

UNDERCOVER POLICING INQUIRY

Protocol for the Provision of Documents and Other Information to the Inquiry by the Metropolitan Police Service

Preamble

1. This Protocol has been issued so as to inform participants of the manner in which the Chairman intends that the provision of documents and other information by the Metropolitan Police Service to the Inquiry should take place, in the interests of the cost effective management of the Inquiry, fairness and public accountability for its process. However, the Chairman recognises that experience or particular circumstances may require the amendment of or departure from the Protocol in order to achieve these objectives.
2. This Protocol is subject to and should be read having regard to the Inquiries Act 2005 (“the Act”) and the Inquiry Rules 2006 (“the Rules”), and is without prejudice to the Chairman’s powers to require the production of evidence under section 21 of the Act. Both the Act and the Rules can be found on legislation.gov.uk. Particular attention is drawn to the offences created under sections 35(2) and (3) of the Act:
 - (a) By virtue of section 35(2) of the Inquiries Act 2005, a person is guilty of an offence if during the course of an inquiry he does anything that 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 anything he knows or believes is likely to have that effect.
 - (b) By virtue of section 35(3) of the Inquiries Act 2005, a person is guilty of an offence if during the course of an inquiry (a) he intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document, or (b) he intentionally alters or destroys any such document. For the purposes of this subsection a document is a “relevant document” if it is likely that the inquiry panel would (if aware of its existence) wish to be provided with it.
 - (c) A person does not commit an offence under subsection (2) or (3) by doing anything that he is authorised or required to do (a) by the inquiry panel, or (b) by virtue of section 22 or any privilege that applies.

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3. This Protocol should be read together with the Protocol for the Imposition of Restrictions to the Publication of Documents and other Evidence Produced to the Inquiry by the Metropolitan Police Service (“the Restriction Protocol”).
4. Although this Protocol directly concerns information to be provided to the Inquiry by the Metropolitan Police Service, the Inquiry will (save for paragraphs 10 - 15 below, which reflect specific access arrangements to which the Metropolitan Police Service has agreed) ordinarily expect to adopt the same approach in principle with other police forces, police bodies, government departments and corporate bodies as far as it is appropriate and to the extent that they may be involved with the Inquiry. The Inquiry intends in due course to publish a list of those other police bodies, government agencies and departments to which the approach described in this protocol will be applied.

Aims

5. This protocol is designed to provide a framework for the provision of information by the Metropolitan Police Service that relates to any matter in question at the Inquiry and to ensure that:
 - (a) all core participants and the public know how the Inquiry approaches the provision of information to the Inquiry by the Metropolitan Police Service;
 - (b) the Inquiry promptly receives information from the Metropolitan Police Service;
 - (c) the Metropolitan Police Service’s search methodology is made known to the Inquiry;
 - (d) the Metropolitan Police Service’s searches are thorough and effective;
 - (e) all appropriate steps are taken to prevent potentially relevant documents in the possession of the Metropolitan Police Service from being lost or destroyed;
 - (f) public interest concerns in relation to the production of information can properly be raised by the Metropolitan Police Service or any affected third party, and can be considered by the Inquiry; and
 - (g) the important public interests in truth and transparency on the subject matter of the Inquiry’s terms of reference are protected.

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Definition of “Information”

6. In this Protocol “Information” means any information howsoever recorded. The Inquiry’s requests are likely to be wide ranging, and may include copies of plans, photographs, audio or video footage, policy statements, meeting notes and minutes, manuscript notes, memoranda, correspondence (post and/or fax), communications records and internal and external email communications, and historic source material such as microfilm or Rolodex and may include physical evidence, electronic metadata, as well as any other material in paper or electronic form.

Preservation of Information by Metropolitan Police Service

7. The Metropolitan Police Service will take all reasonably practicable steps to preserve all information which may be of relevance to the Inquiry. It will keep the Inquiry team informed as to the steps which it takes in order to do so.

