

RULING ON OPERATIONALLY SENSITIVE MATERIAL RESTRICTION ORDERS

Introduction

1. This ruling addresses the establishment of a standardised, three stage process for handling Operationally Sensitive ("OS") material, culminating in the making of Operationally Sensitive Material Restriction Orders ("OSROs").

Background and Submissions

2. The Inquiry Legal Team ("ILT") provided two detailed notes: the ILT Note (Interim Restriction Order: Operationally Sensitive Material) dated 29 August 2025 and the ILT Note (Final Restriction Order: Operationally Sensitive Material) dated 4 November 2025. The notes explain that the Inquiry holds material on its disclosure database that is relevant to the Terms of Reference and which therefore falls to be disclosed to all Core Participants ('CPs'), but which is not, or not necessarily, capable of being made public without redaction of information within it that is operationally sensitive ('OS').
3. The ILT defined OS material in this way:

"OS material contains information which, if published, would alone be capable of assisting those who would wish to carry out future terrorist attacks or other criminal activity and/or would, in combination with other information already in the public domain or contained within other disclosure, be capable of assisting those who would wish to carry out future terrorist attacks or other criminal activity, i.e. through "the mosaic effect".

Examples of OS material include:

- a. *information that sets out details on how to build an improvised explosive device ('IED');*
- b. *information that explains how to maximise the effectiveness of an IED; and*

- c. *information that explains techniques or methods available to law enforcement agencies to disrupt the activities of those engaged in terrorist or other criminal activity.”*
- 4. This ruling does not address the Inquiry’s approach to materials that are said to be closed because those materials engage matters of national security and/or other matters protected by the public interest. The ILT explained that a separate note will be circulated in due course on the proposed approach to the handling of closed material and the process for seeking Restriction Orders in respect of such material.
- 5. I consider it essential that, as far as possible, OS material is made available to all CPs with minimal redactions applied to the OS content. However, there is a need for caution to ensure that such material is handled with care so as to avoid the risks identified in paragraph 3 above.
- 6. On 1 September 2025, I issued an interim OSRO pursuant to section 19(1) of the Inquiries Act 2005 (‘the Act’) which bound all CPs, members of the public and media. The purpose to that order was to provide CPs with the earliest possible access to materials containing OS information to ensure that they were best placed to participate effectively ahead of the Inquiry hearing I held on 12 November to determine whether the final OSRO should be made.

The Inquiry’s commitment to openness

- 7. Openness is at the heart of our system of justice and is vital to the rule of law (*R (Guardian News and Media Ltd.) v City of Westminster Magistrates Court [2013] QB 618; Cape Intermediate Holdings Ltd v Dring [2020] AC 629 and A v BBC [2015] AC 588.*). The principle of open justice applies equally to those conducting quasi-judicial inquiries (*Kennedy v Charity Commission [2014] UKSC 20*). Openness, so far as possible, is embedded in section 18 of the Inquiries Act 2005 (‘the Act’) and is a core component of the requirement in section 17 for me to act fairly.
- 8. I am committed to holding as much of the Inquiry as possible in public. This commitment has been a guiding principle of the Inquiry since it began and

was expressed in my public statement on 21 February 2024 on the Terms of Reference:

“My starting principle is that hearings will be held in public and broadcast live on the Inquiry’s website unless it is necessary in the public interest and for reasons of national security that they be held in private.

The nature of the issues we are investigating will inevitably require us to look at sensitive information. Some of this work may need to be done in private and I may need to hold what are known as closed hearings, where the public and others engaged in the Inquiry may not be able to attend. I will only do this where I am satisfied it is absolutely necessary to get to the truth.

I will scrutinise every request and, if closed hearings are necessary, I will work to ensure that as much information as possible about the closed hearings is made public. There will be legal issues I need to consider but I intend to bring as many details as I can about the intelligence issues around the Omagh Bombing that are within the Terms of Reference into the light.”

9. The commitment to openness is and must be more than just words: it is and will be central to every decision I make. I recognise that providing CPs with as much information as possible, involving the media, conducting public hearings and acting with transparency are essential to achieving this goal.
10. Despite this commitment to openness, many of the Bereaved Family and Survivor CPs (“the family CPs”) have already recognised the likelihood that aspects of the Inquiry’s work will need to take place in closed and that it will, in due course, be necessary to make certain Restriction Orders to facilitate that process, where disclosure would be contrary to the public interest having regard in particular to the matters mentioned in section 19(4) of the Inquiries Act 2005.

