



The Scottish Parliament
Pàrlamaid na h-Alba

Tavish Scott MSP
Member of the Scottish Parliament for Shetland

Daren Fitzhenry
Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Our Ref: Fitz002\080218\TS\dc
Date: 8 February 2018

I write to bring to your attention an urgent need to investigate the role of Scottish Government ministers and special advisors in responding to freedom of information (FOI) requests.

As you will be aware, the journalist James McEnaney has secured documentation detailing the involvement of ministers and special advisors in responding to an information request on their contact with Teach First. I understand that this information was received seven months after the information was first requested and only after the matter was referred to your office.

During the Freedom of Information Requests debate in the Scottish Parliament on 21 June 2017, I asked the Minister for Parliamentary Business, Joe Fitzpatrick MSP, this direct question:

Tavish Scott (Shetland Islands) (LD):

I am grateful to the minister for giving way on the point about responding to the concerns expressed in the journalists' letter earlier this month. One of those concerns is that requests are being screened for potential political damage by special advisors. Is that true?

Joe FitzPatrick:

No. Requests are all prepared by Scottish Government officials. Special advisors have a role in assessing draft responses for accuracy. [Laughter.]

These documents now suggest that, in the same week that ministers gave this assurance in Parliament, special advisors were interfering in the content of replies to freedom of information requests.

A government email dated 23 June 2017 suggests that documents scheduled for release were removed following the intervention of Colin McAllister, a special advisor.

A further email on 30 June indicates that Mr McAllister then made further requests which led to changes to the response issued to the applicant.

I believe that this shows that special advisors are involved in a greater role than simply assessing for accuracy the responses to information requests. I would ask for the details of what these amendments entailed to be published so that it can be clearly seen if they were appropriate and within the limits stated by ministers that week.

In addition, I request that you investigate whether there were grounds for John Swinney MSP, the Deputy First Minister and Cabinet Secretary for Education and Skills, to ask that four documents be removed from an information release, as indicated in the email of 30 June 2017.

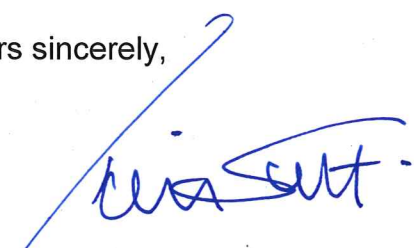
If information scheduled for release into the public domain was withheld solely on the basis that a minister would "prefer" they were not released, it would seriously damage public confidence in their right to information.

The public's right to information is clearly defined in legislation. As you know, it is an offence under Section 65 of the Freedom of Information (Scotland) Act 2002 to block or conceal a record held by an authority to prevent disclosure of records which an applicant is entitled to.

I am aware that you are at the assessment phase of conducting an investigation into the Scottish Government's FOI performance, as set out in your letter of 2 February 2018 to the Minister for Parliamentary Business, Joe Fitzpatrick MSP. I believe that this new information raises serious questions about whether the government is following good practice and that it therefore merits your attention under Section 43 (3) of the Act.

Thank you in advance for considering this matter and I look forward to your response.

Yours sincerely,



Tavish Scott MSP