

Permanent Secretary
Leslie Evans



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Linda Fabiani MSP
Convenor – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

12 June 2019

By email: SGHHC@parliament.scot

Dear Ms Fabiani

Committee on the Scottish Government Handling of Harassment Complaints

Thank you for your letter received on 21 May which responds to mine of 1 May 2019. The Annexes to this letter set out responses to each of the specific further questions which the Committee has asked.

I would like to take this opportunity again to provide assurance that the Scottish Government is committed to cooperating fully with the Committee and has taken steps to ensure all relevant information is preserved until the Committee commences its full inquiry.

In relation to the issue which you identify as the Committee's main concern around automated deletion, to be clear: this does not apply to information kept as part of the corporate record. There is therefore no risk that relevant information kept as part of the corporate record has been automatically deleted.

The Scottish Government's Records Management Plan, agreed with the Keeper of the Records of Scotland in accordance with the Public Records (Scotland) Act 2011, sets out the procedures to ensure that the Scottish Government and its employees are fully aware of and abide by their duties under the Act. Those procedures ensure that material which should be kept as part of that corporate record is kept, and that material which should not be kept as part of the corporate record is not kept. Those procedures apply to the subject matter of the Committee's inquiry in the same way as they do for all other issues with which the Scottish Government deals.

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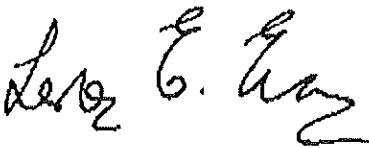


The automated deletion system is therefore only relevant to information which has not been saved as part of the corporate record. However, following your letter of 26 February, in which you set out the Committee's interest in this category of information, I have taken the additional step of instructing the halting of the automated deletion system in respect of specific people. This ensures an even wider scope of information will be available to the inquiry when it commences than would be the case under our normal practice.

Your latest letter also asked about information connected with the judicial review proceedings. The judicial review proceedings related to similar subject matter to the Committee's remit: the Scottish Government's handling of the complaints. As part of those proceedings, documents held by the Scottish Government were collated in relation to the application of the relevant Scottish Government procedure in handling the complaints, and that set of documentation has also been preserved.

I hope this letter offers further assurance to the Committee about the Scottish Government's compliance with robust records management practice as well as an understanding of further steps that have been taken to safeguard additional information.

Yours sincerely



LESLIE EVANS

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Annex A: records management policies and guidance

"As a starting point, could you provide the Committee with a copy of the Scottish Government's records management plan (including when it came into effect), together with any relevant records management policies, strategy documents and any retention and disposal schedules applying both to Outlook and to any other electronic systems used by the Scottish Government."

The Scottish Government's current Records Management Plan was prepared in 2013 following the coming into force of the Public Records (Scotland) Act 2011 and formally agreed by the Keeper in August 2015. The Plan may be found here:
<https://www.gov.scot/publications/scottish-government-records-management-plan/>

The Plan is underpinned by the Scottish Government's Records Management Policy, which sets out the objectives of record keeping, systematic approach to the management of records within the organisation, and responsibilities. The Policy may be found here:
<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/11/scottish-government-records-management-plan/documents/00528239-pdf/00528239-pdf/govscot%3Adocument/00528239.pdf>

The Scottish Government's corporate record keeping system since 2005 has been eRDM (Electronic Records and Document Management). eRDM enables the organisation to create, store, amend, archive and retrieve information electronically. This provides an organisation wide information and knowledge sharing resource designed to enable efficiencies in the creation, sharing, retention and retrieval of information. It also enables compliance with related legislative requirements including the Freedom of Information Scotland Act and the Data Protection Act. eRDM retains both the content and audit details of electronic files which are considered to be part of the corporate record.

Retention and disposal schedules for eRDM are applied in accordance with the Scottish Government File Type guidance. This can be found under the 'supporting files' tab in the link to the Records Management Plan above.

Email material is considered as transient data for the purposes of our records management policy and only considered part of the corporate record when stored in our eRDM system. This is consistent with best practice recognised by the Keeper of the Records of Scotland¹.

"What criteria are applied in determining what information should be preserved on the corporate record and where is the information that is preserved held"

A record is defined as a piece of recorded information or document, regardless of format, which facilitates the activities and the business carried out by the Government and which is thereafter retained for a set period to provide evidence of a transaction or decision carried out by or on behalf of the Government. Records may be created, received or maintained in hard copy or electronically.

¹<https://www.nrscotland.gov.uk/record-keeping/electronic-records-management/managing-email>
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The criteria for determining whether any given item is a 'record' is a local business decision based around guidance provided by the Knowledge and Information Management (KIM) team. They have clear guidelines on how material should be considered, categorised and files appropriately. Training in the effective use of eRDM and its principles is mandatory for all Scottish Government staff.

"Does the corporate record include "informal" information such as email exchanges"

Guidance from the Keeper makes clear that e-mails which record business transactions and decisions should be preserved in accordance with an organisation's Records Management Plan, and those which are trivial or have no long-term corporate value should be deleted.

Within Scottish Government, the question of whether a particular e-mail has corporate value is determined by the local business area/officer concerned complying with the published guidance from KIM. The Records Management Policy states expressly that e-mails which must be retained for business purposes as evidence of a decision or transaction carried out by or on behalf of the Government are to be saved to the corporate record.

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Annex B: technical questions related to preservation and deletion

“What happens to information that is deleted as part of the records management process or otherwise; and in the case of this inquiry, what attempts have been made to retrieve any information that has been deleted? For example, is any such information held on back-up files or other IT systems from which such information could be retrieved?”

