to constitute a separate and distinct issue, or concern Mr Sterling's personal conduct as HOCS.

If looking to consider the terms of a response to [REDACTED] to his "complaint" of 23 June we would draw on paragraphs highlighted above and say that there is no locus for Ms Evans to accept the complaint

I hope that this all makes sense and please get back to me if not.

[REDACTED]

From: [REDACTED] On Behalf Of PermanentSecretary@gov.scot
Sent: 23 January 2019 09:06
To: [REDACTED]
Subject: Complaint Against the Head of the Northern Ireland Civil Service

[REDACTED]
Hi. We have just received the attached message from [REDACTED] requesting details of Leslie Evans "investigation" into his complaint against David Sterling which he says has now been "completed".

This is all rather odd given that no such investigation has taken place. Anyhow, this will need to be dealt with as an FOI case so there's a little process for me to go through but we will obviously just go back to [REDACTED] to advise him of the fact that there was no investigation.

Thanks,

[REDACTED]

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[REDACTED]

Subject: FW: Complaint Against the Head of the Northern Ireland Civil Service

Sensitivity: Confidential

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 23 January 2019 11:42

To: [REDACTED]; Permanent Secretary <PermanentSecretary@gov.scot>

Cc: [REDACTED]

Subject: RE: Complaint Against the Head of the Northern Ireland Civil Service

Sensitivity: Confidential

[REDACTED]

Thanks for your message. To clarify, the Scottish Government has just received from [REDACTED] the following request under FOI:

"The Scottish Permanent Secretary Dame Leslie has just completed an investigation into a complaint I raised against the Head of The Northern Ireland Civil Service David Sterling."

"Since her investigation has now been completed I require copies of all written communication from Dame Evans to her counterparts in the Northern Ireland Office over the course of her investigation and include her final written conclusions on the matters presented to her".

I will be dealing with the case. In responding to this, our position will almost certainly be that we do not hold such information. This is because Leslie Evans did not carry out an investigation into any complaint against Mr Sterling. I imagine that [REDACTED] has misunderstood something he's read in correspondence with yourselves?

We had been asked if Leslie would investigate [REDACTED] complaint against Mr Sterling and our office was in touch with [REDACTED] about this over a fairly long period last year. [REDACTED] helpfully provided a good deal of documentation and we discussed the matter with him by phone on a number of occasions. However, following long consideration of the case, it was decided here that it would not be appropriate for Leslie Evans to carry out an investigation into the complaint and the reasoning was set out in my email to [REDACTED] of 10 December.

Anyway, happy to discuss.

[REDACTED]
Permanent Secretary's Office
(0131) 244 [REDACTED]

From: [REDACTED]

Sent: 23 January 2019 10:26

To: Permanent Secretary <PermanentSecretary@gov.scot>

Cc: [REDACTED]

Subject: Complaint Against the Head of the Northern Ireland Civil Service

Importance: High

Sensitivity: Confidential

[REDACTED]

Good morning.

[REDACTED] has asked me to forward the attached e mail that [REDACTED] forwarded to me last night – I was dealing with the FOI case he submitted to us (TEO) – if we could discuss please.

We will need to consider the release of the information requested and would welcome your view.

Happy to discuss in advance of a formal reply.

Regards

[REDACTED]

[REDACTED]

Machinery of Government
Executive Office
Room SD 03
Stormont Castle
Belfast
BT4 3TT

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 23 January 2019 09:17
To: PermanentSecretary@gov.scot
Cc: [REDACTED]
Subject: RE: Complaint Against the Head of the Northern Ireland Civil Service

[REDACTED]

Thanks for letting us know.

[REDACTED] has now been informed of the outcome of his complaint against David Sterling which has therefore prompted this. He is aware of the salient points of your conclusions on this so you may wish to reiterate these.

Please get in touch if that would be helpful.

Wiu

[REDACTED] Division | The Executive Office | Stormont Castle | Stormont Estate |
Belfast BT4 3TT

[REDACTED]

[REDACTED]

Subject:

FW: FOI Case - [REDACTED]

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 04 February 2019 17:07

To: [REDACTED]

Subject: FOI Case - [REDACTED]

[REDACTED]

We were in touch last week about an FOI case I'm handling from [REDACTED] and we discussed the phrasing of one of the paragraphs in my draft letter of response. Having consulted with senior colleagues we've decided on wording which is a bit neater than my original but in essence is not so different. So we'll be saying something like:

"You have asked for copies of all written communications from Ms Evans to her counterparts in Northern Ireland over the course of her investigation into your complaint against the Head of the Northern Ireland Civil Service, David Sterling, including her final written conclusions on the matters presented to her."

"Our aim is to provide information whenever possible. However, in this instance the Scottish Government does not have the information you have requested as Ms Evans has not undertaken the investigation to which you refer."