11. In particular I noted that many advocates who have spoken at the Inquiry hearings to date have sensitively and realistically acknowledged the likelihood of closed material and processes. For example:

- a. At the Special Advocates Hearing on 22 July 2025 Mr Southey KC explained that: “*...if you think about the realities of this case or this Inquiry, everyone recognises that large, key parts of this process are likely to be in Closed*” **[Transcript 22.07.25 Page 25 Line 3]**
- b. At the Special Advocates Hearing on 22 July 2025 Mr Kane KC explained that: “*This Inquiry has a huge task involving what will probably be a large amount of material which will probably again fall into the closed section.*” **[Transcript 22.07.25 Page 52 Line 16]**

12. Equally important, I am acutely aware of the advocates’ submissions and understandable concerns regarding the need for intense critical scrutiny of applications for closed material and/or the need for closed hearings. For example:

- a. In his Opening Statement Mr Toal KC explained: “*Closed hearings must be the exception and not the rule and I know this inquiry shares that view and national security must not become a licence for permanent secrecy.*” **[Transcript 23.06.25, Page 102, Line 24]**
- b. In his Opening Statement Mr Kane KC explained: “*A general comment can be made that there is need for as much open material as possible to be disclosed to the bereaved families and injured survivors as Core Participants. That should be the starting point and should not be deviated from unless there is clear and compelling reason established with evidence for material to become closed. We strongly urge you, sir, and this Inquiry, when applying the relevant test, to take a robust approach in support of the interests of the bereaved families and injured survivors and to disclose material or parts of material whenever it is possible to do so. Finely balanced judgments should fall in their favour.*” **[Transcript 24.06.25, Page 21, Line 24]** and “*The Inquiry should be cautious to guard against any narrow, lazy or obstructive approach by*

State Core Participants to the disclosure of relevant material, and must ensure that any closed material is minimised” [Transcript 24.06.25,

Page 30, Line 21]

13. My commitment to openness will be demonstrated over time through actions, not just words. I am clear that openness is a touchstone of my Inquiry and must be given very significant weight in any decision that impacts on how the inquiry is conducted.

Restriction Orders: The Law

14. Section 17 of the Act provides:

- (1) *Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*
...
- (3) *In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others). ”*

15. Section 18 of the Act provides that:

- (1) *Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able—*
 - (a) *to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;*
 - (b) *to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.”*

16. Section 19(1) makes provision for restrictions upon (1) the attendance of the public at the Inquiry and (2) the disclosure or publication of any evidence or documents provided to the Inquiry. By section 19(2) those restrictions may be

imposed either by (a) the Minister in a restriction notice or (b) the chairman of the inquiry in a restriction order. Sections 19 states:

- (3) *A restriction notice or restriction order must specify only such restrictions–*
 - (a) *as are required by any statutory provision, retained enforceable EU obligation or rule of law, or*
 - (b) *as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).*

17. As required by section 19(3)(b), Chairman should have particular regard to a number of matters. Section 19 states:

- (4) *Those matters are:*
 - (a) *the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern*
 - (b) *any risk of harm or damage that could be avoided or reduced by any such restriction;*
 - (c) *any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;*
 - (d) *the extent to which not imposing any particular restriction would be likely–*
 - (i) *to cause delay or to impair the efficiency or effectiveness of the inquiry, or*
 - (ii) *otherwise to result in additional cost (whether to public funds or to witnesses or others).*

18. For the purpose of section 19(4)(b), section 19 states:

- (5) *In subsection (4)(b) “harm or damage”*
 - (a) *death or injury;*
 - (b) *damage to national security or international relations;*

- (c) *damage to the economic interests of the United Kingdom or of any part of the United Kingdom;*
- (d) *damage caused by disclosure of commercially sensitive information.”*

19. By section 20(4) of the Act, a Restriction Order once imposed may be varied or revoked at any time during the course of the inquiry. Section 20(5) provides that the restrictions, once imposed under section 19, remain in force indefinitely, unless the order specifies a time limit or, the order is varied or revoked.

