

**Module 2A of the UK Covid-19 Public Inquiry (“the Inquiry”)  
Request for Evidence under Rule 9 of the Inquiry Rules 2006  
Reference for Request: DH/M2A/01**

**Witness statement: Scottish Information Commissioner, David Hamilton**

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### General

1. The Scottish Information Commissioner is responsible for the enforcement and promotion of Scotland's freedom of information laws. His powers and duties are set out in Parts 3 and 4 of the Freedom of Information (Scotland) Act 2002 (FOISA). This contains powers and duties to:
  - (i) Enforce FOISA, the Environmental Information (Scotland) Regulations 2004 (the EIRs), the INSPIRE (Scotland) Regulations 2009 and related Codes of Practice which may be issued under sections 60, 61 and 62 of FOISA and regulation 18 of the EIRs.
  - (ii) Provide guidance on FOISA and the EIRs to the public and promote the following of good practice by Scottish public authorities; and
  - (iii) Give advice to any person on these matters.

The Commissioner's statutory functions include investigating and deciding applications (appeals) and enforcing decisions in relation to authorities' handling of information requests.

2. The Commissioner is appointed by His Majesty the King, on the nomination of the Scottish Parliament, and serves for a fixed term of six years.
3. I was appointed as the Scottish Information Commissioner on 16 October 2023.
4. I recently retired from the Police Service of Scotland after 27 years of service. I served as Chair of the Scottish Police Federation representing 18,000 Scottish Police Officers. As an engineering graduate of Glasgow University, I was a founding director of 1919 magazine, an experienced aid worker and Treasurer of anti-hate charity Remembering Srebrenica Scotland.
5. Daren Fitzhenry was the incumbent Commissioner during the timeframe specified by the UK Covid-19 Inquiry. The Inquiry may wish to direct further queries related to specific decisions taken by the Scottish Information Commissioner during this period to Mr Fitzhenry – contact details can be provided.
6. During his tenure, Daren launched a major intervention aimed at improving FOI performance of the Scottish Government, actively engaged with the Scottish Parliament and Scottish Government on the updating of FOI legislation in Scotland, oversaw the largest extension of FOI to new bodies since the legislation was enacted, and laid two special reports to the Scottish Parliament examining the impact that the Covid-19 pandemic had on FOI in Scotland.

7. Prior to his role of Scottish Information Commissioner, Daren was a senior officer in the Royal Air Force Legal Branch, heading up its legal advisory team, with wide-ranging experience in the development and enforcement of regulatory systems.
8. Key staff who were under the employment of Daren Fitzhenry throughout the specified timeframe have contributed to the detail of this statement.

### **Opening remarks**

9. As the full impact of Covid-19 began to hit Scotland, it became clear that, as with so many other areas, the pandemic would have an impact on FOI practice, and possibly performance. It was equally clear that transparency, enabled by FOI, was an important part of the response to the public health crisis. Information, and the right to seek and receive it, was never more important. It was recognised that the public would have questions about the decisions made by our governments and public services, and never more so than at a time when those decisions, sadly, may have meant the difference between life and death, or impact on jobs and personal liberties.
10. Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if the information requested cannot be found or has not been recorded. Failing to record information can frustrate the right of access to information.
11. Importantly, under FOISA there is no duty to document. The legislation focusses on the provision of information that is held by public authorities at the time a valid information request is made, while also containing a statutory duty to publish certain types of information. It does not, however, contain any requirement for public authorities to create records, nor does it contain any statutory requirements relating to the retention of information.
12. That said, I begin by setting out the legislative landscape specific to the particular queries posed to me by the Inquiry regarding the recording and retention of records relevant to the Covid-19 pandemic management and response by the Scottish Government.
13. As I was recently formally appointed Scottish Information Commissioner, my statement below has necessitated consultation with my staff within my office during the specified timeframe.

### *The Freedom of Information (Scotland) Act 2002 (FOISA)*

14. FOISA provides a statutory right of access to information held by Scottish public authorities. FOISA came into force on 1 January 2005 and applies to all Scottish public authorities over which the Scottish Parliament has jurisdiction. Under FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given it by the

authority subject to certain conditions and exemptions set out in the Act. Section 23 of FOISA also places duties on public authorities to publish certain types of information in the public interest.