Requests for Information

8. The Inquiry will submit all requests for information through the Solicitor to the Inquiry to the solicitor acting on behalf of the Metropolitan Police Service. The solicitor to the Metropolitan Police Service will disseminate all such requests within the Metropolitan Police Service only insofar as is necessary to action them.
9. The Metropolitan Police having already provided assistance to the Inquiry as to the location of information which may be of relevance to the Inquiry will continue positively to co-operate with the Inquiry in order to promote the Inquiry’s understanding of where and how potentially relevant information is stored.

Intelligence Management and Operations Support - Access by Inquiry team

10. Intelligence Management and Operations Support is a Special Branch records storage and management team. The Metropolitan Police Service voluntarily consents to a member of the Inquiry’s legal team, with the appropriate security clearance, working regularly, or as frequently as it appears will be of assistance to the Inquiry, inside the Intelligence Management and Operations Support team’s offices while the Metropolitan Police Service is providing information to the Inquiry. While it is anticipated that this will usually be one member of the Inquiry’s team, the Metropolitan Police Service intends to permit access to other members of the Inquiry’s legal team as may be desirable from time to time, subject to security clearance.

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11. The purpose of such access is:

- (a) to enable the Inquiry's legal team to witness and be informed by the Metropolitan Police Service about the location of information within the Metropolitan Police Service, and the nature of hard copy and electronic filing systems, and the documents or categories of documents likely to be relevant to the work of the Inquiry;
- (b) to enable the Inquiry's legal team to witness and be informed as to the search terms and parameters used;
- (c) to encourage discussion of search terms and parameters between the Metropolitan Police Service and the Inquiry's legal team with a view to preventing any waste of time and resources on either side in the production by the Metropolitan Police Service of documents or other information which is not in fact required by the Inquiry;
- (d) to encourage discussion of search terms and parameters between the Metropolitan Police Service and the Inquiry's legal team with a view to ensuring that the information provided will be sufficient to satisfy the Inquiry's requests;
- (e) to enable inspection of documents in situ where appropriate; and
- (f) to provide an additional level of assurance as to the processes followed.

12. While the Inquiry's legal team will make every effort to provide guidance as to the use of search terms and parameters, the Metropolitan Police Service recognises that any such guidance is likely to be reliant on factual information provided by Metropolitan Police Service staff as to the nature and location of documents held, and on the views expressed by Metropolitan Police Service staff as to the best search methodology. Ultimate responsibility for the provision of information to the Inquiry therefore remains with the Metropolitan Police Service.

13. Oral communications between members of the Metropolitan Police Service and the Inquiry team shall not be taken to vary the contents or meaning of any written request. The Inquiry may, unilaterally or on request by the Metropolitan Police Service, provide written clarification to reflect any discussion as to the matters of interest to the Inquiry or as to search terms and parameters.

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Operation Herne Access by Inquiry Team

14. The Metropolitan Police Service voluntarily consent to the Inquiry having access to the offices of Operation Herne on similar terms to those on which access is to be permitted to Intelligence Management Operations Support.

Other Access by Inquiry Team

15. The Metropolitan Police Service will consider requests for members of the Inquiry team, with appropriate security clearance, to visit other Metropolitan Police Service locations for the purposes and on the terms set out in paragraphs 10 – 13 above.

Disclosure Statement

16. In any case where searches are conducted, and whether or not the methodology is the subject of discussion with members of the Inquiry team before it is finalised, a written explanation of the methodology adopted should be provided to the Inquiry.
17. The Inquiry will request a signed disclosure statement if it deems the same to be necessary. The purpose of such a statement will be to confirm the search methodology, to provide clear assurance that the Inquiry's request has been met so far as is reasonable in all of the circumstances and to explain, so far as can be ascertained, what has become of any information which is the subject of a request, which has been in the possession of the Metropolitan Police Service, but which is no longer in the possession of the Metropolitan Police Service and which cannot be produced. The Inquiry will also request that the Metropolitan Police Service identifies the last person known to have had access to such information if it deems the same to be necessary.
18. The presence of a member of the Inquiry legal team at any search in accordance with paragraphs 10 – 13 of this Protocol shall not affect the powers of the Chairman to request such a statement.

