

Annex B

From: [redacted – section 38(1)(b)]@itspublicknowledge.info>
Sent: Thursday, March 16, 2023 9:33 AM
To: Penelope Curtis <Penelope.Curtis@gov.scot>
Cc: [redacted – section 38(1)(b)]@gov.scot>
Subject: Decision 004/2023 [redacted – section 38(1)(a) application - OSIC Ref: 202100725

Morning, Penny

I see from media reports that the Ministers have now appealed this decision. At the moment, due to hybrid working, mail is only delivered to our office in St Andrews once a week (Tuesdays). Would it be possible for you to ask your agents to email a copy of the appeal to me when it is ready to be served?

Thanks

[redacted – section 38(1)(b)]

[redacted – section 38(1)(b)]
Head of Enforcement

Scottish Information Commissioner

Kinburn Castle, Doubledykes Road
St Andrews, KY16 9DS

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Web: www.itspublicknowledge.info
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Scottish Information Commissioner 
it's public knowledge

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From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Sent: Thursday, March 23, 2023 11:35 AM
To: [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>
Cc: Colin McAllister <Colin.McAllister@gov.scot>; Callum McCaig <Callum.Mccaig@gov.scot>;
Nicolson S (Stuart) (Special Adviser) <Stuart.Nicolson@gov.scot>; Ross Ingebrigtsen
<Ross.Ingebrigtsen@gov.scot>; David Rogers <David.Rogers@gov.scot>; [redacted – section
38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section
38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section
38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section
38(1)(b)]@gov.scot>
Subject: Court of Session appeal - Hamilton report - process update

[redacted – section 38(1)(b)] and colleagues

For information, OSIC and [redacted – section 38(1)(a)] have been served formally of our Appeal. They have 21 days from service (22 March) to lodge Answers to the appeal.

[redacted – section 38(1)(a)] asked whether the Appeal would be published. He was provided with the following information:

In terms of publication, parts of the court process (such as the Appeal and any Answers lodged by other parties) are not ordinarily published by parties. There is a publicly available [guide](#) available from the Scottish Courts and Tribunal Service (SCTS) which provides advice as to how the SCTS will engage with journalists and what will be provided to journalists by SCTS (as opposed to the general public).

If there are further media inquiries I'd suggest the existing lines are probably still OK.

A Scottish Government spokesperson said:

“We are committed to openness and transparency and recognise that scrutiny is essential for effective governance. As this case is now before the court, we will not comment on live legal proceedings.”

Background

Scottish Ministers lodged an appeal on a point of law against a Decision 004/2023 of the Scottish Information Commissioner on 14 March 2023.

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
0131 244 [redacted – section 38(1)(b)] | Mobile [redacted – section 38(1)(b)]

From: [redacted – section 38(1)(b)]@gov.scot>
Sent: Monday, April 3, 2023 12:22 PM
To: [redacted – section 38(1)(b)]@gov.scot>; Penelope Curtis <Penelope.Curtis@gov.scot>
Cc: [redacted – section 38(1)(b)]@gov.scot>
Subject: Lines on the SG decision to appeal 004/2023

[redacted – section 38(1)(b)], Penny,

Apologies for sending this on to you both, I wasn't sure who best to contact in [redacted – section 38(1)(b)] absence.

[redacted – section 38(1)(b)] and I have been contacted by [redacted – section 38(1)(b)] at P&E asking the following about lines in relation to the decision to appeal 004/2023 – see her messages below. Can you help please? And do tell me if I can do more than just ask both of you! [redacted – section 38(1)(b)] has said it's not hugely urgent, but needs something this week if possible.

[10:27] [redacted – section 38(1)(b)]

Morning both, hope you have had good weekends! I am dealing with a wide-ranging piece of correspondence which also references SG decision to appeal Decision 04 (Harrop). Can I check whether we have any lines to take on that, in particular any that we have issued? Thank you.

[10:29] [redacted – section 38(1)(b)]

Oh, and do we have any stock lines around how FoISA envisages the right to appeal a decision, to counter the implied criticism that SG has resisted OSIC's requirements. Thank you!

Thanks very much in advance,

[redacted – section 38(1)(b)]

[redacted – section 38(1)(b)] | FOI Manager | Freedom of Information Unit

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From: Penelope Curtis <Penelope.Curtis@gov.scot>

Sent: Tuesday, June 27, 2023 3:49 PM

To: Lorna Gibbs <Lorna.Gibbs@gov.scot>; Andrew Bruce <Andrew.Bruce@gov.scot>

Subject: OFF - SEN - FOI - Handover issues - legal

Lorna

Copy Andy

I'm working out what I need to pull together as handover material. There are two ongoing legal issues that I've been more closely involved in than for usual business:

- Appeal to the Court of Session on Scottish Information Commissioner Decision 2023-004. Andy is familiar with the background as it relates to whether or not Scottish Ministers hold information that was collected by James Hamilton as part of his Ministerial Code investigation (Ms Sturgeon's self-referral).
- [redacted – out of scope]

I'll pull together a brief note on both issues that provides background, leads in the Unit and [redacted – section 30(c)], get you access to the restricted files etc.

