

SCI Protocol on Public Access to Documents: Redaction etc.

1. Introduction

1.1 This Protocol is about redaction of information by the Inquiry from documents before they are published. It also explains what document providers should do if they want information they are submitting to be redacted or otherwise not provided to the Inquiry.

1.2 The Inquiry will ask for and receive documents during its investigation. Because it is a public inquiry under the Inquiries Act 2005, there will be public access to many documents it obtains (see section 18). The Inquiry aims to be as transparent as possible.

1.3 Sometimes it is inappropriate for a document or everything in it to be made public. It might be necessary to redact it. The Inquiry's process for the redaction of documents is outlined at paragraph 4 below.

1.4 When a document provider claims, under section 21 of the 2005 Act, that it is unable to comply with a request for information, or that it is not reasonable in all the circumstances for the document provider to be required to do so, the document provider should follow the procedure in paragraph 3 below.

1.5 When a document provider considers public interest immunity or privilege may apply under section 22 of the 2005 Act, the document provider should act in accordance with paragraph 6 below.

1.6 When a document provider seeks to have restrictions imposed on disclosure or publication of information given, produced or provided to the Inquiry, under sections 19 and 20 of the 2005 Act, the document provider should follow the procedure set out in the Inquiry's Restriction Order Protocol.

1.7 The Appendix to this Protocol contains a note of the definitions of terms used in this Protocol

2. Provision of documents to the Inquiry

2.1 All documents must be provided to the Inquiry in a way that is in accordance with the Inquiry's Protocol for Receipt and Handling of Information.

3. Information to be provided to the Inquiry

3.1 The Inquiry can issue written requests for information, in terms of rule 8 of the 2007 Rules.

3.2 The Chair has powers, under section 21 of the 2005 Act, to compel people to provide information to the Inquiry. The Chair can issue notices which set out what is required, and other details such as the possible consequences of non-compliance.

3.3 People who receive a notice, or any other request for information, should provide the information requested by the Inquiry in clean, unredacted and original format. They should not themselves make any redaction to the information before providing it to the Inquiry. They should not provide PDFs of the information except where that is its original format.

3.4 When a document provider claims under section 21(4) of the 2005 Act that they are unable to comply with a notice under section 21, or that it is not reasonable in all the circumstances to require the document provider to comply with the notice, the document provider must promptly give its reasons to the Inquiry.

3.5 The Chair will then determine the document provider's claim and may request further information from the document provider to allow the Chair to do so. In determining the document provider's claim the Chair may revoke or vary the notice or may decline to do so. The document provider must thereafter abide by the determination made and conduct itself otherwise in accordance with this Protocol.

4. Redaction of information

4.1 Provision of information to the Inquiry must not be delayed on the ground that a document provider wants redactions to be made. The Inquiry must receive documents in clean, unredacted form. Any departure from this approach must be discussed with the Inquiry's legal team before documents are provided. Document providers are reminded that section 35(3) of the Inquiries Act 2005 makes it an offence to intentionally suppress or conceal a document which the Inquiry is likely to wish to obtain, or to alter or destroy such a document.

4.2 The Inquiry legal team will review the documents provided to identify those which are relevant to the scope of the request. It is for the Inquiry legal team alone to determine relevance of any particular document. Any document which is identified as relevant will be disclosed to Core Participants, subject to the application of redactions which will be made by the Inquiry, in accordance with the following provisions.

4.3 Documents or parts of documents provided to the Inquiry may need to be withheld from wider dissemination and/or redacted prior to disclosure to Core Participants. This may include content within documents which:

- a. is considered to be both irrelevant to the Inquiry's Terms of Reference and sensitive;
- b. constitutes personal data within the meaning of UK data protection legislation, further disclosure of which is prohibited by that legislation;
- c. is subject to a Restriction Order made under section 19(2)(b) of the Inquiries Act 2005; or
- d. is subject to the determination of an application for a Restriction Order made under section 19(2)(b) of the Inquiries Act 2005.

4.4 Where the Inquiry decides to redact 'irrelevant and sensitive' information (category 4.3(a) above) or personal data (category 4.3(b)), it will do so without the need for any application or request. The Inquiry will decide whether any redaction is required on a case by case basis.

4.5 The Inquiry is a data controller with obligations under the UK GDPR and the Data Protection Act 2018. It will review all documents prior to their disclosure to ensure compliance with this legislation, and aim to ensure that a consistent approach to the redaction of personal data is applied. The Inquiry's approach to the redaction of personal data is governed by the relevance of that data to the Inquiry and the necessity of its disclosure. The Inquiry proposes to remove the following categories of personal data from all materials disclosed to Core Participants:

- Dates of birth;
- Personal addresses and other contact details, but not professional contact details; and
- Signatures.