15. The definition of “information” in FOISA is wide. It means information recorded in **any form**. FOISA does not require an authority to create information to respond to a request.
16. The information to be given by the authority in response to a request is that **held** at the time the request is received. (Planned deletions may be made if it is not reasonably practicable to prevent destruction). Section 1(4) of FOISA concerns information which would have been deleted or amended, regardless of the receipt of a request, between the time when the request was received and the time when the authority provides the information. It says that the amendment or deletion can be made in these circumstances. However, section 1(5) makes it clear that the information is not to be destroyed before it can be given, unless this is not reasonably practicable.
17. Information “held” for the purposes of FOISA not only encompasses the information physically held by the authority (subject to limited exceptions) at the point when a request is received, but also information which another person holds on behalf of the authority (section 3(2)(b)).
18. In relation to the use of private email accounts and unofficial messaging platforms, my and my predecessors’ position is very clear: **information which is generated in private accounts in the course of conducting public authority business is held for the purposes of FOISA, by the account owner on behalf of the authority. It is the purpose of the communication which matters, not the method by which it was created or delivered, or where it is stored .**
19. Importantly, FOISA does not place a legal duty on Scottish public authorities to create, record or retain information i.e. there is no legal duty to document. However, **after an information request has been made, altering, defacing, blocking, erasing, destroying or concealing information with the intention of preventing its disclosure is criminal offence under section 65 of FOISA.**
20. Under section 43(1) of FOISA I have a duty to promote the following of good practice by authorities in relation to FOISA and the Codes of Practice. Additionally, section 43(3) of FOISA provides that I may assess whether a Scottish public authority is following good practice.
21. Under section 51 of FOISA, I can issue an enforcement notice to an authority which has failed to comply with a provision of Part 1 of the Act, requiring it to take steps to comply within a specified time. Breach of this notice can be referred to the Court of Session which

may deal with the matter as a contempt of court. However, I have no such powers in relation to breaches of the Codes of Practice, I can simply issue a practice recommendation under section 44 (there are no penalties for failing to follow such a recommendation).

22. Before issuing a practice recommendation to a Scottish public authority relating to its conformity with the Section 61 Code of Practice [DH/1–INQ000361155] I must consult with the Keeper of the Records of Scotland. [DH/2-INQ000361156]

*The Scottish Ministers' Code of Practice on Records Management by Scottish Public Authorities (the Section 61 Code)*

23. Sections 60 and 61 of FOISA require the Scottish Ministers to issue two codes of practice. As Commissioner, I have a duty to promote observance of both Codes. Should an authority fail to comply with either Code, they may be failing in their duties under FOISA.
24. The Section 61 Code provides authorities with guidance on the creation, keeping, management and destruction of records, and on the review and transfer of records to both the Keeper of the Records of Scotland at the National Records of Scotland (NRS) and other public archives. Part 1 of the Section 61 Code provides a framework for relevant authorities to manage their records. It sets out recommended good practice for the organisational arrangements, decisions and processes required for effective records and information management.
25. The scope of the Section 61 Code applies to all records irrespective of the technology used to create and store them or the type of information they contain. 'Records' is defined as 'information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or the transaction of business'.
26. The Section 61 Code, which sets out best practice and **not legal duties**, refers to authorities having procedures to decide what information they should keep. The term 'keep' is interpreted very widely to include the creation of information. It means that authorities should consider a number of factors in determining what information should be created. The Section 61 Code is not prescriptive about the records that should be recorded and retained, but does set out some guiding principles in relation to deciding what should be kept, including:
- (i) 'The need to refer to authoritative information about past actions and decisions for current business purposes' and
  - (ii) '[T]he need to explain, and if necessary justify, past actions in the event of an audit, public inquiry or other investigation' (paragraph 3.1 (b) and (d) of the Section 61 Code).

27. Paragraph 3.6 of the Section 61 Code also states that staff should be aware of the need to dispose of ephemeral material on a routine basis.
28. The Section 61 Code is a supplement to the provisions in FOISA and its provisions are designed to help authorities to comply with their duties under FOISA. It is not legislation and its provisions do not have the force of law. Scottish public authorities are expected to adhere to the Section 61 Code unless there are good reasons not to do so, which can be justified to my office.

