

Protocol on documents

Introduction

1. This Protocol relates to:
 - a. the holding of potentially relevant documents by Core Participants, Material Providers and the public;
 - b. the provision of such documents to the Inquiry; and
 - c. the receipt and handling of such documents by the Inquiry.
2. This protocol is designed to facilitate the prompt delivery of documents to the Inquiry by ensuring that all Core Participants, Material Providers and the public are aware of and understand the Inquiry's procedures for the provision of documents and how the Inquiry will treat such documents.
3. It should be read in conjunction with the Inquiry's **'Protocol on the redaction of documents'** and **'Protocol on applications for restriction orders'**.

Definitions

4. In this Protocol:

"Material Provider" means any person, institution or organisation, which has been asked to provide documents to the Inquiry or which has provided documents to the Inquiry. For the avoidance of doubt, it includes departments of His Majesty's Government ('HMG');

"Document" means information recorded in any form of any description, this includes paper, analogue and digital materials; and

"Potentially relevant documents" are those which, having regard to the Inquiry's Terms of Reference, it is likely that the Chair (if aware of their existence) would wish to be provided with.

Background

5. The procedure and conduct of the Inquiry are for the Chair to direct (section 17(1) Inquiries Act 2005 ('the Act')).
6. It is an offence under section 35(2) of the Act to do anything which 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 to do anything that the person knows or believes is likely to have that effect.
7. It is an offence under section 35(3) of the Act for a person:
 - a. intentionally to suppress or conceal a document that is, and that he knows or believes to be, a relevant document; or
 - b. intentionally to alter or destroy such a document.
8. Holders of potentially relevant documents should take a risk-based approach to the handling and retention of material they hold, ensuring that its ongoing management throughout the duration of the Inquiry does not constitute an offence under section 35 of the Act.
9. The procedures set out in this Protocol are not intended to cover every eventuality, and where the Chair needs to make a decision as to the procedure or conduct of the Inquiry not covered by this

Protocol, he will, in accordance with his obligations under the Act, act fairly and with regard to the need to avoid unnecessary cost.

Provision of documents to the Inquiry

10. Generally, the Inquiry will approach Material Providers with a request for documents or witness statements pursuant to Rule 9 of the Inquiry Rules 2006 (a 'Rule 9 request').
11. However, if any person thinks that they have relevant documents then they should please contact the Solicitor to the Inquiry's team by email via solicitors@omagh.independent-inquiry.uk identifying the material that they have so that the Inquiry can consider whether to make such a Rule 9 request.
12. The Chair expects that any person to whom a Rule 9 request is addressed will cooperate with the Inquiry and provide all potentially relevant material without the need for him to exercise his powers of compulsion of documents or evidence. However, the Chair will consider exercising his powers under section 21 of the Act, requiring the production of evidence, if the response to such a request is refused, incomplete, or not provided by the stated deadline.
13. Material Providers may on occasion have concerns regarding the sharing of special category personal data, or other information which they consider to be particularly sensitive. In such circumstances, they may wish to request a section 21 notice, which may be issued with the Chair's agreement.
14. Material Providers, including legal representatives, should provide documents requested by the Inquiry, together with any other documents they consider relevant, within the time limits specified by the Inquiry.
15. Material Providers are requested to undertake comprehensive, thorough and rigorous searches in response to a request for documents. The Inquiry may request that Material Providers set out the searches undertaken to identify all potentially relevant documents in a witness statement.
16. In the event that an extension of time is sought, an application to the Chair in writing, through the Solicitor to the Inquiry, should be made as soon as possible.
17. The Inquiry expects that once a Material Provider has identified potentially relevant documents in response to a Rule 9 request or a section 21 notice, every care is taken to ensure that all such documents are preserved in their original form, in accordance with paragraphs 6 and 7 above. Original copies of documents provided electronically should not be destroyed during the life of the Inquiry.
18. Material Providers should note the following standards for submitting evidence to the Inquiry:
 - a. all documents should be provided with an accompanying index listing them, along with their locations on any systems or folders;
 - b. all documents should be provided electronically where possible, with their original filenames and, where scanned, they should be named appropriately;
 - c. documents should be provided in their native format (e.g. Microsoft Word, Microsoft Excel, email files (e.g. msg, eml) with their attachments), together with any underlying metadata;
 - d. documents should be submitted at document level, i.e. multiple documents should not be grouped into one large PDF. Similarly, a document should not be scanned as individual pages, but as a single PDF;
 - e. hard copy documents should be digitised to multipage PDF format;
 - f. scanning of paper documents should be undertaken at a standard of 300dpi;

