

Protocol for disclosure and redaction of documents

Purpose of the protocol

1. To provide guidance as to the approach the Inquiry is taking in respect of the redaction of documentation in advance of disclosure to the core participants and to ensure a consistency of approach.
2. This protocol should be read alongside the [protocol for the receipt and handling of documents](#).
3. The procedures outlined below are not intended to cover every eventuality or every procedural issue that may arise. Where the interests of justice and fairness require it, the Inquiry may depart from this protocol. Further, this protocol may be amended from time to time, in which case an amended version will be published on the Inquiry website.

Documents

4. 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.

5. A provider of documents (“PoD”) should provide documents related to the terms of reference to the Inquiry in their original form, unredacted and unfiltered. The Inquiry will filter the documents obtained under section 21 notices for their relevance and materiality to the terms of reference. The Inquiry will then apply redactions to the documents in accordance with this protocol.

Redaction

6. Subject to any restriction orders or notices which may be made under section 19 of the Inquiries Act 2005 (“the 2005 Act”), the Chair must take reasonable steps to ensure that members of the public have access to a record of evidence given and documents produced at the Inquiry¹.
7. There are a number of reasons why documents or parts of documents provided to the Inquiry may require to be redacted prior to disclosure to core participants or inclusion in evidence. These include the following:
 - a. The information contained in the document is both sensitive and irrelevant to the Inquiry’s work, for example it refers to details of a police investigation that has no connection or relationship to the events around the death of Sheku Bayoh;
 - b. The information in question constitutes personal data within the meaning of the UK General Data Protection Regulations (“GDPR”) and the Data Protection Act 2018 (“DPA”) further disclosure of which is incompatible with that legislation; and
 - c. The information in question is covered by a Restriction Notice or Order made under section 19(2)(a) or (b) of the 2005 Act.
8. Prior to disclosure to core participants, the Inquiry will review all documents to ensure that it complies with its own obligations as a controller of personal data under the GDPR and DPA. The Inquiry will apply redactions for personal data to all documents prior to disclosure. Personal data is any information

¹ The Inquiries Act 2005 section 18

that could directly or indirectly identify a living individual. While relevant names will not be redacted, the Inquiry anticipates that the following personal data will be redacted. This is not intended to be an exhaustive list:

- a. Day and month of birth;
 - b. Personal telephone numbers;
 - c. Personal email addresses;
 - d. Personal social media identifiers;
 - e. Identification numbers, such as passport numbers and national security numbers;
 - f. Home addresses, unless the address is itself relevant;
 - g. Places of work (for non-police witnesses) where these are sufficiently specific to identify the witness, unless the occupation and place of work is itself relevant;
 - h. Vehicle registration numbers for personal and private vehicles, unless the vehicle registration is itself relevant; and
 - i. Signatures of non-professional witnesses and members of the public.
9. Once the Inquiry has redacted the relevant documents it will contact a PoD to advise that documentation they have provided to the Inquiry will be disclosed in redacted format. The Inquiry will advise the PoD of their proposed redactions. The Inquiry will ask the PoD to confirm that they are content for the documentation to be disclosed in redacted format.
10. Any PoD who contends that a document should be further redacted or redacted otherwise than in accordance with the redactions already proposed by the Inquiry may make an application to the Chair in writing. Any such application must be addressed to the Solicitor to the Inquiry and emailed to legal@shekubayohinquiry.scot. The application should contain a copy of the document with the suggested redactions clearly marked and a brief explanation of the reasons for the proposed redactions.

Multiple Providers

11. Where the same document has been provided by more than one provider, the Solicitor will determine which provider should be consulted on redactions prior to disclosure (“the Appropriate Provider”).
12. The decision will take into consideration a range of factors. These factors include ensuring expeditious progress of the Inquiry and whether the provider was the original holder of the document and provided it to others, who then provided same to the Inquiry. They will include a careful consideration as to which provider is best placed to advise on redaction. In some instances it may be necessary to consult more than one provider. In exercising that discretion, the Solicitor will at all times act with fairness and with regard to the need to avoid any unnecessary cost.
13. At the same time as the redacted document is shared by the Inquiry with the Appropriate Provider, other providers who have shared the same document will be advised of the document. The Inquiry will provide them with the document ID and title as provided by that provider, to allow them to identify the document to be redacted. Those providers may send comments to the Solicitor to the Inquiry.

Restriction Notice or Order

14. Paragraph 7c above states that redactions may be applied where that document, or parts of that document, are subject to a restriction order or notice under section 19 of the 2005 Act. If, and to the extent that the PoD wishes to rely on legal professional privilege or another legal rule as a reason for not producing a document or part of a document, the PoD 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 PoD believes that the legal rule prohibiting disclosure to the Inquiry applies. Before asserting legal professional privilege, PoDs should consider carefully whether they

should waive that privilege to aid transparency and assist the Inquiry in its work in the public interest.

15. The Inquiry expects PoDs to adopt a measured approach when seeking redactions. The Inquiry will only redact information where the case for this is properly made out. The Inquiry will consider all requests for redaction carefully and in accordance with the principles above.

Issued under the authority of the Chair on 4 August 2021

Revised 22 December 2021.