

Original Message-----

From: (redacted) <redacted>

Sent: 23 February 2021 10:14

To: Solicitor General <redacted >; Lord Advocate <(redacted)>; (redacted) <(redacted) >

Subject: RE: COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS [UNSCANNED]

There's also a reference to correspondence earlier in the day, yesterday. Not sure if you have that; if it can be shared?

(redacted) (redacted)

Tel: (redacted)

-----Original Message-----

From: Solicitor General <(redacted) >

Sent: 23 February 2021 10:13

To: (redacted) <redacted>; Lord Advocate <(redacted) >; (redacted) <(redacted) >

Cc: Solicitor General <(redacted) >

Subject: RE: COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

(redacted) - let me ask (redacted) in a delicate way and I will get back to you

(redacted)

-----Original Message-----

From (redacted) (redacted) >

Sent: 23 February 2021 10:12

To: Lord Advocate <(redacted) >; (redacted)(redacted) Cc: Solicitor General <(redacted) >

Subject: RE: COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

(redacted)

COPFS sent this letter on to the LOs at 23.08 last night.

Do we know when COPFS sent the letter to the Parliament / advised the Parliament of this?

I think the submissions were published by the Parliament around 19.00 last night.

Thanks

(redacted)

(redacted)

(redacted)

Tel: (redacted)

-----Original Message-----

From:(redacted) <(redacted) > On Behalf Of Lord Advocate

Sent: 23 February 2021 10:01

To: (redacted) <(redacted) (redacted) <(redacted) >

Cc: Solicitor General <(redacted) >; Lord Advocate <(redacted)

Subject: FW: COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

Morning (redacted)

Please see email below from (redacted). The Solicitor General has asked us to sight you on this to make you aware that a letter has issued to the Parliament's Clerk, advising that CC considers the publication of Alex Salmond's submissions constitutes a breach of the contempt of court order.

We would be grateful if this not be share with anyone else.

Many Thanks

(redacted)

(redacted)

(redacted)

(redacted)

(redacted)

(redacted)

-----Original Message-----

From: Lord Advocate <(redacted) >

Sent: 22 February 2021 23:32

To: Wolffe J (James) <(redacted) >; (redacted) <(redacted) >

Cc: Lord Advocate <(redacted) >; Solicitor General <(redacted) >

Subject: FW: COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

Lord Advocate, Solicitor General,

Please see email below from (redacted), making you aware that he has issued a letter to the Parliament's Clerk, advising that CC considers the publication of Alex Salmond's submissions constitutes a breach of the contempt of court order.

(redacted)

(redacted)

(redacted)

E-mail: (redacted)

From: (redacted)

Sent: 22 February 2021 23:08:31 (UTC+00:00) Dublin, Edinburgh, Lisbon, London
To: PS/Lord Advocate; PS/Solicitor General
Cc: (redacted), (redacted); (redacted), (redacted); (redacted), (redacted); PS Crown Agent; DCA Legal Assistants
Subject: COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

(redacted/redacted)

The Law Officer will want to be aware that following publication this evening by the Scottish parliament of two documents containing submissions by Alex Salmond to the above Committee, the attached letter was sent to the Clerk/ Chief Executive of the Parliament advising that Crown Counsel considers that publication of one of those documents is in breach of the section 11 Contempt of Court Order imposed by the Lord Justice Clerk during the criminal proceedings against Mr Salmond. A copy of the letter is attached for information.

(redacted)
Procurator Fiscal
High Court

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From: Lord Advocate <(redacted) >
Sent: 23 February 2021 17:06
To: Wolffe J (James) <(redacted) >
Cc: Lord Advocate <(redacted)>
Subject: FW: Request for Urgent Statement from Lord Advocate [UNSCANNED]

Lord Advocate,

Mr Dey's office have been in touch. Mr Dey asked if you could be able to phone him ASAP to discuss the conservative's request for a parliamentary statement from you on the situation with the SGHHC.

(redacted)
(redacted)

(redacted)
E-mail: (redacted)

From: (redacted) **On Behalf Of** Minister for Parliamentary Business and Veterans
Sent: 23 February 2021 17:05
To: Lord Advocate
Cc: Minister for Parliamentary Business and Veterans
Subject: FW: Request for Urgent Statement from Lord Advocate

Hi (redacted),

To see below, Mr Dey would appreciate a call with Lord Advocate on the below ahead of Bureau this evening at 1725.

Thanks,

(redacted)

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

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From: (redacted), MSP <(redacted) >
Sent: 23 February 2021 14:26
To: Presiding Officers <(redacted) >; (redacted) <(redacted) >; (redacted), MSP <(redacted) >; (redacted), MSP <(redacted) >; (redacted), MSP <(redacted) >
Subject: Request for Urgent Statement from Lord Advocate

Dear Presiding Officer,

Following the situation which we have witnessed today surrounding the Scottish Parliament's Committee on the Scottish Government's Handling of Harassment Complaints I would like to request that the Lord Advocate be asked to make an Urgent Statement to Parliament.

I'm sure you will agree there is growing concern amongst MSPs at the damage this is doing to the Scottish Parliament as an institution and that MSPs must be able to question the Lord Advocate.

I hope this request can be taken forward at the earliest opportunity and note the time available tomorrow for a statement to take place.

