

Inquiry Protocol: Disclosure and Redaction of Documents

Introduction and scope

1. This protocol addresses:
 - 1.1 The procedure for the disclosure of documents to the Inquiry by core participants who are public authorities (namely Greater Manchester Police and the National Crime Agency), and other public authorities who are not core participants but who may possess, or have already disclosed, evidence relevant to the Inquiry's terms of reference (including, but not limited to, Cheshire Police and the Independent Police Complaints Commission). They are referred to collectively herein as "public authorities" or "a public authority"; and
 - 1.2 The procedure for the redaction of such documents.
2. In this protocol, "document" means anything in which information of any description is recorded. The Inquiry's requests for documents may (depending on context) include copies of plans, photographs, video footage, policy statements, meeting notes and minutes, manuscript notes, memoranda, correspondence (post and / or fax) and internal and external email communications. The Inquiry may also request physical evidence and where it does, references in this Protocol to "documents" should be taken to include reference to physical evidence.

Background and aims

3. This protocol is designed to ensure:
 - 3.1 That all core participants and the public know how the Inquiry approaches the provision of documents to the Inquiry by public authorities, and the procedure for applications to redact documents. Practical and transparent procedures in this regard are an important part of the effective running of the Inquiry;
 - 3.2 That the Inquiry promptly receives documents from public authorities;
 - 3.3 That the provision of these documents to the Inquiry is not delayed by the need for prior applications to be made in respect of the documents;
 - 3.4 That the distribution of documents to other core participants is achieved expeditiously even if, initially, the documents are redacted;
 - 3.5 That appropriate provision is made for public authorities to make applications for a restriction order from the Chairman;
 - 3.6 That other core participants are able to raise concerns about the extent of redaction of documents;
 - 3.7 That the rulings which the Chairman has already made when sitting as a Judge Coroner in the Inquest touching and concerning the death of Anthony Grainger ("the Inquest) relating to disclosure and redaction of documents are respected in this Inquiry unless there is good reason for them to be revisited (e.g. a material change of circumstances).

4. Section 18(1) of the Inquiries Act 2005 (“the 2005 Act”) provides as follows:

- (1) Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able—
 - (a) to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;
 - (b) to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.

5. Section 19 of the 2005 Act provides as follows:

- (1) Restrictions may, in accordance with this section, be imposed on—
 - (a) attendance at an inquiry, or at any particular part of an inquiry;
 - (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.
- (2) Restrictions may be imposed in either or both of the following ways—
 - (a) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;
 - (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.
- (3) A restriction notice or restriction order must specify only such restrictions—
 - (a) as are required by any statutory provision, enforceable Community obligation or rule of law, or
 - (b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are—
 - (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
 - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
 - (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
 - (d) the extent to which not imposing any particular restriction would be likely—
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).
- (5) In subsection (4)(b) “harm or damage” includes in particular—
 - (a) death or injury;
 - (b) damage to national security or international relations;
 - (c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;
 - (d) damage caused by disclosure of commercially sensitive information.

6. Sections 20 and 22 of the 2005 Act provide as follows:

20 Further provisions about restriction notices and orders

- (1) Restrictions specified in a restriction notice have effect in addition to any already specified, whether in an earlier restriction notice or in a restriction order.
- (2) Restrictions specified in a restriction order have effect in addition to any already specified, whether in an earlier restriction order or in a restriction notice.
- (3) The Minister may vary or revoke a restriction notice by giving a further notice to the chairman at any time before the end of the inquiry.
- (4) The chairman may vary or revoke a restriction order by making a further order during the course of the inquiry.
- (5) Restrictions imposed under section 19 on disclosure or publication of evidence or documents (“disclosure restrictions”) continue in force indefinitely, unless—
 - (a) under the terms of the relevant notice or order the restrictions expire at the end of the inquiry, or at some other time, or
 - (b) the relevant notice or order is varied or revoked under subsection (3), (4) or (7).This is subject to subsection (6).
- (6) After the end of the inquiry, disclosure restrictions do not apply to a public authority, or a Scottish public authority, in relation to information held by the authority otherwise than as a result of the breach of any such restrictions.
- (7) After the end of an inquiry the Minister may, by a notice published in a way that he considers suitable—
 - (a) revoke a restriction order or restriction notice containing disclosure restrictions that are still in force, or
 - (b) vary it so as to remove or relax any of the restrictions.
- (8) In this section “restriction notice” and “restriction order” have the meaning given by section 19(2).