"If you are unhappy with this response to your FOI request..."

Given the long history of this complaint, I would not be surprised if [REDACTED] were to appeal but, if so, we will deal with it here in the usual way with FOI cases.

Regards,

[REDACTED]
Permanent Secretary's Office
Scottish Government
Rm 1N.04
St Andrews House
[REDACTED]

[REDACTED]

Subject:

FW: [REDACTED] - FOI

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 12 February 2019 09:43

To: [REDACTED]

Subject: [REDACTED] - FOI

[REDACTED]

Morning. Tried to phone earlier but couldn't get through.

You will recall that the SG had an FOI from [REDACTED]. He had asked for papers relating to the "investigation" which he thought Leslie Evans had carried out into David Sterling's conduct. We responded by informing him that no such investigation had taken place. [REDACTED] has now requested a review. He clearly has misunderstood earlier communications from your office (he quotes a letter/ email from [REDACTED] which he thinks suggested that Leslie *had* conducted an investigation).

Anyway, now that he has asked us for a review, we'll be writing back to him reiterating that no investigation was carried out. However, I think this emphasises the need for clarity so that [REDACTED] accepts the situation. I think it would be helpful if your office sends him a similar message so that he's getting the same message from SG and NI?

As it happens, yesterday I spoke to your colleague [REDACTED] who is carrying out his own review of another [REDACTED] FOI request. [REDACTED] mentioned an email I had sent to [REDACTED] in December setting out SG's reasons for not carrying out an investigation into Mr Sterling's conduct. [REDACTED] had asked if we agreed this document was in scope of his FOI review. Although we disagree that the email is in scope of the FOI, we are of the view that the information contained in it is not problematic for us. I will be formally responding to [REDACTED] later today to make that point.

So I thought it was worthwhile tying these two matters together with your office (and you may want to have a word with [REDACTED] to confirm). As I see it, [REDACTED] needs to understand that while SG were asked to review the documentation and consider conducting an investigation, in the end, we decided that our Permanent Secretary did not have a role to play.

I am happy to advise you in advance of issuing our FOI review response to [REDACTED]. However, I think it would be beneficial for everyone if your office proactively (and ideally before we respond to him) communicates with [REDACTED] to clear up the misunderstanding from your end.

Happy to discuss.

[REDACTED]
Permanent Secretary's Office
Scottish Government
Rm 1N.04
St Andrews House
[REDACTED]
[REDACTED]

[REDACTED]

Subject: FW: Internal Review IR2019 - 0002 [REDACTED] - Complaint Against Head of NI Civil Service

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 12 February 2019 17:02

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Internal Review IR2019 - 0002 [REDACTED] - Complaint Against Head of NI Civil Service

[REDACTED]

Internal Review IR2019 - 0002 [REDACTED] Complaint Against Head of NI Civil Service

We spoke yesterday on the phone concerning your message about the above matter. You have asked about a particular document – an email from myself to [REDACTED] of 3 December 2018 – and have asked our view on whether this email (and the enclosed attachment) is within scope of the FOI which you are reviewing.

Having discussed this with our FOI policy team, we agree with your suggestion that the email to [REDACTED] was out of scope of the original FOI request as it was not a request from Perm Sec “for information or clarification”. However, we do not agree with your conclusion that this material is now in scope, by virtue of [REDACTED] request for an internal review. His review is in relation to how the Northern Ireland Executive handled the original request. We feel, therefore, that if it was out of scope then, it remains out of scope now.

However, regarding the information contained in our email, I don’t see that there is anything there which we would object to were it released in another context. It seems that [REDACTED] is currently under the misapprehension that Leslie Evans conducted an investigation into the conduct of David Sterling. This, of course, is not the case. We are very much of the view that [REDACTED] would benefit from some clarity on the situation and perhaps a message from the NI Executive might go out to [REDACTED] to clarify the situation and, if so, we wouldn’t object to our note – or extracts from it – to accompany your message.

So, while my steer from the Scottish Government’s FOI advisers is that our note remains out of scope of your FOI review, were you to decide to release this information, we would be fine with that but would prefer you do so outwith your FOI review response. I hope that this is helpful.

Kind regards,

[REDACTED]

From: [REDACTED]

Sent: 08 February 2019 16:23

To: [REDACTED]

[REDACTED]

[REDACTED]
Subject: Internal Review IR2019 - 0002 [REDACTED] - Complaint Against Head of NI Civil Service

[REDACTED]
I am carrying out an Internal Review into a FOI response issued by The Executive Office (TEO) to [REDACTED] who had requested 'copies of all information sent to Leslie Evans in support of the complaint against the Head of the Northern Ireland Civil Service David Sterling in addition to the above copies of any e mails or letters of instruction sent to Leslie Evans and copies of any requests from her for information or clarification'.

