

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 and to ensure a consistency of approach.
2. This protocol should be read alongside the [protocol for 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, with the exception of the redaction of any personal data contained within the documents that is unrelated to the terms of reference. 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. These include (but are not limited to) 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, the Inquiry will review all documents to ensure that they comply 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 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, unless the vehicle registration is itself relevant; and
 - i. Signatures.
9. Without prejudice to the generality set out within paragraph 8 above, the Inquiry may, where necessary, rely upon the legal proceedings exemption as set out in Schedule 2 to the DPA. The Inquiry may disclose personal data where it is deemed necessary for the purposes of the Inquiry.

Redactions proposed by PoDs

¹ The Inquiries Act 2005 section 18

10. Once the Inquiry has redacted the relevant documents it will contact the PoD identified as the Appropriate Provider (in accordance with paragraphs 15 and 16 below) to advise that documentation they have provided to the Inquiry will be disclosed in redacted format. The Inquiry will advise the PoD of its proposed redactions. The Inquiry will ask the PoD to confirm whether they have any further suggested redactions prior to the disclosure of the documentation.
11. 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 a proposal to the Inquiry by email to legal@shekubayohinquiry.scot (“the Proposal”). The Proposal should include a copy of the document with the suggested redactions clearly marked and a brief explanation of the reasons for the proposed redactions.
12. The Inquiry will consider the Proposal and inform the PoD of the decision made, and the redactions agreed or rejected, by email. If the PoD wishes to challenge the Inquiry’s decision to reject any redactions suggested within the Proposal then it may apply to the Chair for a restriction order within a reasonable time limit set out by the Inquiry, following the process outlined in the Inquiry’s [restriction order application protocol](#). Any insistence on a redaction requires to be accompanied by a detailed explanation as to why that information cannot be made public.
13. PoDs should have regard to the relevant provisions of the 2005 Act when giving reasons for proposed additional or amended redactions and must take a reasonable and proportionate approach when seeking redactions, whether within a Proposal or any application for a restriction order. Before asserting legal professional privilege, a PoD should consider carefully whether they should waive that privilege to aid transparency and assist the Inquiry in its work in the public interest.
14. The Inquiry will decide what information needs to be redacted and will consider representations by PoDs in coming to a view. PoDs should provide sufficient information within their Proposal to allow the Inquiry consider such representations in coming to a view. In limited circumstances the Inquiry may seek further information or explanation from a PoD to allow it to reach a view on any variation to the redactions proposed by the PoD.

Multiple Providers

15. Where the same document has been provided by more than one PoD, the Solicitor will determine which PoD should be consulted on redactions prior to disclosure (“the Appropriate Provider”).
16. The decision will take into consideration a range of factors. These factors include ensuring expeditious progress of the Inquiry and whether the PoD 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 PoD is best placed to advise on redaction. In some instances it may be necessary to consult more than one PoD. In exercising that discretion, the Solicitor will at all times act with fairness and with regard to the need to avoid any unnecessary cost.

17. At the same time as the redacted document is shared by the Inquiry with the Appropriate Provider, other PoDs who have shared the same document with the Inquiry (“Alternative Providers”) will be advised of the document. The Inquiry will provide them with the document ID and title as provided by that Alternative Provider, to allow them to identify the document to be redacted. Those Alternative Providers may send comments to the Solicitor to the Inquiry, where such comments relate to the sensitivity of the documents in question or the Inquiry’s determination as to which PoD is to be consulted on redactions as the Appropriate Provider. Alternative Providers will not be asked for comments in relation to redactions considered necessary under the GDPR.

Issued under the authority of the Chair on 4 August 2021.

Revised on 22 December 2021.

Further revised on 22 September 2022.