



The Scottish Parliament
Pàrlamaid na h-Alba

Dr Nicola Marchant
Vice Chair
Scottish Police Authority

Cc
Professor Susan Deacon
Chair and
David Hume
Audit Committee Chair,
Scottish Police Authority

By email only
John.McCroskie@spa.pnn.police.uk

**Public Audit and Post-legislative
Scrutiny Committee**

Room T 3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

Direct Tel: (0131) 348 5390
Email: papls.committee@parliament.scot

23 February 2018

Dear Dr Marchant

THE 2016/17 AUDIT OF THE SCOTTISH POLICE AUTHORITY

We recently took oral evidence from you on the Auditor General's 2016/17 audit of the SPA¹ and have set out below a number of significant outstanding concerns for you to address.

This letter should be read in conjunction with our separate letter to the new chair, Susan Deacon, which invites her to explain in more general terms how the SPA will respond to the Auditor General's report. That letter also sets out our view that the performance of some SPA board members has been of an unacceptable standard.

Our outstanding concerns are as follows—

Board performance

We took extensive oral evidence on last year's Auditor General report on the SPA (i.e. for 2015/16), including from various former and then current SPA board members. Our scrutiny culminated in a letter to the Cabinet Secretary about decision-making in the SPA which made a number of critical references to the board, for example—

¹ <http://www.audit-scotland.gov.uk/report/the-201617-audit-of-the-scottish-police-authority>

- “We therefore expect the Scottish Government and the SPA to take steps to ensure that the chair and all board members are fully aware of the practical implications of the On Board guidance [Scottish Government guidance on governance].”
- “we consider that SPA board members should be far more critical in how they question or challenge some of the decisions made by the chair of the board.”²

It is evident, both from the new issues uncovered in this year’s audit and from various public statements made by the new SPA chair, that the board’s functioning remains substandard. For example, Ms Deacon recently told our Justice Committee colleagues that the board needed to be able to function at a broader strategic level and that there needed to be more of a culture of constructive challenge.

Taking this into account, we want to understand what action the SPA took to respond to our earlier concerns as restated above; why there is a requirement for further action to be taken on very similar grounds; and, how any new initiatives to improve the board will differ from any actions taken in response to our previous criticisms.

Specific audit issues

Given the extent of poor decision-making within the SPA, we were unable at our recent committee meeting to discuss the full content of the Auditor General’s report. We have therefore set out below specific issues arising from the audit that pre-date Ms Deacon’s tenure and, for each point, **request an explanation of how board members and any relevant committees responded at the time—**

- the Auditor General’s conclusion (paragraph 8 of the audit) that certain personnel appointments did not represent value for money in the use of public funds or were inconsistent with procurement procedures;
- in relation to relocation expenses, the Auditor General’s view that the chief executive of the SPA and the chief financial officer of Police Scotland “made insufficient efforts to ensure that the remuneration report in the annual report and accounts were free from error and omission” (paragraph 15);
- the Auditor General’s stated (paragraph 22) that the SPA incurred an additional three months salary costs unnecessarily in relation to the departure of the previous chief executive Mr John Foley. Notwithstanding your detailed explanation to us about ‘business imperatives’ surrounding this decision, was there any way in which these ‘unnecessary’ payments to Mr Foley could have been avoided? Did the board or any committee at any point consider dismissing Mr Foley?;
- when the SPA announced that Mr Foley had opted to take early retirement, the Board sought Audit Scotland’s views on the most appropriate point for the accountable officer responsibilities to transition. At our committee meeting on

² http://www.parliament.scot/S5_Public_Audit/2017_05_12_PAPLS-Cab_Sec_SPA.pdf

21 December 2017, we discussed with Audit Scotland the various discussions it had with you about this matter. In doing so, Audit Scotland concluded it was fair to say that it had made recommendations to the SPA board but the board “ ... did not stop and think about what was happening”³. With relation to the highlighted exchange, please explain why you and the board did not take into account the issues raised by Audit Scotland.

Review of the support provided to the SPA Board

You are jointly leading a review of how the executive of SPA can best support the Board to take informed, transparent decisions. The review was due to report in 2017 but it is not clear when it will now report.

We request an update on the review’s progress, including when it now report and the extent to which you have reflected on previous work by this committee and the Auditor General to inform your conclusions.

Freedom of information

A freedom of information request about the SPA has been brought to our attention (reproduced in the annexe to this letter). It included a question about the appearance of Moi Ali, a former SPA board member, before the Committee last year to provide oral evidence on the Auditor General’s previous audit. At that meeting committee members expressed very strong concern about information sharing – or lack of it – by the SPA. A subsequent letter from three SPA members made no mention of legal advice having been taken in relation to deciding whether to provide information to Ms Ali.⁴

Why did the board consider it was a good use of public money to seek legal advice concerning the provision of information to Ms Ali?

I would be grateful if you could provide a response to this letter by **23 March 2018**.

Yours sincerely,



**Jenny Marra MSP
Convener**

³ Please see columns 28 and 29 of the Official Report:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11288&mode=pdf>

⁴ http://www.parliament.scot/S5_Public_Audit/2017_05_25_SPA-PAPLS_follow_up_info.pdf

Annexe – Freedom of information request

This information contains an FOI reply from the SPA:



12 October 2017

SPA 061-2017

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

REQUEST DETAILS

Please find below our response to your correspondence dated 13 September 2017, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

I would like to make a Freedom of Information request to find out if the SPA (including chair, chief executive, and board members, collectively or each member) commissioned or instructed any legal advice (and how many pieces of legal advice) in relation to:

issues raised by Moi Ali as an SPA Board member, and any raised by Moi Ali post resignation from the SPA Board, communications between the SPA & Moi Ali, communications between Moi Ali and the Scottish Parliament, Moi Ali's resignation from the SPA and Moi Ali's appearance before the Scottish Parliament and any issues or matters referring to Moi Ali.

The information contained in any legal advice in relation to the above

The cost of any legal advice in relation to the above and who (names of law firms, solicitors, QCs or Advocates) gave or authored any legal advice in relation to the above.

Who and which public bodies including the Scottish Government this legal advice was shared with.

RESPONSE

Your request for information has been considered and the Scottish Police Authority (SPA) is able to provide the following:

The SPA can confirm that legal advice was sought from DLA Piper, Solicitors, in relation to the SPA holding Committee meetings in private. The cost of this legal advice came to a total of £1,408.68 (inc VAT).

The SPA can also confirm that legal advice was sought from DLA Piper, Solicitors, in relation to a request for information from Ms Ali. The cost of this legal advice came to a total of £5,875.08 (inc VAT). Parts of this legal advice procured by the SPA was shared with the Scottish Government. In addition, the SPA obtained supplementary

legal advice in relation to this issue. The cost of this supplementary legal advice came to a total of £4,800.00 (inc VAT).

The information contained in the legal advice procured by the SPA as aforesaid is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings and is, therefore, exempt from disclosure in terms of Section 36(1) of the Freedom of Information (Scotland) Act 2002.

Section 36(1) of the Freedom of Information (Scotland) Act 2002 is not absolute exemption and as such, the public interest in disclosing the information must be weighed up against the public interest in maintaining the exemption.

Section 36(1) Public interest considerations favouring disclosure:

Disclosure would provide an understanding around the decision making in relation to the above matters.

Section 36(1) Public interest considerations favouring non-disclosure:

Disclosure of the information requested could prejudice the effective operations of SPA. SPA staff have to be able to discuss certain matters behind closed doors, with an expectation of privacy in those discussions. If that expectation were to be eroded it may affect the free and frank exchange of views and as such inhibit decision making.