I look forward to hearing from you in due course.

Regards,

(redacted)

(redacted) MSP
(redacted)
Scottish Conservatives

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The information in this email may be confidential. If you think you have received this email in error please delete it and do not share its contents.

From: (redacted) <(redacted)> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 23 February 2021 17:11
To: Lord Advocate <(redacted)>
Cc: (redacted)(redacted) >; Deputy First Minister and Cabinet Secretary for Education and Skills <(redacted)>; (redacted) (redacted)
Subject: RE: Call with Lord Advocate / DFM re: Alex Salmond submission to SGHHC [UNSCANNED]

Hi (redacted),

Thanks for getting in touch – DFM has asked us to fix up a call with the LA on this at 18:00 with both (redacted) and (redacted) (cc'd) on the line. I will send out a calendar invite with dial in details and would be grateful if you could please let me know if this time will cause any issues for the LA.

Many thanks,

(redacted)

(redacted) (redacted) |(redacted) | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | (redacted) | E: (redacted)

From: Lord Advocate
Sent: 23 February 2021 16:45
To: Deputy First Minister and Cabinet Secretary for Education and Skills
Cc: Lord Advocate ; Solicitor General ; (redacted); (redacted)
Subject: Call with Lord Advocate / DFM re: Alex Salmond submission to SGHHC
Importance: High

Good afternoon (redacted),

The Solicitor General suggested that the Deputy First Minister would like to speak to the Lord Advocate about a potential letter correcting inaccuracies contained in Alex Salmond's submission to the SGHHC which was published yesterday. I have attached the latest draft for the DFM's awareness.

Could you please let me know if the DFM would like a call, what time, and if he would prefer by phone or MS Teams?

Many thanks,

(redacted)

(redacted)
(redacted)
E-mail: (redacted)

Appendix

I have read the “Final Submission” lodged by Mr Salmond with the Committee. It makes a number of comments about my own position and the position of the Crown Office which are inaccurate and unfounded.

Mr Salmond makes sweeping allegations to the effect that Crown Office is unfit for purpose, and that there has been a “complete breakdown of the necessary barriers which should exist between government, political party and indeed the prosecution authorities in any country which abides by the rule of law”. These allegations are wholly unfounded. All decisions taken by the Crown in relation to the prosecution of Mr Salmond were taken by very senior professional prosecutors, acting independently and without reference to, or influence by, myself, the Solicitor General for Scotland or the Scottish Government.

Further, Mr Salmond’s understanding of the meaning of section 162 of the Criminal Justice and Licensing (Scotland) Act 2010 is mistaken. That section is of general application and is not limited in the way he suggests. It is designed to protect the integrity of the administration of justice, and to secure the confidence of those who provide evidence that information they provide will not be used by an accused person to whom such evidence is disclosed for any collateral purpose. There are no relevant exceptions. A provision which would have allowed an application to the court to permit onward disclosure of material to which that section applies was removed by a Government amendment moved by the then Cabinet Secretary for Justice.

Against that background, I address some of the specific inaccuracies in the submission. I deal only with the most obvious ones.

It is incorrect to suggest that, as Lord Advocate, I could choose to publish the Scottish Government’s legal advice. The Lord Advocate, like other legal advisers, is bound by legal professional privilege. The Government has not waived that privilege for reasons which have been explained to the Committee. Law Officers’ consent is required for disclosure of legally privileged material, under the Scottish Ministerial Code, but the question of Law Officer consent arises only if the Government has, in exceptional circumstances, concluded that the tests set out in paragraph 2.40 of the Ministerial Code are met.

It is incorrect to allege that documents were “concealed” from the court during the judicial review. It was, and is, deeply regrettable that all the relevant documents were not identified at an earlier stage in the process. The process of document recovery and disclosure has been explained in evidence to the Committee.

Mr Salmond comments on the consideration which the Government gave to the question of whether the judicial review proceedings should be sisted (i.e. suspended) pending the criminal investigation. Wherever there are civil proceedings which may interact with a criminal investigation, it is entirely appropriate to consider whether steps should be taken in relation to the civil proceedings in order to protect the integrity of the criminal investigation. In this case, the Scottish Government considered whether a sist of the judicial review was necessary for that purpose, but was satisfied that the criminal process could be adequately protected by reporting restrictions. Those reporting restrictions were a matter of agreement; and it was unnecessary for the Scottish Government to appear at the hearing at which they were imposed.

Mr Salmond comments: “I believe that the Committee should ask the Lord Advocate directly whether he instructed two unwilling complainants to make police statements.” I did not direct any complainer to make a police statement; indeed, I have no power which would enable me to issue such a direction.

Attachment

Mr Salmond comments adversely on the way in which the Scottish Government passed the matter to the police. The particular approach chosen was adopted precisely because of the sensitivity of the case and with a view to enabling the police to put in place, from the outset, appropriate arrangements for handling the case.

Finally, I observe that there was no failure on my part to answer the question in the Convener's letter to me of 3 February, about the provision of records. As my letter of 8 February made clear, and as was envisaged in the Convener's letter, a separate response was issued to the Committee on those issues. I addressed in my own response those issues which it was appropriate for me, rather than a senior Scottish Government official, to address.