

Inquiry Protocol on Redaction of Documents (VERSION 2)

Introduction

1. It is important that the Inquiry sees all documents it obtains from institutions which are relevant to its work in complete form. However, there may be legal reasons why the Inquiry may need to apply redactions to documents before they are disclosed to Core Participants in any particular investigation and so to the general public via a public hearing or an investigation report. This protocol sets out the approach that will be taken by the Inquiry to the redaction of documents it receives from providers of information (POI).
2. It is for the Inquiry to determine the relevance of any particular document and for the Inquiry to determine whether a redaction should be applied, whether or not that redaction has been requested by a POI.
3. The procedures outlined below are not intended to cover every eventuality or every procedural issue that will arise. It follows that, where the interests of justice and fairness require it, the Inquiry may need to depart from this protocol in exceptional cases. Further, this protocol may be amended as necessary. Should the protocol be amended, the revised version will be published on the website.
4. Given the scope of the inquiry as set out in the terms of reference and the potential for direct receipt of fresh allegations of non recent child sexual abuse or exploitation, there is the possibility that police investigations commence which may lead to criminal proceedings. It is of obvious and paramount importance that the work of the Inquiry does not risk prejudicing those investigations or any subsequent criminal proceedings. It is considered that, properly managed, the Inquiry can take its work forward without giving rise to such a risk. However, the Inquiry's approach will need to be tailored and subject to ongoing review to ensure no such risk is created. Secondly, in order to operate effectively and efficiently, the Inquiry needs to maintain an element of flexibility. Procedures may need to be adopted, or adapted, in order to enable it to do so.

Definitions

5. In this Protocol, any references to "information" includes documents and witness statements; and "document" or "documents" means anything in which information of

any description is recorded, whether in paper or electronic form, and includes, but is not limited to, reports, reviews, board/committee minutes, governing/constitutional documents, legislation, letters/emails (internal and external), information from websites, guides/codes of conduct, policy documents and articles, and audio tapes of interviews.

6. The Inquiry's request for documents is wide ranging and may include a request for physical evidence: where it does; references in this Protocol to "documents" should also be taken to include references to physical evidence.

Purpose

7. This protocol is designed to set out a consistent approach to redaction and to ensure that the POI understands how the Inquiry will treat the information it intends to publish.

Provision of information to the Inquiry

8. This protocol should be read in conjunction with the Inquiry Protocol Relating to Receipt and Handling of Documents.

Redaction of documents

9. Subject to any restriction orders or notices which may be made under section 19 of the Inquiries Act 2005, the Chair must take reasonable steps to secure that members of the public may have access to a record of evidence produced at the Inquiry. The Inquiry will publish such documents following the relevant hearing, having regard to the Inquiry timetable and any relevant ongoing criminal investigations/prosecutions.
10. Except where Legal Professional Privilege or other legal bar to disclosure to the Inquiry is asserted in respect of any document or part of document, all documents must be provided to the Inquiry in unredacted form.
11. There are a number of reasons why documents or parts of documents provided to the Inquiry should be withheld from wider dissemination and / or redacted prior to disclosure to Core Participants or inclusion in evidence. These include the following:
 - a. the information in question is sensitive and irrelevant to the Inquiry's work;
 - b. the information in question constitutes personal data within the meaning of the Data Protection Act 1998, further disclosure of which is prohibited by that Act;

- c. the information in question is covered by a Restriction Notice made under section 19(2)(a) of the Inquiries Act 2005;
 - d. the information in question would cause harm or damage to the public interest such that it is contended that a Restriction Order should be made by the Chairman for the reasons set out in section 19(3) to (5) of the Inquiries Act 2005 which include considering any conditions as to confidentiality which apply to the circumstances in which the information was obtained and avoiding:
 - i. death or injury
 - ii. damage to national security or international relations
 - iii. damage to the economic interests of the United Kingdom or any part of the United Kingdom
 - iv. damage caused by disclosure of commercially sensitive information;
 - e. harm or damage to the public interest on grounds of public interest immunity applies;
 - f. Prejudice to the course or outcome of any ongoing criminal investigation or prosecution into matters relating to the information proposed for release;
 - g. Publication of the information may result in a breach of the Sexual Offences (Amendment) Act 1992; and
 - h. The information falls to be redacted under the Inquiry's guidance on the redaction of the identity of individuals (see **Annex A**).
12. Where, in response to a request from the Inquiry a POI is collating material for disclosure to the Inquiry, the Inquiry will ask it to take one of two approaches to the issue of redaction, taking into account all of the circumstances of the Inquiry's request.
13. In summary the Inquiry will either:
- a. Ask the POI to provide two copies of the documents. A clean copy and also a copy of the material with highlighted redactions applied (which can be read through to the underlying text) that the POI considers should be applied in line with the matters set out in paragraph 9 above. Any documents or parts of documents in respect of which redactions are sought must be highlighted and an accompanying narrative provided which explains the reasons why the redaction in question is sought; or

