

Email from Levy & McRae to Clerks – 15 November 2020

Dear Sirs,

This letter is to provide an update on progress on our client's part.

As you are aware, the Scottish Government indicated to your committee on 26 October that they intended to produce over 400 more documents, exceeding 2000 pages, to us.

We received that bundle on 2 November and have been working through it with our client to date. That has taken very many hours and is ongoing.

As of Friday, we sent the attached letter to the Scottish Government. Accompanying that letter was a significant batch of documents which we and our client had identified for immediate release to you.

Since then, and over this weekend, we have identified further documents which tomorrow morning we will advise the Scottish Government they can release to you. We and our client aim to complete that exercise by this coming Friday. Two immediate issues arise which you should be aware of:

1. Many of these documents do not appear relevant to the remit of the inquiry and it would appear that they are being produced to give the impression of full co-operation and transparency. Our client has identified many documents which he considers should be released but which you have not yet received. These include the transcript of the Commission and Diligence and associated documentation which were central to the judicial review and the eventual concession of the Scottish Government. Curiously, these are not among the 4000 pages yet were central to the judicial review.
2. Many of the documents produced are only being seen for the first time by us and our client. This is despite two court orders in the civil and criminal proceedings – A lengthy commission and diligence procedure in the Judicial review and a search warrant in the criminal case. It would appear that many of these documents would have made a material and helpful contribution to both of our client's cases. It is important that the Committee is aware of this and that our client is considering all of his legal options in relation to that non-disclosure of material in light of the two major court actions which he had been through at considerable expense to the taxpayer and to him personally (he funded the criminal case and was not entitled to recover costs from the state). In respect of that issue, our letter of 10th November is also attached.

Yours sincerely

David McKie
Partner



10 November 2020

Our Reference: DMK/LL/STE039-0003

FAO: John Swinney & Lesley Fraser

By email only

Dear Sirs,

Alex Salmond

We refer to your letter of 30th October.

We confirm that our client has commenced the review of the extensive number of documents produced by you and on which you sought his position.

We note, as Mr Swinney informed the parliamentary committee in his letter of 26th October 2020, that it took many months for you to collate that documentation, even with the resources of the Scottish Government at your disposal. You have also presumably taken legal advice on the content of those documents.

By contrast, your letter indicated that our client had two weeks to complete that exercise. That, as we are sure you were well aware, was an unreasonable and impossible timetable to meet.

You also indicated your intention, in the event that our client does not agree to the release of documents, to seek a court ruling on whichever documents remained in dispute.

We have repeatedly explained to the Committee, in correspondence you will have seen, that such a further waste of public money is wholly unnecessary.

We note that the Committee has consistently made clear to you that there is no desire for a number of the documents you apparently remain determined to publicise. There is no basis for seeking to spend public money on passing unlawful and irrelevant documentation to a committee which does not wish to receive them. Your stated position continues to raise serious questions about the conduct of the Scottish Government in this matter. Specifically, your proposal to produce reduced documents would be unlawful. The Committee's position on the matter has been set out in their letter of 6 November. The application will be contrary to the position of the Committee and wholly unjustified. Proceedings would further delay the Inquiry and involve further unnecessary cost to the taxpayer.

Our client has, however, declared his from the outset to co-operate with the Inquiry and has already produced material which you will have seen.

In that spirit, he is prepared to agree to the release of a large number of the documents, which we shall identify to you by Friday 13th November.

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However, our client wishes to raise the following with you:

1. Many documents now produced have never been produced or seen by us or by our client previously. This is in spite of three formal orders/processes (the interlocutor for specification, the granting of a commission and also the search warrant in the criminal case) as well as a lengthy process for Commission and Diligence for recovery of those documents where a number of witnesses from the Scottish government gave evidence under oath. Some of these documents would, on the face of them, have made a material difference, and been directly relevant, (and of potential benefit to our client) to both the judicial review and the criminal trial. They include discussions with and representations made to the crown in advance of trial. What possible explanation can you offer for the failure to produce these documents in response to the orders of the court in either the criminal proceedings or the judicial review? This is an issue of considerable gravity and our client is considering his position in relation to that matter.

2. In relation to that material, there is still significant documentation which our client wishes to discuss with us and on which he requires to take legal advice. That process will not be complete by your self-imposed deadline. We do, however, hope to have a finalised position by **5pm on Friday 20th November 2020**. If we require further time, we will let you know. Please confirm that no attempt to raise proceedings prior to that date will be made. Any proceedings prior to that date will be premature and unnecessary. This letter will be founded upon.

3. As you are doubtless aware, our client has been put at a significant financial disadvantage in this whole process. Your proposal to produce documents reduced by the court as unlawful inevitably involves our client's intervention in any such proceedings to protect not only the orders he fought successfully to obtain, but also his reputation.

He is a private citizen. He has already incurred significant personal expense. He does not, like you, have the benefit of a publicly funded legal department. He does not have access to the advice of Counsel paid for by the taxpayer. The inequality of arms is stark.

Given that position, our client requires assistance on funding

a) to enable him to take legal advice on these documents and

b) to make further representations to you on these documents and on that subject to the Parliamentary Inquiry

Please confirm that you will assist our client with that funding, which would also include his representation in any proposed court action raised by you.

If you are not willing to assist him, please outline the basis for that refusal.

We look forward to hearing for you.

Yours faithfully,

David McKie
Levy & McRae



13 November 2020

Our Reference: DMK/MOR/STE039-0003

Lesley Fraser
Interim DG Organisational Development & Operations
Scottish Government

By email only

Dear Ms Fraser

Alex Salmond

We enclose a first batch of documents approved by our client for release to the Parliamentary Inquiry. The documentation is voluminous and the exercise is taking considerable time. It remains ongoing and we will update you further in due course once we and our client have made more progress. The aim remains to finalise this exercise by next Friday, but if that proves impossible, we shall let you know.

You have not replied fully to our previous letter and look forward to a reply on the issue of funding given the extensive time commitment this exercise inevitably requires.

Furthermore, the Inquiry has made clear its position on reduced documents and so we look forward to your confirmation that none of these covered by the interlocutor or undertakings will be produced in any format.

A number of the documents which you propose to release have already been released by us on behalf of our client to the Committee and you will have had sight of those. We are unclear as to why you now propose to produce them again. Our client has no objection in principle to these being released given that it perhaps places that correspondence into chronological context, but this approval should not be treated as his having waived privilege over any and all of his documents.

We would draw your attention to attachment 1 of document INV 238. In "causes for concern, response to specific incidents" you have left unredacted material. The same material is properly redacted in document (523). We would suggest that it might be useful for you to follow the redactions of our material which have been made in the published letters.

We propose for convenience to use your table in each letter to identify the documents for release (or objection) and attach that for ease of reference.

Yours sincerely

David McKie
Levy & McRae

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