Time Limits

19. The Metropolitan Police Service will carry out searches without delay, and will respond to requests from the Inquiry within a reasonable timeframe specified by the Solicitor to the Inquiry. If the Metropolitan Police Service is unable to comply with an initial timeframe then it may in the first instance request an extension which may be granted by the Solicitor to the Inquiry. The Metropolitan Police Service is required to contact the Solicitor to the Inquiry at least 2 working days before the original time period has expired if it wishes to request further time.

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20. In any case where the Metropolitan Police Service considers that responding to a request will require further time than that specified by the Solicitor to the Inquiry, or such further time as he allows, it should apply to the Chairman in writing for such further time as is required. The application should include the reasons why the time thus far permitted is insufficient and/or unrealistic in all the circumstances, and should be made before the original time limit has expired, or, where that time limit has been extended, before the expiry of the time limit so extended.

Provision of information to the Inquiry

21. Save as is provided for in the following paragraph, the Metropolitan Police Service should provide the Inquiry with all information requested by the Inquiry, and any other information it possesses and which it considers to be relevant to the request, as soon as possible. Such information should be disclosed in unredacted form and accompanied by a list recording what is being disclosed. The only exceptions to this approach will be where:
 - (a) there is agreement in advance between the Metropolitan Police Service and the Inquiry that the circumstances are such that it would be preferable for the material to be inspected in situ by members of the Inquiry team;
 - (b) the material is withheld, without delay, on the grounds that it is subject to the Metropolitan Police Service's legal professional privilege in accordance with paragraph 26 below;
 - (c) disclosure is prevented by any enactment, in which case the position shall be drawn to the attention of the Chairman; or
 - (d) the Metropolitan Police Service otherwise objects to production of the documents in which case it will inform the Inquiry and the Chairman will consider whether to accept the objection or to issue a notice requiring production of the information pursuant to section 21 of the Act.
22. In light of the procedural protections provided for in the Restriction Protocol, the provision of information to the Inquiry must not otherwise be delayed on the grounds that the Metropolitan Police Service may seek the redaction of a document or some part of it before it is disclosed to any core participant or published.
23. In the event that, after answering a request for information by the Inquiry, the Inquiries and Review Support Command (formerly known as Metropolitan Police Service Assistant Commissioner's Public Inquiry Team) or anyone else within the

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Metropolitan Police Service who is aware of that request becomes aware that there is information falling within the scope of that request which has not been provided to the Inquiry, then it will provide the same to the Inquiry without delay together with a written explanation as to why the information was not included in the original response.

24. In relation to any document provided to the Inquiry by the Metropolitan Police Service, the Metropolitan Police Service will inform the Inquiry of any material change or update to that document occurring after the date of its provision to the Inquiry of which it becomes aware, and provide the updated document. This will apply whether the document was provided in response to a rule 9 request, or a notice issued under section 21 of the Act, or by way of voluntary disclosure. The Metropolitan Police Service will inform the Inquiry of the change within a reasonable time after it is made, and may choose to inform the Inquiry periodically of such changes rather than on a document-by-document basis. Once a document provided to the Inquiry by the Metropolitan Police Service has been deemed by the Inquiry to be irrelevant or unnecessary, a change or update will only be considered material by the Inquiry if the nature or extent of the change might reasonably be considered capable of affecting the decision as to relevance or necessity.

Security Classification

25. When handing material provided by the Metropolitan Police Service, the Inquiry will adhere to the security rules and information handling procedures of the Inquiry, which are known to the Metropolitan Police Service.

