

## **Protocol for receipt and handling of documents**

### Purpose of the protocol

1. To carry out its investigation effectively, the Sheku Bayoh Public Inquiry needs to retrieve documents that relate to matters within the scope of the Terms of Reference of the Inquiry.
2. This protocol explains how the Inquiry will retrieve those documents and treat the information it receives. The procedures set out in this protocol are not intended to cover every eventuality. Further, there may be occasions when, in accordance with the guiding principles set out in the Inquiries Act 2005 to act with fairness and to avoid any unnecessary cost, the Inquiry needs to depart from the procedures outlined in the protocol.

### Definitions

3. In this protocol:

“document” includes information recorded in any form. This can mean it is in paper or in electronic form. It will include but is not limited to text messages, emails, social media posts, letters, statements, manuscript notes, meeting/attendance notes, legislation, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata; and a “relevant document” is one which, having regard to the Inquiry’s Terms of Reference, it is likely that the Inquiry panel would (if aware of its existence) wish to be provided with;

“metadata” is data that describes other data. For example, who created a particular word document, who modified that document and the date of both;

“person” means individual or organisation.

#### The Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007

4. Section 17 of the Inquiries Act 2005 (“the 2005 Act”) provides that the procedure and conduct of an inquiry are to be such as the Chair of the inquiry may direct. This is subject to any other provision in that Act or the Inquiries (Scotland) Rules 2007.
5. Section 18 requires the Chair to take such steps as he considers reasonable to secure that members of the public are able to obtain or view documents given, produced or provided to the inquiry. The documents that members of the public will be allowed to view will typically only be those that are put to witnesses in evidence during the hearings and not all documents.
6. Section 19 provides that restrictions may be imposed on the disclosure or publication of any evidence or documents given, produced or provided to an inquiry. Restrictions may be imposed by notice by the Scottish Ministers to the Chair or an order made by the Chair.
7. Section 21 provides that the Chair may by notice require a person to provide any documents in the custody or control of that person.
8. Section 22 provides that a person does not have to provide documents requested under section 21 if the person could not be required to provide them during the course of civil court proceedings or providing them would be incompatible with EU obligations

9. Section 35 provides a person is guilty of an offence if the person fails, without reasonable excuse, to provide documents requested under section 21. Section 35 also states:

*“(2) A person is guilty of an offence if during the course of an inquiry he does anything that is intended to have the effect of–*

*(a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the inquiry panel, or*

*(b) preventing any evidence, document or other thing from being given, produced or provided to the inquiry panel,*

*or anything that he knows or believes is likely to have that effect.*

*(3) A person is guilty of an offence if during the course of an inquiry–*

*(c) he intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document, or*

*(d) he intentionally alters or destroys any such document.*

*For the purposes of this subsection a document is a “relevant document” if it is likely that the inquiry panel would (if aware of its existence) wish to be provided with it.”*

#### Voluntary production of documents

10. Wherever possible the Chair intends to rely on voluntary co-operation for production to the Inquiry of the documents he considers necessary to fulfil the terms of reference.
11. The Chair will normally make a request for voluntary production of documents by means of a letter from the Solicitor to the Inquiry to the person believed to have custody or control of them. The Chair expects that all parties to whom a request of this kind is addressed will co-operate fully with the Inquiry, give a broad interpretation to any request and provide all documents requested. Also, that they will provide any other documents they consider to be relevant to the Inquiry's Terms of Reference. All documents should be provided without delay and within the time limits specified by the Solicitor.

### Notices under section 21 of the Act requiring production of documents

12. Where a person is unable or unwilling to produce documents to the Inquiry voluntarily, a full explanation should be provided to the Solicitor to the Inquiry as soon as possible. Thereafter, the Chair may elect to use his powers under section 21 of the 2005 Act to require production of the documents.
13. Where the Chair decides to require the production of documents under section 21, the Solicitor to the Inquiry will send a notice under section 21 of the Act to the person believed to have custody or control of them. The notice will require the person to provide the documents specified in the notice within such period as may be specified. The notice will also specify the consequences of not complying with the notice.

### Production of documents

14. Where a request is made or a notice is issued to a person for documents, the person should undertake comprehensive, thorough and rigorous searches for all relevant documents.
15. All documents provided to the Inquiry must be in original form or if not available, in the best available copies, intact and in unredacted form.
16. All documents should be provided electronically where possible. The Inquiry will be using an online document management review system and electronic documents should be provided either in their native format, for example Microsoft Word, Microsoft Excel, MSG email files/PST email containers, or by converting any proprietary file formats to Adobe PDF.
17. Where hard copy documentation is provided these should be digitised beforehand to multipage PDF format. If the document is mainly text based, this should be scanned in black and white and should only be scanned in colour where it is critical to the legibility of the document. All digital images should be legible and at least as readable as the original image from which they are

derived. As a guide, scanning settings should be set to, at least, 300 PPI (pixels per inch) for both black and white and colour documents. This should be increased to 600 PPI for photographs.

18. All documents should be accompanied by an inventory listing. The person should also provide in writing:

- (a) confirmation that the documents produced represent all the documents specified in the request or notice in their custody or under their control; or
- (b) a list of any documents withheld and the reasons for not producing them.

19. The Inquiry expects that once documents have been identified every care is taken to ensure that all such documents are preserved in their original form until the end of the Inquiry, unless express permission with justification for destruction is sought and granted by the Chair. All such applications should be made to the Chair in writing, through the Solicitor to the Inquiry.

#### Disclosure of documents, restrictions and redaction

20. When the Inquiry has decided which documents it intends to disclose to Core Participants with a view to putting them in evidence, the Inquiry will inform the person who provided those documents. The person will then have an opportunity to indicate which part or parts of the document (if any) that they are seeking to have redacted. The Inquiry will publish a protocol on dealing with the procedure with regard to redaction of documents.

21. If a person considers there are reasons the documents should not be disclosed beyond the Inquiry team, they may apply to the Chair for a restriction order preventing such disclosure or publication in accordance with section 19 of the 2005 Act. The Inquiry will publish a separate protocol that should be followed when seeking a restriction order.

*Issued under the Authority of the Chair on 30 November 2020.*