[REDACTED] grounds for requesting an internal review are that 'it appears to be somewhat incomplete' and that a document TEO received from Leslie Evans' office was not included in the response.

The document [REDACTED] alludes to is attached – it is an email from the Scottish Government's PS Office with a draft response for discussion.

The email and attachment were not included in the batch of documents supplied to [REDACTED] as part of the TEO FOI response, as they were considered outside of the scope of the request (but were referenced to in one of the documents provided).


However, we are now in a position that they are in scope, by virtue of [REDACTED] request for an internal review.

Therefore, I wanted to take the views of the Permanent Secretary to the Scottish Government on release or otherwise of the email and attachment. (There may be an argument that the email and attachment are of sufficient sensitivity that release would prejudice relations between the NI and Scottish administrations (s28 of FOIA), but we would need to explore this further.)

Having taken your views, and before arriving at a decision to release, or not, I would plan on consulting further with [REDACTED]

Happy to discuss.
[REDACTED]

[REDACTED]
The Executive Office
Information Management and Central Advisory Branch
Room A5.17
Castle Buildings
Stormont Estate
Belfast
BT4 3SR

[REDACTED]
 The Executive Office

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[REDACTED]

Subject: [REDACTED] FW: [REDACTED] - FOI

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 27 February 2019 15:46

To: [REDACTED]

Subject: [REDACTED] - FOI

[REDACTED]

Afternoon. A further update on our FOI case from [REDACTED]

Following our response to [REDACTED] initial FOI request which we issued on 4 February, he asked a review. My colleague carried out the review and confirmed that we had no information to release to [REDACTED] given that Ms Evans had not conducted an investigation into Mr Sterling's conduct.

However, [REDACTED] has been in further conduct with us. He has pointed to an apparent discrepancy between what the SG has told him and the advice he has had from NI. In support of this, [REDACTED] sent us a copy of a letter he had received from your colleague [REDACTED] Griffin (attached). We had not seen this letter before. However, as this is worded, I must confess, it is not difficult to understand why [REDACTED] feels he is getting conflicting advice from our two governments. I feel that [REDACTED] letter is worded in such a way as to give the impression that Leslie Evans had indeed conducted an investigation into [REDACTED] conduct. While I have no doubt that any confusion was entirely unintended, it is rather unfortunate.

I had suggested in my previous email (below) that it would help the situation if your office were to contact [REDACTED] directly to clear up the misunderstanding and I would still recommend that you do this in order that he doesn't feel that he is receiving conflicting advice.

Many thanks,

[REDACTED]
Permanent Secretary's Office
Scottish Government
Rm 1N.04
St Andrews House
[REDACTED]
[REDACTED]

From: [REDACTED] On Behalf Of Permanent Secretary

Sent: 12 February 2019 09:43

To: [REDACTED]

Subject: [REDACTED] - FOI

[REDACTED]

Morning. Tried to phone earlier but couldn't get through.

You will recall that the SG had an FOI from [REDACTED]. He had asked for papers relating to the "investigation" which he thought Leslie Evans had carried out into David Sterling's conduct. We responded by informing him that no such investigation had taken place. [REDACTED] has now requested a review. He clearly has misunderstood earlier communications from your office (he quotes a letter/ email from [REDACTED] which he thinks suggested that Leslie *had* conducted an investigation.

Anyway, now that he has asked us for a review, we'll be writing back to him reiterating that no investigation was carried out. However, I think this emphasises the need for clarity so that [REDACTED] accepts the situation. I think it would be helpful if your office sends him a similar message so that he's getting the same message from SG and NI?

As it happens, yesterday I spoke to your colleague [REDACTED] who is carrying out his own review of another [REDACTED] FOI request. [REDACTED] mentioned an email I had sent to [REDACTED] in December setting out SG's reasons for not carrying out an investigation into Mr Sterling's conduct. [REDACTED] had asked if we agreed this document was in scope of his FOI review. Although we disagree that the email is in scope of the FOI, we are of the view that the information contained in it is not problematic for us. I will be formally responding to [REDACTED] later today to make that point.

So I thought it was worthwhile tying these two matters together with your office (and you may want to have a word with [REDACTED] to confirm). As I see it, [REDACTED] needs to understand that while SG were asked to review the documentation and consider conducting an investigation, in the end, we decided that our Permanent Secretary did not have a role to play.

I am happy to advise you in advance of issuing our FOI review response to [REDACTED]. However, I think it would be beneficial for everyone if your office proactively (and ideally before we respond to him) communicates with [REDACTED] to clear up the misunderstanding from your end.

Happy to discuss.

[REDACTED]
Permanent Secretary's Office
Scottish Government
Rm 1N.04
St Andrews House
[REDACTED]