*The Public Records (Scotland) Act 2011 (PRSA)*

29. The recording and retention of public records in Scotland is governed by the Keeper through the PRSA. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities. The Scottish Government is one of the named authorities.
30. National Records of Scotland (NRS) is a non-ministerial department of the Scottish Government. NRS is headed by the Keeper and the Registrar General of Scotland. The Keeper is responsible to the Scottish Ministers for records transmitted to them under various statutory provisions. The Keeper is also responsible to the Lord President of the Court of Session for the efficient management of court and other legal records.
31. PRSA has its origins in: *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor recordkeeping and found that thousands of records had been created, but were then lost due to inadequate legislative framework and poor records management. The Shaw Report demonstrated that management of records in all formats is not just a bureaucratic process, but central to good governance.
32. PRSA requires public authorities to prepare and implement a records management plan which sets out the arrangements of the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The plan must be agreed with the Keeper and regularly reviewed.
33. PRSA gives the Keeper power to carry out a review of whether an authority is complying with its records management plan. Where the Keeper considers that an authority has failed to comply with its plan, or the provisions of PRSA, they may issue an action notice, specifying the alleged breach that has occurred and the action which the authority has to undertake by a specified date.

## Scottish Government Communications

### *Recording and retention of communications*

34. The Scottish Government's legal or other obligations, as regards the recording and retention of communications (formal or informal) related to decisions and actions related to the management of the Covid-19 pandemic, would be as set out in the Scottish Government's adopted Record Management Plan, as agreed with the Keeper and in line with PRSA requirements.
35. As set out above, as Scottish Information Commissioner, I have no statutory remit as to the creation and retention of records by the Scottish Government with the exception of retention of records held following the receipt of a valid information request.
36. In so far that it relates to the retention of records for the purposes of FOISA, I expect the Scottish Government, as a matter of good practice, to take steps to retain records to '...justify, past actions in the event of an audit, public inquiry or other investigation' (paragraph 3.1 (d) of the Section 61 Code). Through appeal related investigations concerning the Scottish Government, I understand that it is Scottish Government policy for all relevant records to be transcribed and placed into the organisation's electronic document management system (eRDM).
37. Information stored/retained on personal devices is still to be considered as information 'held' for the purposes of FOISA, where that information relates to Scottish Government business. It is the substantive content of the information that is relevant to its consideration under FOISA as opposed to the method of communicating that information.
38. Section 1 of FOISA states:

*A person who requests information from a Scottish public authority **which holds it is entitled to be given it by the authority** [my emphasis]*

39. As noted in *Dr Ian Graham v Scottish Information Commissioner* ([2019] CSIH 57) [DH/3-INQ000361157], it is possible for the same information to be held on behalf of more than one person. "Hold" need not connote any legal relationship between the authority and the information such as ownership of the information. Because "hold" is not a technical legal term, what it means has to be determined having regard to the purpose of the legislation. That purpose is reflected in the long title of FOISA:

*An Act...to make provision for the disclosure of information held by Scottish public authorities or by persons providing services for them...*

40. Case law has accepted that the whole purpose of FOISA is the release of information and that it ought therefore to be construed in as liberal a manner as possible (*Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47) [DH/4- **INQ000361158**]
41. As set out in the introductory text, the Section 61 Code sets out best practice and not legal duties. The Section 61 Code is not prescriptive about the records that should be recorded and retained. I note that later iterations of the Scottish Government's Records Management Policy expressly recognise that WhatsApp messages, tweets and SMS messages fall within the definition of a record. The policy also recognises the importance of such records being retained, in line with policy objectives, in the eRDM system. The decision as to what should be deemed as a corporate record, and therefore saved into eRDM is clearly subjective. Beyond these generic statements, it is beyond my remit to comment on the extent to which the Scottish Government comply with legal and other obligations with regard to the recording and retention of informal communications.
42. As regards legal and other obligations of the Scottish Government with regard to the recording and retention of informal communications, as I have indicated above, my remit in relation to record keeping by Scottish public authorities is limited. The Section 61 Code provides guidance on desirable practice for Scottish public authorities to follow in connection with the keeping, management and destruction of their records, and (in terms of section 43 of FOISA) compliance with the Code is among the factors I can take into account in determining whether a Scottish public authority is following good practice in discharging its functions under FOISA. The Code's statutory context, therefore, is the promotion and assessment of such good practice and – while the guidance it contains may be of wider practical application – such application does not fall within my statutory remit.
43. In fact, the Section 61 Code has nothing specific to say on informal communications and, while I am not confined by the Code in determining what comprises good practice, in this area, I am still confined by what amounts to the discharge by Scottish public authorities of their functions under FOISA. In any case, I have made no such determination of specific relevance to the recording and retention of informal communications. While my staff do monitor the following of good practice by Scottish public authorities, we would not generally review records management policies or similar documents, except in the context of a wider (reactive) assessment of an authority's compliance: we do not have the resources to do otherwise. Consequently, we have not considered these documents previously (records management has not been an aspect of my ongoing practice intervention with the Scottish Ministers) and any evaluation of them now would have to be constrained by my remit to enforce FOISA and trespass on to wider records management issues.