Email which has not been saved on eRDM (and therefore not part of the corporate record) is managed through the Enterprise Vault. Emails remain in a user's Outlook mailbox for 60 days and are then automatically archived in Enterprise Vault for 1 year before deletion. Emails which a user wishes to retain for a longer period (without having stored in eRDM) can be moved to the #Archive folder from where they are archived overnight to Enterprise Vault and retained for 3 years before deletion. Once archived, this data is replicated to the Scottish Government's secondary datacentre for resilience purposes and is not backed up as this material is deemed to be of low corporate value.

Data retention policies like this are standard best practice across industry and government and are driven by legal obligations. The Keeper of the Records of Scotland uses the same software and policies in relation to emails generated and received by National Records Scotland. The need to minimise costs when retaining data of low corporate value is also a consideration. The Scottish Government's ICT service provides mail and archiving services for over 13000 email users. Staff receive guidance on the application and effect of the Enterprise Vault as part of their mandatory eRDM training.

There is no automated deletion of data except for the management of Outlook items through the Enterprise Vault. Non-email data that is not deemed as part of the official record and stored in eRDM accordingly is managed and deleted by individuals and business areas according to their business requirements. The Scottish Government's backup policy is to retain all backups for 28 days.

“What efforts have been made to establish whether any relevant information has in fact been deleted either as a result of automatic deletion from Outlook or otherwise?”

As indicated in the response to the previous question, no record or back up is kept of emails which are automatically deleted from Outlook via the Enterprise Vault, which is in line with standard best practice across industry and government.

Other relevant information, not subject to automatic deletion, would form part of the corporate record and would therefore be subject to the records management policies and guidance, including retention and disposal schedules, described in Annex A to this letter. Staff involved in matters relevant to the Committee's inquiry are fully aware of those policies and guidelines and apply them within the wider context of their obligations under the Civil Service Code.

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"Are any aspects of the Scottish Government's IT processes or systems managed by contractors external to the Scottish Government?"

No aspects of the Scottish Government's IT processes or systems are managed by external contractors. All SG systems are managed by in-house teams, although some support may be provided by third-party vendors and system integrators for some systems and platforms. Email, eRDM and file services are all managed in-house.

"Where you say 'All future such material will also be preserved for these system users', could you confirm whether this applies from 22 March when the formal instruction was issued to these users following the Committee's request and that it will continue to apply going forward."

Yes.

"Could you confirm whether the timing of the instructions being issued means that there is potential for relevant information to fall outwith the 14-month retention schedule and therefore will already have been discarded."

As previously explained, safeguards and procedures are in place to ensure that all relevant material is saved to the corporate record. The 14-month period for material to be kept within the Enterprise Vault does not apply to this material.

When the additional step was taken on 22 March to halt auto-deletion (of material of no corporate value) for specific users, a point-in-time snapshot of all unstructured data relating to the individuals named (email, vaulted archives and personal folders) was taken and is currently being maintained in a secure area. This information is backed up and could not be affected by any changes made on the live system. This ensures an even wider scope of information will be available to the inquiry when it commences than would be the case under our normal practice.

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Annex C: full text of instructions issued to staff following Committee's request of 26 February

From: [redacted]
Sent: 22 March 2019 13:10
To: [redacted]
Cc: [redacted]
Subject: Data retention: Committee on Scottish Government Handling Of Harassment Complaints

Colleagues

In my email below I attached a letter from Linda Fabiani MSP to the Permanent Secretary about data retention in respect of the Parliament's Committee on Scottish Government Handling of Harassment Complaints. In my email I asked that as an interim precautionary measure pending legal advice you adhere to the request from the Committee: ie that no documents which could be within the scope of the Committee's request should be deleted, irrespective of extant retention policies or normal practice. The remit of the Committee is set out in Ms Fabiani's letter.

I now attach the Permanent Secretary's reply to Ms Fabiani which will issue today, in which she confirms that my interim request should now continue as a permanent instruction. We do not know when the Committee will be in a position to begin its substantive work, and it is essential that all relevant documentation is preserved until the conclusion of the Committee's work.

With thanks

From: [redacted]
Sent: 28 February 2019 16:46
To: [redacted]
Cc: [redacted]
Subject: Letter from the Committee on Scottish Government Handling Of Harassment Complaints

Colleagues

You may know that the Convenor of the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints wrote to the Permanent Secretary as attached on 26 February. In her letter the Convenor explains that "the Committee wishes to make clear that it expects the Scottish Government to ensure that all hard copy and electronic documents (including emails and electronic messages) which may be relevant to the Committee's inquiry are preserved." She also adds that "Documents to be preserved include electronic data which would otherwise be deleted in accordance with a document retention policy or in the ordinary course of business." I am currently leading work to ensure that the Scottish Government will be ready to engage with the Committee at the appropriate time, and am therefore coordinating the provision of advice to the Permanent Secretary in relation to this request.

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In order to inform the Permanent Secretary's response I have commissioned legal advice on the implications of the second sentence quoted above, which suggests a possible departure from our normal retention policies (which in turn reflect our legal obligations). I will share with you the Permanent Secretary's response once agreed and any further advice, but in the meantime I am writing to ask that as a precautionary measure the request from the Committee is adhered to: ie that no documents which could be within the scope of the Committee's request above are deleted, irrespective of extant retention policies or normal practice.

With thanks

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