



Independent Commission for Reconciliation and Information Recovery

How the Commission shares and
publishes information

5 September 2024

How will the Commission Recover Information?

1. In addition to the full range of police powers for use in its liability investigations, the Commission has other statutory powers at its disposal to obtain information from individuals and from organisations.
2. The Commission has the powers to issue a statutory notice to a person (or organisation) to attend at a time and place specified by the Commission. They can be compelled to provide information (including in response to questioning), documents or any other thing in their custody or control. Evidence or such other material may also be required to be provided in the form of a written statement. The person on whom notice is served must comply with it, unless the Commissioner for Investigations determines they are unable to comply with it or that it is not reasonable to require them to comply with it. Failure to comply with a notice without reasonable excuse can result in a penalty of up to £5000, five times the equivalent that can be given in Coroners' proceedings.
3. The Commission has strong, legally enforceable powers to obtain information from state organisations, police and armed forces. Those 'relevant authorities' are legally required to make any information available to the Commission that the Commissioner for Investigations reasonably requires for the purposes of, or in connection with, an investigation. The authorities must provide all the required information, in full, to the Commission. They may not redact, summarise, or otherwise alter or obfuscate the information and cannot claim any duty of confidentiality or any other restriction to avoid providing it. It is for the Commissioner for Investigations to determine the request for what is reasonably required, not the organisation receiving the request. Refusal to meet the Commission's requests can be followed up with legal sanctions and if necessary a court order to comply. What is reasonably required may be broader than what is relevant and this power allows the Commission to undertake its own determination of what is relevant to its investigation.

When does the Commission share or publish information?

4. There are two stages where the Commission shares or publishes information: it shares information during the information recovery stage and findings stage as it is carrying out its investigation, and it publishes

information at the end of the findings stage when it sets out its findings in a public report. The act of sharing or publishing information is sometimes called 'disclosure'.

5. In our investigations, we will be able to provide victims, families, witnesses and suspects with specific information that has been obtained during the course of the investigative process where we judge it is in the interests of fairness, or of enabling victims and families to participate in that process. This is called 'disclosure' and can include the act of making information available to specific parties or publishing it generally. Disclosure is an important element of meeting legal requirements of fairness and Articles 2 and 3 of the European Convention on Human Rights.
6. All types of inquiries and investigations have processes in place that prevent disclosures that could cause death or injury, damage national security or cause other types of harm. For example in a public inquiry, the Chair or a government minister can issue restriction notices to prevent publication of evidence¹. In the coronial process, the Government can make an application to the coroner for Public Interest Immunity to prevent the disclosure of information which it considers would be damaging to the public interest. These processes are subject to judicial oversight by the courts.
7. During the course of its investigations the Commission will disclose meaningful information to requesting individuals, in order to provide updates on the progress of their case and so that they can be appropriately involved in decisions at key stages. There are also other parties to whom the Commission may also need to disclose information to fulfil its responsibilities. Disclosure of information could be made to:
 - i. Requesting individuals throughout course of investigation for purpose of keeping them informed on progress and understanding questions and concerns they have the Commission might want to take into account; They also have a right to see the report in full before it is published and make representations about its contents if they wish.
 - ii. Other relevant family members are also entitled to receive a copy of the draft report for purpose of enabling representations upon the content should they wish.

¹ [Inquiries Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- iii. Witnesses so that they can provide further assistance to the Commission and help it with evidence already uncovered;
 - iv. Suspected perpetrators during course of the investigation, who will need to understand facts of the case and/or the evidence relating to their conduct.
 - v. Those facing significant criticism in a proposed report by the Commission so that they can make representations that the Commission takes into account in producing the final report.
8. The Commission will handle a number of different types of information, including witness statements, documentary material from past investigative processes, and unredacted information that state organisations, such as the police and security services are required to provide.
9. There are two mechanisms by which the Commission will be able to make information available:
- a. By its own decision-making processes and governance, in the light of its statutory powers and duties (including the Data Protection Act 2018, the Human Rights Act 1998 and the Northern Ireland Troubles Act 2023). In these processes the Commission may occasionally need to take expert advice and will ensure that the decision is made by a suitably qualified and experienced Commissioner or officer of the Commission. These decisions are subject to judicial oversight by the courts.
 - b. By the process in the Northern Ireland Troubles Act 2023 for disclosure of sensitive information, where the Commission's general power to disclose is subject to a requirement to notify ministers of a disclosure to prosecutors and certain other authorities or to obtain their permission for disclosure more generally. The latter decision is subject to judicial oversight by the courts.

