

The Scottish Ministers -v- The Scottish Information Commissioner (Appeal under s.56 of the Freedom of Information (Scotland) Act 2002)

Case Ref No: XA3/26 and XA8/26

Date of Hearing: 22 September 2026 (1 Day)

Division and Senators: First; Lord President, Lord Malcolm, Lady Wise

Livestreamed Hearing?: ☒ Yes ☐ No

Agents and Counsel (*if known*):

Appellant; Reid KC and Welsh; Scottish Government

Respondent; Dean of Faculty KC; Anderson Strathern LLP

Link to Judgment Reclaimed / Appealed (*if available*):

Statutory Appeal

Case Description:

On 13 January 2019, the then First Minister (Nicola Sturgeon) asked the independent advisers on the Scottish Ministerial Code whether she had complied with the Code in connection with several meetings between her and her predecessor as First Minister, the late Alex Salmond.

James Hamilton was appointed to carry out the investigation. On 22 March 2021, his redacted report was published, concluding that the First Minister (Nicola Sturgeon) had not breached the Code.

Subsequently, separate applications were made to the Scottish Ministers, under the Freedom of Information (Scotland) Act 2002, by two individuals for information: (i) on 5 April 2021, an application was made for all written evidence to Mr Hamilton's investigation into the First Minister; and (ii) on 6 December 2023, an application was made for all evidence to Mr Hamilton's investigation into the First Minister.

Ultimately, the Scottish Ministers responded to both individuals, providing some information but withholding the remainder under the various exemptions in

the 2002 Act. Both individuals were dissatisfied with this outcome and applied to the Scottish Information Commissioner under s.47 of the 2002 Act for a decision as to whether the Scottish Ministers had complied with the requirements under the Act to provide the information.

The Scottish Information Commissioner investigated and in November and December 2025 issued his Decision Notices (279-2025 and 315-2025), requiring the Scottish Ministers to, amongst other things, disclose the information that they had withheld under the exemption in section 26(c) of the 2002 Act. This section provides that information is exempt from disclosure,

“if its disclosure by a Scottish public authority (otherwise than under this Act) –

...

(c) would constitute, or be punishable as, a contempt of court.”.

The Scottish Ministers appeal against both Decision Notices and in these conjoined appeals, the dispute between the Scottish Ministers and the Information Commissioner is whether disclosing the information in question would constitute, or be punishable as, a contempt of court.

There are three Court orders, which remain in force, that are relevant to these appeals:

- (i) in August 2018, the former First Minister, the late Alex Salmond, brought judicial review proceedings against the Scottish Ministers challenging how complaints that had been made against him had been handled. On 8 October 2018, Lord Woolman made an order under section 11 of the contempt of Court Act 1981 prohibiting publication of the names, designations, and “any other information concerning those complainers which would lead to their identification.”.
- (ii) Mr Salmond and the Scottish Ministers settled those civil proceedings and as part of that process, the Scottish Ministers gave an undertaking (*i.e.*, made a binding promise) to the Court not to “cause or permit the publication or dissemination to any other person” of Mr Hamilton’s report or associated statements and material, except where necessary to comply with a lawful requirement or as approved by the Court.

- (iii) On 24 January 2019, Alex Salmond was charged with several sexual offences. His trial commenced on 9 March 2020. On the second day, the trial judge, the Lord Justice Clerk (Lady Dorrian) issued an order preventing publication of any information likely to disclose the complainers' identities. On 23 March 2020, Mr Salmond was acquitted and, in February 2021, Lady Dorrian's order was varied to prevent "the publication of the names and identity and any information likely to disclose the identity of the complainers...as such complainers in those proceedings."

In these conjoined statutory appeals, the Scottish Ministers ask the Court whether the Scottish Information Commissioner made an error of law by: (i) misdirecting himself in law in relation to the purpose and operation of section 26(c) of the 2002 Act; and (ii) failing to have regard to (and only to) relevant factors in making the decisions. The Scottish Information Commissioner opposes the appeals, contending that he made no error of law.

The cases will be heard by the First Division on 22 September 2026 at 10:30am.