4.6 The Inquiry will also provisionally redact the names of junior officials and staff members where the Document Provider can demonstrate that, by virtue of their junior position, the official or staff member has a reasonable expectation of privacy. Such redactions will not be applied where the Inquiry Legal Team consider disclosure of that person's identity to Core Participants is necessary, for example because the involvement of a particular individual in events is relevant and cannot be explained by reference to their post only, or because it is necessary in order to allow the Inquiry, Core Participants and the public properly to follow the narrative of events. All redactions of this type will be marked as 'Irrelevant and Sensitive' and will be provisional, subject to change. No redactions to the names of individuals should be applied by Document Providers before disclosure of documents to the Inquiry, nor should the identification of such individuals delay the provision of documents to the Inquiry. Such requests for redaction will need to be made during the Document Provider Review stage (paragraph 5.1 below) and the Inquiry legal team will need to be satisfied that the basis for the redaction is properly made out.

4.7 The basis for all redactions applied by the Inquiry will be identified on the face of the redaction itself to ensure all Core Participants are aware of the reason for it having been applied. For example, the Inquiry intends that

redactions applied to personal data will have the text “Personal Data”, or “PD” where there is space for only limited text.

4.8 The procedures outlined above are not intended to cover every eventuality nor every procedural issue that will arise. The Inquiry may need to depart from this

Protocol in exceptional cases in compliance with the Chair’s statutory obligation to act fairly. This Protocol may be amended as necessary. If so, the revised version will be published on the website.

Disclosure

5.1 Before documents are disclosed to Core Participants, the Inquiry will share such documents with the Document Provider in question who will be given an opportunity to review and approve the redactions applied and identify any further redactions it seeks (the “Document Provider Review”). The Inquiry legal team will consider each request for further redactions and will either:

- a. agree the request for further redactions and apply them. Such documents will then be disclosed to Core Participants; or
- b. reject the request for further redactions. In such circumstances, the Document Provider will be given a short opportunity to apply for a Restriction Order to prevent disclosure of the information which it seeks to redact. Documents subject to such an application will be disclosed to Core Participants with provisional redactions applied, pending the outcome of the application. Please refer to the Inquiry’s Restriction Order Protocol for further information.

6. Withholding or redacting privileged and public interest immunity information

6.1 When a document provider considers, on the basis of privilege under section 22(1) of the 2005 Act, that it is entitled to withhold information, or a document should be redacted to exclude such information, the Inquiry expects and requires the document provider to give careful consideration to waiving any privilege that may be considered

to arise, given the importance and breadth of the matters the Inquiry requires to investigate under its Terms of Reference.

6.2 When a document provider does not waive privilege, the document provider should provide to the Chair the information or document(s) to review for relevance, while preserving privilege, along with a specific legal submission explaining the reasons for the privilege claimed in respect of the information or document(s).

6.3 When a document provider considers, on the basis of public interest immunity under section 22(2) of the 2005 Act, that it ought to withhold information or that a document should be redacted to exclude such information, the document provider should provide a public interest immunity certificate with a specific legal submission explaining to the Inquiry the reasons why it considers public interest immunity applies to the document(s) in question, taking account of the balance of the relevant interests.

6.4 the Chair will determine the balance of relevant interests and whether public interest immunity applies, and whether the document provider is entitled to withhold the information or it should be redacted from documents.

7. Appendix

Definitions

7.1 In this Protocol:

'2005 Act' means the Inquiries Act 2005.

'2007 Rules' means The Inquiries (Scotland) Rules 2007.

'Chair' means the Chair of the Inquiry.

'core participant' means a person designated as such under rule 4 of the 2007 Rules.

'cipher' means a three letter code used in substitution for the name of a person.

‘document’ includes information recorded in any form.

‘document provider’ means a party who has been requested to provide, or has provided, information to the Inquiry, whether voluntarily or in compliance with a section 21 notice.

‘information’ means information recorded in any form, and for the avoidance of any doubt and without prejudice to that generality: (1) includes any document; and (2) where it relates to producing or providing information which is recorded otherwise than in legible form is to be read as a reference to producing or providing a copy of the information in legible form.

‘Inquiry’ means the Scottish COVID-19 Inquiry.

‘personal data’ means any information which is capable of identifying directly or indirectly a living natural person.

‘redaction’ is the removal of information from a document, usually by obscuring the text in a way that makes clear that the information has been redacted.

‘redact’ and ‘redacted’ are to be construed accordingly.

‘section 21 notice’ means a notice issued pursuant to section 21 of the 2005 Act.

8. Further details

8.1 If you have any questions about any of the above, or any other matter related to the provision of information, please email the Solicitor to the Inquiry at gordon.mcnicoll@covid19inquiry.scot.

9. Version control

9.1 This is the third version of the Protocol on Public Access to Documents: Redaction etc. It was approved on 8 September 2023 and is issued under the authority of the Chair.