ILT proposed approach to OS material

20. In their note dated 29 August 2025 the ILT set out the process for managing the disclosure and use of OS material by CPs in three stages:

- a. Stage 1: Identification of OS material
- b. Stage 2: Disclosure of OS material
- c. Stage 3: Use of OS material at hearings

Stage 1: Identification of OS material

21. The ILT note explains that once a document is received by the Inquiry and has been determined to be relevant, the ILT will assess, on a provisional basis, whether any content within it is, or may be, OS. The ILT identified a number of categories of material that it considered were likely to be, OS. These categories were modified in the ILT second note dated 4 November 2025 following receipt of CP submissions. The final proposed OS categories were:

OSRO Category A	Tactics and capabilities used by the UK state authorities and others in the investigation and/or disruption of suspected terrorist or other criminal activities.
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OSRO Category B	Methods and strategies used by individuals in the preparation and /or commission of suspected terrorist or other criminal activities.
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22. The ILT explained the process in this way:

“Information that is identified by the ILT as OS will be provisionally redacted. The provisional redaction of such material will be overwritten with the text ‘OS’ to make clear the reason for the redaction. Material Providers will be invited to indicate in their review of materials whether they agree with the identification of the OS material and whether any other information within a document is considered to be OS, such that it requires provisional redaction. Material Providers are expected to indicate which OS category or categories the information is said to fall within if they make such a submission.”

23. The ILT has made clear that if there develops a dispute between a material provider and the ILT as to whether content is, or is not, Operationally Sensitive then there will be provision for a bespoke application for a Restriction Order which I will rule upon. Provision for a bespoke application will also exist to address any situation which does not neatly fit within the OSRO process. In other words, the process will permit a degree of flexibility.

Stage 2: Disclosure of OS material

24. The ILT note explains that once a document, in whole or part, is identified as containing OS material, the provisionally redacted version of the document will be made available to CPs in the normal area of the disclosure system, known as Relativity, and would be treated like any other open disclosure. CPs will also have access to an OS database within the disclosure system, which will contain documents with the relevant OS content visible. The ILT suggest that the final OSRO imposes restrictions on the accessing and use of the OS documents. This is to ensure that the OS material is only disclosed to specified individuals, including CPs and their legal representatives.

Stage 3: Use of OS material at hearings

25. It is suggested that CPs and the ILT would be able to ask a witness about the open redacted document in a completely open hearing without any additional restrictions. The OSRO would provide that any questioning about the OS material would only occur during an Operationally Sensitive Restricted Hearing. The following individuals in addition to myself would be permitted to attend an Operationally Sensitive Restricted Hearing: the ILT and Inquiry support staff; CPs and their legal representatives; relevant witnesses; accredited media; and anyone else the Chairman authorises in writing.

26. The ILT goes on to suggest that an Operationally Sensitive Restricted Hearing would only be necessary if, on cogent grounds, the Inquiry or a CP required questions to be asked of a witness about the OS material. The disclosure, sharing, or publishing of anything said in an Operationally Sensitive Restricted Hearing would be prohibited by the OSRO. However, at the conclusion of any such hearing the Chairman would be able to indicate of his own volition which parts of the hearing would or would not be capable of being reported openly. In the alternative, the ILT, any CP or the accredited media, who would each be entitled to be present at any Operationally Sensitive Restricted Hearing, would be able to apply to the Chairman for permission to report on the evidence heard. The Chairman would then make a ruling on any such application, having heard from any other CP's legal representative with a direct interest in the issue.

CP Submissions

27. The ILT note dated 29 August 2025 set out a timetable for disclosure of the first tranche of OS documents and for exchange of written submissions from CPs. I received submissions from the following CPs and media organisations:

- a. PSNI,
- b. HMG,
- c. the BBC,
- d. the Core Participants represented by Fox Law,
- e. the Core Participants represented by John McBurney Solicitors,
- f. the Core Participants represented by Elev8law Solicitor, and
- g. the Core Participants represented by P A Duffy and Co. Solicitors, Campbell and Haughey Solicitors and Roche McBride Solicitors.

28. In the written submissions of HMG and the BBC, reservations were identified concerning aspects of the approach set out in the August note by the ILT. Having had the opportunity to consider the revised process as set out in the note dated 4 November, and having listened to the proposed operation of the process as set out at the oral hearing, all CPs either endorsed the process suggested by the ILT, or were content to see it being given effect to.

Each of the counsel appearing for the family CPs supported the implementation of the scheme. Mr Southey KC acknowledged that the scheme provided for a pragmatic approach which would allow the family CPs to be involved as fully as possible and would help to avoid delay. He welcomed the statement of an opportunity to seek a ruling on the categorisation applied to any particular material in the absence of agreement. He acknowledged the ILT's recognition that the sole test in relation to any proposed questioning directed towards operationally sensitive material was that of relevance. Mr Kane KC welcomed and supported the approach taken by the ILT. He drew attention to, and approved of, the various statements made in the ILT submissions which recognised the validity of the concerns expressed by the family CPs that they should have access to relevant material. Mr McGuckin BL noted that the approach suggested by the ILT preserved openness as a starting point, avoided unnecessary delay and met the requirements of fairness, by allowing the family CPs to see the same material as was available to the Inquiry. As he described it, the proposed process achieved an appropriate balance between working in the open as much as permissible and maintaining a structure which was practical, fair and efficient.