Legal Professional Privilege

26. Where information is the subject of Metropolitan Police Service legal professional privilege the Metropolitan Police Service may withhold it, or redact that information prior to providing it to the Inquiry. The Metropolitan Police Service and the Inquiry will proceed on established principles of legal professional privilege, which does not extend to communications made for the purposes of obtaining advice on the commission of a future crime, or which are themselves part of a crime.¹
27. The Metropolitan Police Service and the Inquiry may agree that the Inquiry will receive information from the Metropolitan Police Service on the basis of strict confidentiality for the sole purpose of reviewing the information for relevance. Where information is provided on such a basis, its provision to the Inquiry will not

¹ *Archbold*, 2016, 12-12: *R v Cox and Railton* (1884) 14 QBD 153.

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preclude the Metropolitan Police Service from subsequently claiming legal professional privilege in respect of all or part of that information. In such circumstances, if the Metropolitan Police Service wishes to assert privilege, it must do so promptly after the Inquiry notifies it that it regards the material as relevant.

28. The Metropolitan Police Service shall maintain a record of all information withheld from the Inquiry or redacted before it is provided to the Inquiry on the basis of legal professional privilege, and all information over which legal professional privilege is claimed in accordance with paragraph 26 above after it has been provided to the Inquiry. In the event that the Metropolitan Police Service waives its right to assert legal professional privilege in relation to any topic or topics at any time during the course of the Inquiry, it will promptly review all information that has previously been withheld from the Inquiry as legal professional privilege, and provide to the Inquiry any information covered by the waiver of privilege. It will also provide to the Inquiry an itemised list of any information already provided to the Inquiry over which legal professional privilege has previously been asserted, but is now waived.
29. The Metropolitan Police Service will not withhold from the Inquiry material which is, or appears to be, the subject of the legal professional privilege of a third party. The Inquiry will treat any such material in confidence. The Inquiry will not use such material to the detriment of the holder of the privilege. The Inquiry will not publish such material unless and until privilege has been waived by the holder. The Inquiry will treat arguably privileged material as privileged. If it becomes necessary in any case to determine whether or not such material is actually privileged then the Inquiry will afford the person who is arguably the beneficiary of the privilege the opportunity to submit evidence and make submissions on the issue where it is possible to do so. It will, for example, not be possible to do so if it would breach or undermine a restriction order², or if the person concerned proves impossible to trace.
30. For the avoidance of doubt, paragraph 29 above should not be read as of itself preventing the Inquiry from providing the privileged information to the person who is the beneficiary of the third party privilege at an appropriate time, provided that doing so does not breach or undermine a restriction order. The Inquiry will normally expect to provide such material to such a person who is a core participant or witness when approaching that person for a witness statement. In other cases, the Inquiry will disclose the material, upon request and provision of satisfactory proof of

² The Inquiry will, in these circumstances, decide all relevant applications for restriction orders before deciding whether it is possible to involve the third party in the determination of the question whether the material is privileged.

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identity, after the Inquiry has published the document from which the legally professionally privileged material has been redacted³.

Review of information for relevance and necessity

31. The Inquiry Legal Team will consider promptly all information made available for inspection or provided by the Metropolitan Police Service and decide whether it is relevant and necessary to fulfilling the Inquiry's Terms of Reference.
32. A record will be kept of the Inquiry's decisions as to relevance and necessity. Where information disclosed to the Inquiry is not considered relevant, or is considered unnecessary this decision will be recorded and communicated to the Metropolitan Police Service, and the material returned. However, such information will not be kept or archived by the Inquiry. The record of decisions taken will form part of the Inquiry record.
33. The Inquiry may defer a decision as to relevance and necessity if, for example, the position is unclear. It may also revisit decisions in the light of developments. Accordingly, any material returned to the Metropolitan Police Service will be retained by the Metropolitan Police Service at least until the end of the Inquiry in case the initial decision on relevance and necessity needs to be revisited.

Retention of documents

34. The Metropolitan Police Service must ensure that it retains original versions of all documents and physical evidence provided to the Inquiry and that such information is not destroyed.

Review

35. From time-to-time the operation of this protocol may be reviewed and it will be amended if necessary.

Issued under the authority of the Chairman on 30 May 2017

³ This covers cases in which it will be obvious on the face of the document whose privileged material has been redacted.