These two mechanisms are explained in more detail below -

A - The Commission's decision to disclose information

10. The Commission has a general power to disclose any information, unless a specific exemption to this applies (see below for second mechanism).

Under this general power, the decision about disclosure is for the Commission to take itself.

11. In reaching a decision to disclose, or not to do so, the Commission will need to take into account a range of legal obligations upon it. Important legal considerations the Commission has identified are legal requirements under the European Convention on Human Rights, data protection legislation, and under the Northern Ireland Troubles Act.
12. Information can be disclosed if it can be recast, summarised or otherwise presented in such a way that is no longer identifiable as sensitive – the information is then described as a gist.
13. In certain cases, the Commission may wish to obtain expert external advice, in addition to its own internal analysis. This may include from those with specific subject matter expertise and knowledge. Given the Commission's duties not to prejudice the national security interests of the UK, to put the life or safety of any person at risk, or to prejudice criminal proceedings anywhere in the UK, the Commission may seek advice from bodies with the relevant expertise, such as prosecutors, the police or the security services. To support such advice, the Commission may need to disclose such information as it considers necessary for that purpose.
14. The decision making within the Commission will be at a suitable senior level with the required experience. In many cases, the Chief Commissioner, a retired senior judge, may take the final decision. It will be the Commission's final decision as to the approach it takes and it will need to justify its decision, including if challenged in the courts.

B - Disclosure or publication following the statutory process.

15. Some information the Commission considers should be disclosed may fall outside its general power to disclose or publish information. The areas this applies to are set out in the Act and several relate to information which is defined as 'sensitive' under the legislation. In these circumstances the Commission is required to follow a statutory process. There are two processes: one where the Commission is referring a case to a prosecutor or certain other recipients within our legal system, and one for all other circumstances.

What is ‘sensitive’ information?

16. Sensitive information is defined by the Northern Ireland Legacy (Troubles and Reconciliation) Act 2023 either:
- (i) as information which has been supplied by a defined list of agencies, or any part of specified other bodies which engages in intelligence activities,
 - (ii) or as information which if disclosed generally would risk prejudicing, or would prejudice, the national security interests of the United Kingdom.

Disclosure where referring a case to the prosecutor (or to police, coroner or sheriff in Scotland)

17. Disclosure of ‘sensitive’ information by the Commission to the prosecutor is permitted once 10 working days have elapsed from notifying the Secretary of State of the proposed disclosure. This does not require ministerial agreement or consent.
18. There is then a different process under the Criminal Procedure and Investigations Act 1996 (CPIA) where material which if disclosed in criminal proceedings would give rise to a real risk of serious prejudice to an important public interest. Such material cannot be used in evidence, even if it is probative of guilt. It must be revealed by the investigator to a prosecutor on the schedule of ‘sensitive’ unused material, or on a ‘highly sensitive’ schedule.
19. An investigator is a person charged with the duty of conducting a criminal investigation. A criminal investigation is an investigation conducted with a view to it being ascertained—
- a. whether a person should be charged with an offence, or
 - b. whether a person charged with an offence is guilty of it.
- In Liability investigations, the Commission is the investigator.

Disclosure or publication of sensitive information more generally

20. Where the Commission proposes to disclose sensitive information (as defined in the Act) obtained in its information recovery process, it is required to obtain permission to do so from the Secretary of State. The Commission will send the specific sensitive information and set out its reasons for wanting to disclose or publish it to the Secretary of State. The Secretary of State then normally has 60 days to respond with a decision. The Secretary of State can only prohibit disclosure if in their view disclosure would prejudice, or would risk prejudicing, the national security interests of the UK. If they decide to prohibit disclosure they must give reasons, unless in doing so that would also risk prejudicing the national security interests of the UK. Such decisions can be challenged on appeal and in the courts.
21. Where the decision relates to sensitive information that the Commission had proposed for disclosure so it could be included in a final report of the Commission, the report must include a statement of the decision of the Secretary of State and any reasons. The Commission will also set out its views on the matter.
22. Decisions can be challenged in the courts, as with processes in public inquiries and other proceedings where the Government takes a decision to certify that material should not be disclosed or to assert Public Interest Immunity. The provisions in the Act govern these processes and the role of the Courts ensures that the government does not have the final say and that there is independent judicial oversight.