



Tithe an
Oireachtais
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Tithe an Oireachtais
Teach Laighean
Baile Átha Cliath 2
Guthán: (01) 618 3851

Houses of the Oireachtas
Leinster House
Dublin 2
Tel: (01) 618 3851

3 March 2012

Your ref.: Ref: S0224 PAC33

Brian Stanley, T.D.,
Chairman,
Committee of Public Accounts

Dear Deputy Stanley,

I refer to your letter of 2 March concerning decisions taken by the Committee of Public Accounts arising from my correspondence to the Clerk to the Committee of 22 February. That correspondence related to a request by the Committee of Public Accounts for sight of legal advices that may have been provided to a previous Committee of Public Accounts in 2014.

Paragraph (2) of Standing Order 153 provides that “official documents” are “all documents in the custody of, or belonging to, the Dáil or a Committee of the Dáil, or over which the Dáil or Committee exercises control, and which: (a) are or have been prepared for the purposes of, or purposes incidental to, transacting any business of the Dáil or of such a Committee... unless the document has been, or is presently to be, laid before the Dáil or has been, or is presently to be, otherwise lawfully placed in the public domain”.

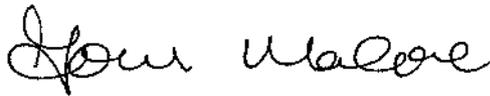
Legal advices that may have been provided to a previous Committee of Public Accounts that have not been laid before the Dáil or otherwise lawfully placed in the public domain must therefore be regarded as official documents for the purposes of Standing Orders.

Standing Order 153 provides for the circumstances in which “access to a specified official document, or specified official documents, may be afforded, or disclosure of it or them allowed, whether generally or for a specific purpose”. You will note that the Committee on Parliamentary Privileges and Oversight (CPPO) is responsible, by virtue of Standing Order 119(2)(e), for “perform[ing] functions relating to the protection of the official documents of the Dáil and the private papers of its members under Article 15.10 of the Constitution, as conferred by Standing Orders 153 and 154”; and that, pursuant to Standing Order 153(5), access to or disclosure of official documents requires either a resolution of the Dáil or approval by the CPPO on behalf of the Dáil.

Therefore it is not possible to make any advices comprehended by the Committee of Public Accounts' request available to it unless and until a resolution of the Dáil to this effect is passed or approval of the CPPO is obtained.

On the question of the legal impediments, if any, there might be to the release of any advices which may exist, a determination on a request by the Committee of Public Accounts would involve a procedural rather than a legal process. As such, it would be a matter for the CPPO to determine what, if any, impediments or other considerations, including legal, apply in relation to acceding to any such request. If, however, the Committee of Public Accounts wishes advice in relation to legal considerations that might apply with a view to framing its request to the CPPO, a request for such advice can be transmitted to the OPLA.

Yours sincerely,

A handwritten signature in black ink that reads "Tom Malone". The signature is written in a cursive style with a large initial 'T'.

Tom Malone
Principal Officer,
Committees Secretariat

Tel. 01-6183851

Email: tom.malone@oireachtas.ie