29. Mr Mansfield KC restricted himself to stating his support for the process as suggested.

30. On behalf of His Majesty's Government, Ms Fee KC acknowledged the extent of the challenge faced by the Inquiry in analysing and processing large volumes of material, some of which was not capable of being shared openly. Given it was now clear that there remained the opportunity for applications to be made to the Chairman for a bespoke approach in the event of a disagreement as to the appropriate classification to be applied to any

particular material, she was content to support the process outlined by the ILT.

31. On behalf of PSNI, Mr Henry KC expressed full agreement with the process as clarified by the ILT and acknowledged the value which it would bring to the work of the Inquiry.
32. On behalf of the BBC, Ms Smyth began her oral submissions by acknowledging the importance of the media working collaboratively with the Inquiry and explained that the approach which the BBC intended to take was to attempt to resolve any issue which might arise in a manner which avoided any unnecessary delay to the proceedings. Applying this approach, and in light of the qualifications set out by the ILT in its final submissions, the BBC offered no opposition to the implementation of the process as described. She did, however, invite me to endorse the uncontroversial principle that, in determining whether any material comes to be categorised as operationally sensitive, a relevant consideration in that decision is the degree to which there is already public awareness of that information. Ms Smyth also touched upon initial concerns which the BBC had harboured in relation to how reporting restrictions might apply to any evidence led at an Operationally Sensitive Restricted Hearing. In light of the understanding that at the end of any such hearing I would, either of my own motion or on the application of those present, indicate which parts of the hearing can and cannot be reported openly, the BBC no longer had any concern in this regard.
33. The consequence of the submissions from CPs and the BBC was that all saw the benefit of establishing the two categories of OS material identified and of a process which provided a mechanism through which the ILT, and applicant CPs, could recognise documents or information which fell within, or outwith, either category.

Decision

34. The Inquiry has, to date, received a large quantity of documents from Material Providers. It expects to receive and to assess many more. It is in the nature of

some of the material received that it may contain information of the sort which the ILT has suggested should be defined as Operationally Sensitive.

35. In the absence of an alternative mechanism for dealing with documents containing such information, Material Providers would be required to prepare individual applications for Restriction Orders in respect of each document and set out the basis for an order in respect of each. Such an approach would inevitably impact adversely on the Inquiry's ability to process and disclose documents timeously. It would also impose a substantial burden on the Material Providers and the ILT.
36. The advantage of the process suggested by the ILT, if implemented, is that it would allow documents, or information within documents, to be categorised according to recognised and easily applied definitions. It would also permit early and full disclosure to CPs while still providing a suitable level of protection for the information concerned, along with an opportunity to challenge and seek a ruling on any disputed matters. It would result in a substantial cost saving as compared to that associated with individual applications. It would provide for a workable method in which evidence could be heard in relation to OS material at hearings which could be attended by CPs and accredited media representatives.
37. Having regard to the terms of section 19(3), (4) and (5) of the Act, I am satisfied that it is appropriate to make an order in terms of section 19(1) which restricts attendance at any Operationally Sensitive Restricted Hearing and which restricts publication of evidence and documents given, produced or provided to the Inquiry. The Order shall be known as an Operationally Sensitive Material Restriction Order. In so doing, I intend to endorse the two categories of OS material set out at paragraph 21 above and to endorse the three-stage process for managing the disclosure and use of OS material as described in paragraphs 21 to 25. It is to the credit of all concerned that a workable process has been agreed upon, the effect of which is twofold. First, it will allow documents already received by the Inquiry to be assessed and disclosed according to the two categories identified. Second, it will provide a framework within which the ILT can manage the assessment and disclosure of documents received from Material Providers in the future.

38. For the avoidance of any doubt, I agree that when considering whether material falls within either of the two OS categories it will be relevant to consider the degree to which there is already public awareness of that material.

39. For these reasons, I will issue the final Operationally Sensitive Material Restriction Order which will give effect to the process as described in this ruling.

**Rt. Hon. Lord Turnbull
Omagh Bombing Inquiry
13 January 2026**