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22 Privileged information etc

- (1) A person may not under section 21 be required to give, produce or provide any evidence or document if—
 - (a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or
 - (b) the requirement would be incompatible with a Community obligation.
- (2) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquiry as they apply in relation to civil proceedings in a court in the relevant part of the United Kingdom.

7. Rule 12(1) of the Inquiry Rules 2006 provides as follows:

- (1) In this rule—
 - (a) “potentially restricted evidence” means any evidence which is in the possession of the inquiry panel, or any member of the inquiry panel, and which is the subject of a relevant application which has not been determined or withdrawn;
 - (b) “relevant application” means an application which is
 - (i) made by any person that evidence or documents are the subject of a restriction notice made by the Minister pursuant to section 19(2)(a) of the Act;
 - (ii) made by any person that the chairman exercise his discretion under section 19(2)(b) of the Act; or
 - (iii) made by any person that evidence or documents be withheld on grounds of public interest immunity, and which entails the withholding of evidence from the public.
- (2) Subject to paragraph (3), potentially restricted evidence is subject to the same restrictions as it would be subject to if the order sought in the relevant application had been made.
- (3) Where the conditions in paragraph (4) are satisfied, the chairman may disclose the potentially restricted evidence to a person who would not otherwise be permitted to see it.
- (4) The conditions are that—
 - (a) the chairman considers that disclosure to an individual is necessary for the determination of the application; and
 - (b) the chairman has afforded the opportunity to—
 - (i) the person providing or producing the evidence to the inquiry panel; or
 - (ii) any other person making the relevant application, to make representations regarding whether disclosure to that individual should be permitted.
- (5) Any person who is shown potentially restricted evidence pursuant to paragraph (3) shall owe an obligation of confidence to the person who provided or produced the evidence to the inquiry.
- (6) A breach of the obligation referred to in paragraph (5) is actionable at the suit of the person to whom the obligation is owed, subject to the defences applying to actions for breach of confidence.

Procedures

8. The Inquiry has already received a very substantial quantity of documents from core participants and others concerned in the conduct of the Inquiry, many of which were provided to the Inquest and which are now treated as the documents of the Inquiry (“existing material”). Public authorities have marked some of the existing documents with suggested redactions. It is for the Chairman of the Inquiry to determine whether disclosure to core participants, and / or publication to the

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public, of existing material so redacted should be restricted in accordance with s19 of the 2005 Act. Accordingly,

Schedule

9. Any public authority that wishes to make an application for a restriction order in relation to existing material shall, within 7 days of the promulgation of this Protocol, provide to the Inquiry a sequentially numbered schedule of the broad categories of reasons why any documents (or parts of documents) in which it has an interest, relevant to the matters being investigated by the Inquiry, may not be capable of being disclosed to other core participants and /or put into the public domain.
10. The schedule should be drafted in such a form that the schedule itself can be made public.

Application

11. Any public authority that wishes to make an application for a restriction order in relation to existing material shall, within 28 days of the promulgation of this Protocol, provide to the Inquiry:
 - (a) A copy of the existing material upon which a provisional redaction has been made, with the provisional redaction (i) highlighted, but visible and (ii) marked up with the category or categories of reason or reasons that it is said justifies the redaction, by reference to the Schedule referred to in paragraph 9 above.
12. The Inquiry expects public authorities to adopt a restrained and measured approach to the provisional redaction of its documents. Documents must be provisionally redacted only where a public authority considers that the redaction can properly be justified under s19(3) or s22 of the 2005 Act. Regard should be had to the need for other Core Participants to understand the context of relevant passages within documents.
13. In any case where a public authority seeks provisional redactions to a document, the Inquiry will treat the document as being “potentially restricted evidence” and evidence “which is the subject of a relevant application which has not been determined” under rule 12 of the 2006 Rules. Accordingly, the Inquiry will not publish the provisionally redacted parts of the document or reveal the provisionally redacted parts of the document to other Core Participants or to any witness unless:
 - (a) the conditions in rule 12(4) of the Inquiry Rules are met;
 - (b) an individual witness or Core Participant was the author or recipient of the unredacted document and is thus entitled to see the document in its unredacted form; or
 - (c) the public authority has subsequently agreed to the removal or amendment of the redactions; or