- b. Ask the POI to provide one clean copy of the material together with a document that sets out information that it requests the Inquiry redacts for the reasons set out at para 11(a), (d), (e) and (f) above. Additionally, if there are specific redactions that the POI wishes to request that the Inquiry applies under the guidance at Annex A of this protocol then these should also be set out in the document. Reasons for any requested redactions must also be provided.
14. If, and to the extent that the POI wishes to rely on legal professional privilege or another legal rule as a reason for not producing a document, part document or part of a document, the POI must identify the document in question and specify the reason in writing to the Solicitor to the Inquiry, together with a summary setting out why the POI believes that the legal rule prohibiting disclosure to the Inquiry applies. Before asserting legal professional privilege, POIs should consider carefully whether they should waive that privilege to assist the Inquiry in its work in the public interest.
15. Under either approach set out in paragraph 13 above the Inquiry expects POIs to adopt a measured approach when seeking redactions. The Inquiry will consider proposed redactions raised by POIs when it is reviewing material provided. It will only redact information where the case for this is properly made out, bearing in mind the applicable tests in the Inquiries Act 2005, and other relevant legislation and recognising the need for the Chair to secure that members of the public are able to view a record of evidence and documents provided to the Inquiry in accordance with the provisions of section 18 of the 2005 Act.
16. The Inquiry will consider all requests for redaction carefully and in accordance with the principles above. As referred to above (paragraph 9(h)) the Inquiry has issued guidance on the redaction of the identity of individuals which is attached as Annex A to this document. That sets out the general principles the Inquiry will follow when considering the redaction of names and other identifying information.
17. The Inquiry is also likely to issue a Protocol which will apply to consideration of requests for Restriction Orders. It may be necessary, in some instances, to disclose or put documents into evidence before the applications in question have been fully determined. Pending final resolution, all documents which are disseminated beyond the Inquiry itself will include all redactions sought on a provisional basis.
18. Where an application for redaction is determined and the Inquiry does not consider that the ground for the redaction in question is made out, it will notify the POI concerned prior to the document in question being disclosed without the redactions applied.

Redaction of Personal Information

19. The Inquiry has its own obligations under the Data Protection Act 1998 and will review all documents prior to their disclosure to ensure compliance with this legislation and that a consistent approach to DPA redactions is applied.

21 September 2016

ANNEX A - Guidance on the redaction of the identity of individuals

1. This guidance sets out the approach to be adopted by the Inquiry to the redaction of information that may identify individuals named within the material it disclosed to core participants and potentially onwards to the public at large.
2. This guidance must be read in conjunction with the Inquiry's Redaction Protocol. The principles set out below will not cover all matters. As anticipated by the Inquiry's Redaction Protocol there may be information outside of the categories below that POI's may request is withheld from dissemination or redacted prior to disclosure to Core Participants or inclusion in evidence.
3. The Inquiry will follow the general principles set out below:
 - a. **Complainants and victims and survivors of child sexual abuse** - Unless the individual has provided consent, in writing, to being identified and such consent has been passed to the Inquiry, the identities of all complainants and victims and survivors of child sexual abuse should be redacted and, if the Inquiry considers that their identity appears to be sufficiently relevant to the investigation a cipher applied.
 - b. **Children who are not core participants and who are not complainants, victims or survivors of child sexual abuse** - Their identities should be redacted and, if the Inquiry considers that their identity appears to be sufficiently relevant to the investigation, a cipher applied. Children in this context refers to individuals that the Inquiry believes are under 18 at the date of the Inquiry's review of the material and individuals referred to in documents who whilst over 18 now, were under 18 at the time the document was created.
 - c. **Individuals convicted of child sexual abuse** (including those who have accepted a police caution for offences related to child sexual abuse)- Their identities should not be redacted unless the naming of the individual would risk the identification of their victim in which case a cipher would be applied.
 - d. **Individuals convicted of an offence other than an offence of child sexual abuse** - Information which would identify the fact of the conviction will be redacted unless the Inquiry considers that the fact of their conviction, given its nature or factual basis, is relevant to the matters being investigated.
 - e. **Individuals against whom a finding of child sexual abuse has been made within civil proceedings** - Their identities should be redacted and a cipher applied, if necessary. Where the allegations against an individual are so widely known, such that redaction would serve no meaningful purpose (for example where the individual's name has been published in the regulated

media in connection with allegations of abuse), the Inquiry may decide not to redact their identity.

- f. **Individuals accused, but not convicted, of child sexual or other physical abuse against a child** - Their identities should be redacted and a cipher applied. Where the allegations against an individual are so widely known such that redaction would serve no meaningful purpose (for example where the individual's name has been published in the regulated media in connection with allegations of abuse), the Inquiry may decide not to redact their identity.
 - g. **Employees/elected members/board members/committee members** - Their identities should not be redacted, unless they fall into d and e above or, in which case the approach in relation to those categories should be applied, or unless the Inquiry otherwise considers that there is good reason for an individual's name to be redacted.
 - h. **Family members of complainants, victims or survivors** - where their identity is likely to be irrelevant to the context of the allegations of abuse, or unless they fall within another category under this guidance, their identity should be redacted and no cipher is necessary. Where their identity may be relevant to those matters a cipher should be applied.
 - i. **Family members of individuals against whom a finding of child sexual abuse has been made within civil proceedings and individuals accused, but not convicted, of child sexual or other physical abuse against a child** - so as not to identify the individuals in categories 3(d) and 3(e) the names of such individuals should be redacted. Where the Inquiry considers it necessary a cipher will be applied.
4. In applying the above criteria the Inquiry will not distinguish as a matter of course between individuals who are known or believed to be deceased and those that are, or are believed to be, alive. The Inquiry may take the fact that an individual is deceased into account when considering whether or not to apply redactions in a particular instance.
 5. It is anticipated that it will be necessary for core participants to be aware of the identity of individuals whose identity has been redacted and a cipher applied. The Inquiry will, circulate, under terms of confidence, to core participants designated within each investigation a list of ciphers relevant to their interest in the Inquiry's investigation(s).