44. As the Scottish Information Commissioner, it falls outside my remit to comment on whether a failure to retain or record relevant communications would breach any obligations incumbent upon those responsible or on the Scottish Government in terms of PRSA requirements. However, I would consider it poor practice - and contrary to the spirit of FOISA and the Section 61 Code of Practice - if I received evidence which demonstrated that the Scottish Government had failed to retain information of this kind systemically, or with a view to frustrating the legal right of access under FOISA.
45. As previously mentioned, after a valid information request has been made, altering, defacing, blocking, erasing, destroying or concealing information with the intention of preventing its disclosure is criminal offence under section 65 of FOISA.
46. The Scottish Government has consistently submitted that information which provides evidence of a transaction or decision carried out by or on behalf of the Scottish Government must be committed to corporate record on their eRDM. Furthermore, the Scottish Government has provided assurances that all relevant WhatsApp/SMS messages are transcribed into the eRDM. However, I recognise that the decision as to what requires to be transcribed to the document management system is subjective.
47. As minimum, and in line with the Section 61 Code, as a matter of good practice, I would expect all documentation required to '...justify, past actions in the event of an audit, public inquiry or other investigation' (paragraph 3.1 (d) of the Section 61 Code) to be retained. Other than my general comment on what is expected in terms of good practice, it would be beyond my remit to comment on how the Scottish Government has interpreted its own policies with regard to the retention of information.

#### *Use of personal devices*

48. As far as I am aware, we have not received complaints or concerns about the use of personal mobile phones or other electronic devices by Scottish Government Cabinet Secretaries or other Ministers, senior civil servants or Special Advisers, as opposed to Scottish Government-issued devices. We have therefore not conducted any investigations on this matter.
49. This may, in part, be due to our view of the status of any information held on such devices for the purposes of FOISA: information which is generated in a private accounts in the course of conducting public authority business is held for the purposes of FOISA, by the account owner on behalf of the authority. It is the purpose of the communication which matters, not the method by which it was created or delivered, or where it is stored.
50. During the Covid-19 pandemic, it became apparent that there was widespread adoption of new technologies and systems and an increased number and variety of devices being used

for work purposes. My office's advice to public authorities was to consider and put in place effective, up-to-date procedures to ensure records that have been created are retained appropriately and are able to be found if requested. We also emphasised that any new messaging technologies used by an authority must be searched in response to information requests, where appropriate.

51. As reflected in my predecessor's Special Report (*Freedom of Information during and after the Covid-19 Pandemic: Learning lessons and looking to the future*)[DH/5- INQ000361159], while new technologies and practice such as remote access to systems and more flexible forms of communication made it easier for authorities to continue to function and comply with FOI obligations during lockdown, they also created their own issues, especially where implemented at speed without the required planning, training or an underpinning policy. Many authorities are likely now to hold business related information in more systems and on more devices than before.
52. When carrying out investigations that concern whether an authority holds information – or has identified and located all the relevant information it holds that falls within the scope of the request, I must be satisfied on the balance of probabilities that all information in scope has been identified. Therefore, I must be provided with sufficient evidence of the searches that were carried out and/or a clear rationale for judgements that were made as to where any information might be stored – this will include appropriate searching of personal devices where required.
53. Beyond the requirement to search all relevant devices, where it is reasonable to assume information could be stored in relation to an information request, obligations on Scottish Government staff with regard to the use of personal mobile phones or other electronic devices for conducting Scottish Government business would be set out in the Scottish Government's own policies and procedures.