Penny

Penny Curtis
Deputy Director Elections and FOI
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0131 244 [redacted – section 38(1)(b)] | Mobile [redacted – section 38(1)(b)]

From: Jack Middleton <Jack.Middleton@gov.scot>
Sent: Wednesday, December 6, 2023 5:14 PM
To: [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; David Hutchison <David.Hutchison@gov.scot>
Cc: [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; DG Corporate <dgcorporate@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Christopher Mackie <Christopher.Mackie@gov.scot>; David Rogers <David.Rogers@gov.scot>; Cabinet Secretariat Inbox <CabinetSecretariat@gov.scot>; Ian Mitchell <Ian.Mitchell@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Communications DFM & Finance <CommunicationsDFMandFinance@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Andrew Bruce <Andrew.Bruce@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Helen Webster <Helen.Webster@gov.scot>; Ashleigh Gray <Ashleigh.Gray@gov.scot>; Lorna Gibbs <Lorna.Gibbs@gov.scot>; Shirley Ferguson <Shirley.Ferguson@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>
Subject: RE: SPAD VIEW PLEASE: Court of Session case - Scotsman

Ok with the line thanks

Jack Middleton
Special Adviser to the First Minister
[redacted – section 38(1)(b)]
jack.middleton@gov.scot

Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot.

From: [redacted – section 38(1)(b)]@gov.scot>
Sent: Wednesday, December 6, 2023 4:22 PM
To: [redacted – section 38(1)(b)]@gov.scot>; David Hutchison <David.Hutchison@gov.scot>; Jack Middleton <Jack.Middleton@gov.scot>
Cc: [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; DG Corporate <dgcorporate@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Christopher Mackie <Christopher.Mackie@gov.scot>; David Rogers <David.Rogers@gov.scot>; Cabinet Secretariat Inbox <CabinetSecretariat@gov.scot>; Ian Mitchell <Ian.Mitchell@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Communications DFM & Finance <CommunicationsDFMandFinance@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Andrew Bruce <Andrew.Bruce@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Helen Webster <Helen.Webster@gov.scot>; Ashleigh Gray <Ashleigh.Gray@gov.scot>; Lorna Gibbs <Lorna.Gibbs@gov.scot>; Shirley Ferguson <Shirley.Ferguson@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>
Subject: RE: SPAD VIEW PLEASE: Court of Session case - Scotsman

SpAds, colleagues,

For awareness, Conservative comment below. This was shared by the Express, who are also looking for a response to the ruling.

Thanks,

[redacted – section 38(1)(b)]

Scottish Conservative MSP Murdo Fraser said: “This is a humiliating defeat for the SNP Government, whose defence that they don’t hold key information about the ministerial code investigation into Nicola Sturgeon has been rejected by Lord Carloway.

“Ministers should now do the right thing and publish in full all the relevant information.

“This shabby episode is the latest example of the SNP’s addiction to secrecy and aversion to accountability. They have spent a small fortune of taxpayers’ cash on trying to defend a cover-up.

“This growing trend of public money being squandered on failed legal cases pursued in the SNP’s political interest – which also includes the Salmond judicial review and the Supreme Court indyref case – has to stop.”

From: [redacted – section 38(1)(b)]@gov.scot>

Sent: Wednesday, December 6, 2023 4:13 PM

To: David Hutchison <David.Hutchison@gov.scot>; Jack Middleton <Jack.Middleton@gov.scot>

Cc: [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; DG Corporate <dgcorporate@gov.scot>; [redacted – section 38(1)(b)]gov.scot>; Christopher Mackie <Christopher.Mackie@gov.scot>; David Rogers <David.Rogers@gov.scot>; Cabinet Secretariat Inbox <CabinetSecretariat@gov.scot>; Ian Mitchell <Ian.Mitchell@gov.scot>; [redacted – section 38(1)(b)]gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Communications DFM & Finance <CommunicationsDFMandFinance@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Andrew Bruce <Andrew.Bruce@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>; Helen Webster <Helen.Webster@gov.scot>; Ashleigh Gray <Ashleigh.Gray@gov.scot>; Lorna Gibbs <Lorna.Gibbs@gov.scot>; Shirley Ferguson <Shirley.Ferguson@gov.scot>; [redacted – section 38(1)(b)]@gov.scot>

Subject: SPAD VIEW PLEASE: Court of Session case - Scotsman

Davie, cc [redacted – section 38(1)(b)]

I would be very grateful of SPAD consideration of a media line which has been agreed with officials. The line related to this Court of Session case [The Scottish Ministers v The Scottish Information Commissioner](#) which The Scotsman has just inquired about. If SPADS are content with the suggested handling, I will take forward to DFM to clear.

LINE

A Scottish Government spokesperson said:

“We are committed to openness and transparency and recognise that scrutiny is essential for effective governance. We note the decision in this case and will respond fully in due course.”

[redacted – section 38(1)(b)]

[redacted – section 38(1)(b)] Senior Media Manager DFM and Finance / Mobile: [redacted – section 38(1)(b)]