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David Hamilton  
Scottish Information Commissioner

10 March 2026

Dear Commissioner,

Thank you for your letter of 4 March requesting an early meeting with me to discuss the Scottish Government handling of Freedom of Information requests relating to the Hamilton Inquiry cases. I am, of course, always willing to discuss issues with you and my office has now arranged our meeting for tomorrow. I should be clear however that it would be inappropriate to discuss any issues regarding Decision Notices 279/2025, 315/2025 or 065/2025 as these are subject to live litigation. I know that you will agree on this point.

We can discuss points 1 and 3 of your letter when we meet. However, in relation to specific issues relating to the publication of material in response to Decision 281, I would reiterate that ensuring compliance with court orders has been Ministers' absolute priority throughout this matter. Over 700 documents running to over 4500 pages were shared with the requester and published on the Scottish Government website. We did temporarily remove some of the material to redact some additional information. A replacement version of that material was published as quickly as was possible. It is regrettable that this has happened but it was a direct result of the scale and complexity involved and the need to progress at pace.

I am now able to provide a substantial response to your letter of 2 February which asked for assurance that the Scottish Ministers have fully complied with Decision Notice 193/2024.

Decision Notice 193/2024 related to the following request ("the 193 Request")

"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."

As is evident from the request, it was directed at legal advice given to Ministers. This is further illustrated by paragraphs 50 to 57 of Decision 193/2024, being a central element of the rationale for ordering the disclosure. Among other matters, those paragraphs link to earlier reporting related to Ministers and legal advice given to them and set out a conclusion that it would be of "significant public interest to know if lessons had been learned from that case".

On 26 October 2024, all legal advice considered by the Scottish Ministers to fall within the scope of the 193 Request was disclosed to the requester and published on the Scottish Government website. That material remains published there with the nature, form and content of that advice freely available to view.

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At the hearing on 29 January 2026, discussion took place among senior counsel and the Court about the legal advice disclosed in compliance with Decision 193/2024 and how that related to withheld material in the scope of Decision 065/2025. I will not rehearse the fine detail of the relevant parts of the hearing, as it is available in the livestream recording. However I set out salient points below.

In essence, on behalf of the Commissioner Mr Johnston KC submitted that in Decision 193/2024 it was held that “the legal advice in relation to this appeal [i.e. appeal case reference number XA10/23] should be disclosed and it was”. This, in tandem with associated submissions by Mr Johnston, appeared to suggest that all legal advice in relation to that appeal fell within the scope of the 193 Request and had been disclosed in response to the 193 Request. Their Lordships discussed Mr Johnston’s position with him, noting that Ms O’Neill KC was demurring from that position.

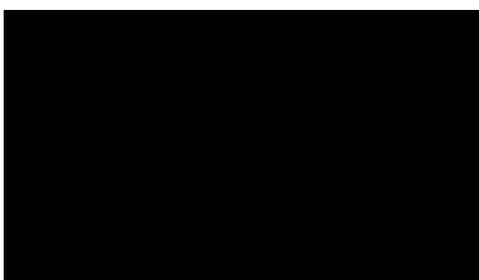
Following those exchanges, Ms O’Neill clearly set out Ministers’ position by reference to earlier submissions and materials, as well as in her response to an observation by the Lord President. Ms O’Neill confirmed that all of the legal advice within the scope of the 193 Request had been disclosed in compliance with Decision 193/2024 but that, separately, withheld information in scope of Decision 065/2024 included legal advice, as well as other information subject to litigation privilege. Ms O’Neill gave the example of communications from internal Scottish Government lawyers giving advice to officials about FOI matters. I think the Court will be clear from Ms O’Neill’s submissions that legal advice not falling within the scope of the 193 Request forms part of the withheld information as regards Decision 065/2025.

As you know, Ministers’ response to Decision 193/2024 involved the disclosure of a substantial amount of material. If there is a concern that in making that disclosure Ministers simultaneously withheld information considered to be within the scope of the 193 Request I have been assured that this is not the case. In deciding not to appeal the Inner House decision Ministers decided to fully comply with Decision 193/2024. That was the purpose and the effect of the information disclosure that followed.

I hope that this detail assists in addressing any residual uncertainty you have encountered about the Scottish Government’s position on the scope of, and the ultimate response to, Decision 193/2024.

I look forward to discussing these issues further with you soon.

Yours sincerely



**Joe Griffin**  
**Permanent Secretary**

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