*Previous investigations relating to the use of informal communications connected to the business of the Scottish Government*

54. My primary function is to decide whether Scottish public authorities have dealt with requests for information in accordance with FOISA. This process is triggered when a person who is dissatisfied with a response to a request makes an application to me (section 47(1) of FOISA). Typically, requests/applications will relate to communications in whatever form, given the explanations detailed above, the medium is not necessarily of concern to us.
55. I have previously investigated applications concerning requests which have specifically sought, or encompassed, WhatsApp messages:

Decision 131/2020 [DH/6 -INQ000361160]

56. Decision 131/2020, concerned a request, made on 5 February 2020, for all WhatsApp messages used by the Cabinet Secretary for Health and Sport and the Ministers for Public Health, Sport and Wellbeing and a Special Adviser. In response to this request, the Scottish Ministers notified the requester that no information was held. At this point, pre Covid-19 pandemic, the Ministers submitted that “in an environment where the traditional lines between corporate and personal digital tools are becoming increasingly blurred, their Information and Technology Service Division (iTECS) have to meet the demand to securely deliver and protect corporate material, yet also allow officials and Ministers to easily access digitally-enabling consumer tools and software”.
57. As part of their submissions, the Ministers stated that WhatsApp, along with other messaging Apps, are not provided by iTECS, although officials are not prevented from installing digital tools and Apps on the physical device provided by iTECS. The Ministers explained that individuals are allowed to install Apps on their devices which are neither recommended nor supported by iTECS as they were confident in the levels of secure separation they can guarantee on the Smartphone and tablets they provide.
58. The Ministers submitted that employees using their mobile phone services have to accept the Mobile Service Employee Agreement during activation, which refers to the Scottish Government’s IT Code of Conduct. The Ministers argued that iTECS had no access to data created and/or saved or archived in what are effectively personal applications, including, but not limited to, WhatsApp, Facebook, Twitter and other messaging platforms.
59. The Ministers contended that social media solutions are not used for substantive government business and, where they are, Ministers and Special Advisers are fully aware of their FOISA and PRSA responsibilities. Ministers and Special Advisers must ensure that relevant information is flagged to their Private Office staff who will then ensure that the information is stored as a corporate record in eRDM. The Ministers submitted that following these procedures enables the Ministers to meet their statutory and legislative responsibilities and the policies contained in their Corporate Records Management Plan.
60. At the point of consideration of this appeal (February 2021), the Ministers submitted that they did not have any policy or guidance specifically regarding the use and retention of WhatsApp messages and that there was no work currently underway. (I am aware that the Scottish Government has recently issued guidance on the use of mobile messaging apps (published on 31 October 2023))

61. During the investigation of this case, the Ministers were asked for details of the back-up systems in place on each individual's phone of the WhatsApp group in question. In response, the Ministers submitted that none of the individuals in the group had any back-up options setup for their WhatsApp group, consequently it was not possible to retrieve any messages from the time period requested.
62. The Commissioner concluded, having reviewed the evidence of searches conducted, on the balance of probabilities, the information requested was not held.

Decision 102/2020 [DH/7- INQ000361161]

63. In Decision 102/2020, the Commissioner considered whether a WhatsApp exchange between the First Minister (Nicola Sturgeon) and Alex Salmond was held by the First Minister purely for personal/political reasons or if it was held in her role as a Scottish Minister (and therefore covered by FOI). We concluded that the Ministers had defined "held" too narrowly and the information could be held for both purposes and it was subsequently disclosed.

*Live appeals (as at 29 November 2023)*

64. At the point of drafting this statement, I am investigating two live appeals concerning requests made in October 2021 for text and WhatsApp exchanges sent or received between any government ministers during August 2021 and sent and sent or received by cabinet secretary during March 2021. These cases have been appealed to me on the basis that the Ministers notified the requester that no information was held in relation to these requests. I have received evidence from the Scottish Government in relation these appeals that limited data from WhatsApp exchanges, involving senior Ministers, are transferred to the Scottish Government's corporate record.
65. Beyond the investigation of appeals under section 47(1) of FOISA detailed above, my office has not independently investigated the Scottish Government's policies and practice in relation to the retention and recording of informal communications. For clarity, I would have no jurisdiction for doing so, unless I was presented with evidence that the Scottish Government's practices were designed to frustrate FOISA access rights (or appeared to reflect a systemic failure with regard to meeting those rights).

*Usage of informal communications in the business of the Scottish Government*

66. From submissions from the Scottish Government received as a result of section 47(1) appeals, I have been informed that WhatsApp and text messages are not usually used for substantive government business, but where they are, staff are aware of their FOI and PRSA responsibilities and relevant information must be highlighted to Private Office staff, who will transfer that information into corporate record.

