



Scottish Information
Commissioner

Our Ref 202400275

Your Ref

Mr Joe Griffin
Permanent Secretary
Scottish Ministers
St Andrews House
Regent Road
Edinburgh
EH1 3DG
By email:

02 February 2026

Dear Permanent Secretary,

Compliance Question regarding Decision Notice 193/2024

I write following my attendance at the Inner House of the Court of Session on Thursday 29 January 2026 in the appeal *Scottish Ministers v Scottish Information Commissioner* (XA29/25) regarding Decision Notice 065/2025. This appeal was principally regarding the matter of legal professional privilege and the provision of information. As a result of the submissions made to the court by Christine O'Neill KC, instructed by Scottish Ministers, I am concerned regarding the compliance by the Scottish Ministers in respect of Decision Notice 193/2024.

Prior to the issuing of that Decision Notice, the applicant had requested:

*“All legal advice given to the Scottish Government/ministers in reference to the court case known as *The Scottish Ministers v The Scottish Information Commissioner* (case reference number XA10/23). This includes legal advice given in relation to the decision to appeal, as well as advice in preparation for the court hearing, as well as all other such advice in relation to the case.”*

The request was appealed to me after Scottish Ministers refused elements of it and I then issued Decision Notice 193/2024 requiring the Authority to disclose the information.

On 26 October 2024, I was advised that Ministers had complied with this decision.

During my investigation of that request, Scottish Ministers elected not to provide me with the withheld information (and I had no power to compel them to do so), so I was unable to verify compliance. Instead, I took the Authority on trust that it had fully complied by releasing all relevant legal advice to the applicant.

On 29 January 2026, in the Inner House of the Court of Session there was discussion with the court regarding Decision 065/2025 and in particular the information said to be covered by legal professional privilege and what it might or might not contain. David Johnston KC, instructed to appear for me, submitted to the court that the legal advice had been provided and therefore the present case was not about the matter of the provision of legal advice. In response to that submission, the court was advised by Christine O'Neil KC, representing Scottish Ministers, that the

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legal professional privilege (LPP) information which was the subject of the appeal included as yet undisclosed legal advice.

On the face of it, it would appear that any such legal advice (as opposed to other communications relating to the obtaining of such advice) should have fallen within the scope of the request considered in Decision 193/2024.

I am trying to reconcile this anomaly and would be grateful if you could assure me that Scottish Ministers have indeed fully complied with Decision Notice 193/2024 and, assuming so, explain what kinds of communications (in the way of legal advice) were not captured by the request which led to that Decision but nonetheless remained for consideration in relation to a near-contemporaneous request for communications on (it would appear) the same subject matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Hamilton', with a stylized flourish at the end.

David Hamilton

Scottish Information Commissioner