- g. scanned (PDF) images of paper should show all information on the paper, including all corners and both sides of the paper (where information is contained on two sides) and any annotations. No data should be cut off during the scanning process. If the paper that is being scanned has any attachment (e.g. a sticky paper note) or cover sheet, it should be scanned twice, both with and without the attached note; and
 - h. all documents should be provided in unredacted format, unless agreed with the Inquiry beforehand.
19. The Inquiry will arrange for the secure transfer of documents with Material Providers. Documents will be held securely when in the custody of the Inquiry.
 20. Material Providers will need to consider their own obligations under the Public Records Act 1958 regarding documents provided to the Inquiry and other potentially relevant documents they hold.

Disclosure and handling of documents by the Inquiry

21. The Inquiry will seek to be as transparent as possible. This means it expects to disclose documents to Core Participants and may (regardless of disclosure) use documents as part of its body of documentary evidence to which reference may be made in its reports and as such may form part of the Inquiry record.
22. Prior to the disclosure and publication of documents by the Inquiry, Material Providers will be given an opportunity to review and comment on redactions proposed by the Inquiry, but the Inquiry will work on the assumption that any material in its possession may be disclosed and published to its website, or used in the ways set out in this document. Should a Material Provider seek to object to onward disclosure or use by the Inquiry, it should identify its objection by reference to specific documents or categories of documents and support it by legal submission in any covering letter accompanying the material explaining why this course should not be followed in the specific circumstances. A separate '**Protocol on applications for restriction orders**' applies.
23. Core Participants will be required to sign confidentiality undertakings and any disclosure made to them by the Inquiry will be subject to the undertaking until such time as the document is made public by the Inquiry.
24. The Inquiry processes personal data in accordance with its obligations under the Data Protection Act 2018 and UK GDPR. In the event that this regime applies to a Material Provider, that Material Provider will be expected to comply with its own obligations when sharing information and documents with the Inquiry and to take such advice as is necessary to ensure its compliance. The Inquiry has a Privacy Notice and Appropriate Use Policy on its website.
25. The Inquiry is not a public authority for the purposes of the Freedom of Information Act 2000 ("FOIA") and will not disclose material in response to requests made pursuant to the FOIA. Arrangements will be made for the Inquiry to assist with responses to any requests made to Material Providers under the Act.
26. The Copyright, Designs and Patents Act 1988, section 46, provides that copyright is not infringed by anything done for the purposes of the proceedings of a statutory inquiry.
27. At the conclusion of the Inquiry information will be handled in one or more of the following ways, as directed by the Inquiry:
 - a. transferred to The National Archives and/or the government sponsoring department;
 - b. returned to original provider(s);
 - c. disposed of under the terms of the Public Records Act 1958.

Court orders

28. In the event that the Inquiry receives materials unredacted from Material Providers; including the names of individuals whose names are subject to reporting restrictions pursuant to court orders

made during any previous court proceedings. When this occurs, the Inquiry will ensure those court orders are complied with, such that those persons' identities are protected at the point materials are adduced in evidence or published.

29. Prior to the disclosure of documents to Core Participants, the Inquiry will apply redactions to documents. These materials will be provided to the Material Provider that supplied the documents for them to check. Materials will only be disclosed to Core Participants after the redactions are applied. Before receiving materials, Core Participants will be required to sign a confidentiality undertaking. This will require each person who receives materials from the Inquiry to keep them securely and in confidence [save to the extent that they are already in the public domain] until such time, if at all, that they are adduced in evidence in the Inquiry. At all times, materials disclosed to Core Participants will be redacted to protect the identities of those subject to reporting restrictions in the court orders.