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- (d) a written application by the public authority for a restriction order has been refused, but in this case, only 14 days after promulgation of the Chairman's Ruling.
14. The Inquiry Team will consider the public authority's proposed redactions.
 15. Having considered the proposed redactions, the Inquiry Team may seek written reasons for the redactions from the public authority and/or seek less extensive redactions than those proposed by the public authority.
 16. There will be some cases where the proposed redactions appear to the Inquiry Team to be *prima facie* justified. For example, the redacted material may be both irrelevant and sensitive; or it may be relevant material where there is an apparent clear and strong public interest in, and / or article 2 ECHR positive duty to ensure, that the material is not published or circulated to other Core Participants; or it may be addressed by the Chairman's rulings when sitting as a Judge Coroner in the Inquest and there has been no material change of circumstances.
 17. In such cases, the Chairman will usually make a restriction order under s19(2)(b) of the 2005 Act without requiring any further written application from the public authority.
 18. Unless there is a particular reason not to do so, such a restriction order will refer to the document and indicate the reasons why the redactions have been permitted by reference to the relevant number within the published schedule of reasons for seeking redactions.
 19. Where a restriction order has been made by the Chairman under s19(2)(b) without a written application having been made in accordance with paragraph 20 *et seq* below, it will be open to a Core Participant who may be dissatisfied with the extent of the redaction specified in the restriction order, to apply in writing to the Chairman to exercise his power under s20(4) of the 2005 Act to vary the restriction order. In such a case, the Chairman may require the public authority to respond in writing to the application, setting out the reasons for seeking the continuance of the restriction order and may then proceed as set out in paragraph 20 *et seq* below.
 20. If the Inquiry Team is still not content with the nature of the proposed redactions, it will require the public authority to make an application in writing to the Chairman for a restriction order.
 21. Such an application should be in two parts, an open and a closed part. The closed part must set out in full the reasons and argument as to why it is said that the restriction is necessary, having regard to s19(3) of the 2005 Act. The closed part will be considered only by the Solicitor to the Inquiry, Counsel to the Inquiry and the

Chairman. The open part shall be drafted in such a way that it can be provided to other Core Participants and published. It must contain as much of the reasons and argument from the closed part as is possible without defeating the purpose of the application.

22. On receipt of such an application, the open part of the application will be provided to the other Core Participants and an opportunity will be given to them to make representations in writing. The Chairman may determine such applications on the basis of the written submissions or hear further argument as he sees appropriate.
23. If the Chairman declines to make a restriction order or declines to make a restriction order as extensive as sought by the applicant then, subject to any notice or application made in accordance with s19(2)(a) or s38 of the 2005 Act, the document will be circulated to other Core Participants and may be published on the website within 14 days of promulgation of the Chairman's Ruling.

Legal professional privilege

24. If and to the extent that a public authority wishes to rely on legal professional privilege as a ground for not producing evidence (or parts of evidence) to the Inquiry, it must notify the Inquiry in writing of the material (or parts of material) that it seeks to withhold on those grounds together with a summary of why it is said that the material attracts legal professional privilege.

General considerations

25. The Inquiry team will generally regard as irrelevant information within documents comprising personal information such as telephone numbers, dates of birth and home addresses. Unless particular circumstances exist which make such information of relevance to the Inquiry, the Inquiry is unlikely to object to the provisional redaction of such material from documents supplied to the Inquiry. The Inquiry will redact such material from documents supplied to it prior to disclosure to Core Participants and the public. Such redactions will not require a restriction order but will instead be made on the basis of irrelevance.
26. The Inquiry may from time to time need to amend this protocol or adopt different procedures to meet specific problems.

Issued under the authority of the Chairman on 26th September 2016