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Mr Lawson Henry  
Sea View  
Alarm Forest

22 June 2017

Dear Lawson

I refer to your letter of 22 March 2017. I am grateful for your patience while I have further consulted legal advisors in the Foreign & Commonwealth Office (FCO).

You will recall that the letter from the Chief Secretary of 11 January 2017 was provided following legal advice on the matter. I am now in possession of the views of the Legal Advisers from the FCO about the issues in your subsequent letter of 22 March.

You have questioned whether the subject of press/communications is included in the Governor's special responsibilities (as an external affair) and whether this gave me the option to proceed to propose an embargo on communications around the Airport without reference to the Executive Council. The advice I am now in receipt of confirms the following:

- There is a potential link between the Governor's special responsibilities and press policy around the Airport as an issue of external affairs, but it is not a clear cut one.
- The Constitution (subject to certain exceptions set out in Section 43(2)(4) and (5)) creates a requirement to obtain the advice of Executive Council

(ExCo). This requirement also applies to areas of special responsibility with the exception of special responsibilities relating to public service appointments etc under Section 44(1)(d).

- There is a further exception to the requirement to obtain advice which is set out in Section 43(4) in relation to urgent/unimportant matters. That allows the Governor to depart from the requirement to obtain advice in any case which in her judgment the matter is too urgent (or too unimportant) to require Council's advice. Unimportant would not seem to apply. But 'urgent' may apply. If section 43(4) is utilised then it also requires the Governor to communicate the measures adopted and reasons to ExCo as soon as practicable.
- Whilst there is the requirement to seek advice, Section 43(3) provides that the Governor is not obliged to follow that advice.

You will recall that the email of 7 October 2016 from the Press Office was couched in the following terms:

*"...we have been increasingly concerned about the misreporting that occurs from any statements we do make. For example, the piece written in the international press over the weekend by a Member contains factual inaccuracies in order to support a particular narrative. This does not give us any confidence that information we do release will be used responsibly.*

*"Given this, we propose that we do not provide any further updates to the public until there is new information to report. Of course, when there are new developments or we have new information we will immediately transmit this to the public."*

As you know, Legislative Council (LegCo), myself and the Chief Secretary discussed the above proposal the same day. This resulted in a further proposal to change our approach to communications. This was accepted by Members.

The method of consultation with ExCo is not defined: as you know there is no need for a physical meeting and the email of 7 October clearly contained a proposal, on my instruction, from the Head of News. It was indeed my intention at that time to seek to limit communications on a number of very sensitive issues to ensure that the public were presented with the facts rather than the opinions of some elected members. I was concerned about the inaccuracies in the reports which were placed in the international media and in particular I was concerned about how these would affect our potential tourism market. Your email and

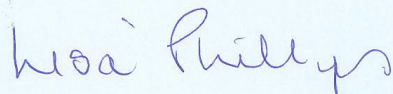


subsequent discussions led me to the conclusion that I should not proceed with the proposal as outlined in that email, but that SHG and Councillors should follow a different process to reach the same outcome, i.e. that communications with the public are based on fact rather than unsubstantiated opinion. It is therefore clear that I took the views of not only ExCo but other Members into account when considering the best way to deal with an issue which had clearly caused considerable concern both locally and in Her Majesty's Government.

In my opinion therefore, there was no embargo on communications, rather a proposal to introduce the same which was communicated to all Members, including ExCo, and the subsequent discussion resulted in a different approach to the matter. Members agreed to the different approach.

My thanks to you for raising this important issue and for giving me the opportunity to clarify with our colleagues in the FCO.

Yours sincerely



Governor  
St Helena, Ascension & Tristan da Cunha