67. Contrary to the Inquiry's evidence that senior decision-makers within the Scottish Government were using informal communications for decision-making purposes, my office has been consistently told that WhatsApp and texts are used infrequently for logistical exchanges, and are routinely disposed of by each individual, or recorded in eRDM if required. This position was recently reaffirmed by Shona Robinson, Deputy First Minister and Cabinet Secretary for finance in statement made to the Scottish Parliament on 31 October 2023:

*"...it is not the culture within the Scottish Government routinely to use systems such as WhatsApp for decision-making"*

68. Decision 122/2021, quoted in an article in The Scotsman on 11 September 2021, concerned a request for information received or sent between 11 and 15 October 2020 related to Ipsos MORI/STV News polling. The request encompassed any SMS or WhatsApp messages sent by Scottish Government Special Advisers from 11-14 October 2020 concerning the polling or news inquiries/coverage related to the polling. The request was made on 15 October 2020. In response, the Ministers stated that no information was held.

69. Again, the Ministers reiterated that their Records Management Policy makes it clear to staff that any information which provides evidence of a transaction or decision carried out by or on behalf of the Scottish Government (including telephone conversations and SMS messages) must be stored in their eRDM as part of their corporate record. They submitted that there was no requirement to retain information that has no value to the corporate record, such as notification emails, emails of a personal nature or containing information relating purely to the logistical arrangements for a meeting or event.

70. During the course of this investigation, my office was not satisfied with the extent of the searches conducted and required the Ministers to conduct further searches for relevant WhatsApp exchanges, we also queried the use of back-up services.

71. The Ministers stated that "the policies we apply to our corporately managed devices block the use of Android and Apple backup services" and they were therefore unable to restore any messages that had previously been deleted.

72. The Ministers also submitted that, due to increased remote working, all staff had been advised to follow simple record management housekeeping guidelines and practices to help reduce traffic over the network and demand on the SCOTS infrastructure. The guidelines are summarised as:

*"Within these guidelines, once a task or action has been completed staff are encouraged, in a timeously manner:*

- *where information held on any medium has value for the corporate record (e.g. to evidence and justify key business activities, decisions and actions) to store it within eRDM;*
- *where it has no value (such as notification emails, emails of a personal nature or containing information relating only to the logistical arrangements for meeting/event) to delete it"*

73. In Decision 122/2021[DH/8-INQ000361162], the Commissioner could not definitively conclude that information was not held by the Ministers on the date of the request (15 October 2020).
74. This case recognised the risk of some modern forms of information being inadvertently destroyed – for example through scheduled automatic deletion – after some of its content has been requested.
75. Decision 122/2021 also illustrates the risk of inadvertent destruction of information given the ephemeral nature of SMS and WhatsApp messages and the lack of backup service used by the Scottish Government devices. It also illustrates how this may be mitigated by records management policies - including remote working guidelines - being in place, combined with thorough searches.
76. These concerns were conveyed to the Scottish Ministers through the serving of Decision Notice 122/2021 sent to the Permanent Secretary, Leslie Evans 12 August 2021. As this Decision Notice did not find a breach of Part 1 of FOISA, the Commissioner could not require any action to be taken by the Scottish Government in response to this decision. Separately, I am not aware if the Scottish Government acted independently on the concerns raised within this Decision Notice.
77. Neither I, or my predecessors have raised concerns with the Scottish Government in relation to the use of informal communications or the policies and practices in relation to the retention and recording of such communications beyond the consideration of the section 47(1) appeals referenced above.
78. However, I have recently been concerned with recent media coverage detailing the frequency with which informal messaging platforms are used and the reported volume of messages that have subsequently been provided to the UK Covid-19 Inquiry given the assurances that have been provided to my office regarding the status and usage of such tools.

## Statement of truth

79. I declare that the contents of this statement are true and accurate to the best of my knowledge and belief.

# Personal Data

**David Hamilton, Scottish Information Commissioner**

**5<sup>th</sup> December 2023**

Question number	Has this question been answered in statement (Yes/No)	If yes, what is the paragraph reference in the statement?	If no, why not?
1/2	Yes	1-8	
3	Yes	34-36	
4	Yes	37-40	
5	Yes	41-43	
6	Yes	44-45	
7	Yes	46-47	
8	Yes	48-49	
9	Yes	50-53	
10	Yes	54-64	
11	Yes	65	
12	Yes	66-75	
13	Yes	76	
14	Yes	77	