

Protocol for the Imposition of Restrictions to the Publication of Documents and Other Evidence Produced to the Inquiry by the Metropolitan Police Service

Chairman's Statement

1. Early in the life of the Inquiry I issued directions for the preparation and submission of the first applications for restriction orders whose effect, if granted, would be to preserve anonymity in the Inquiry. That process will continue and the Inquiry will need to give effect to orders for anonymity when preparing documents for disclosure and publication by gisting or redaction as necessary.
2. The Inquiry will also receive a very large number of applications for restriction of information that, if granted, would require, for reasons other than anonymity, the redaction or gisting of documents that have been produced to the Inquiry.
3. Finally, the Inquiry will respect the private life of any individual named in a document and will make disclosure of personal information only when it is necessary to do so.
4. It will be apparent from the foregoing that the Metropolitan Police Service and the Inquiry have ahead of them a prodigious document processing task. It is necessary to devise robust, fair and workable procedures that avoid, if possible, multiple handling of the same document and time-consuming and premature challenges to restriction whose effect would be to obstruct the progress of the Inquiry.
5. Thus, the Inquiry has been seeking to identify a method of working with documents received from the Metropolitan Police Service that simultaneously (i) gives effect to restriction orders granting anonymity, (ii) processes and gives effect to restrictions sought for other reasons and (iii) ensures respect for the private lives of those mentioned in them.
6. The Inquiry's legal team has circulated more than one draft of a protocol in which their proposals are described. The purpose of publishing such a protocol is not just to bring clarity to the process for the mutual benefit of the Inquiry and the Metropolitan Police Service but also to satisfy the Inquiry's wish to explain its work to core participants and the public in as transparent a manner as it properly and reasonably can.
7. A consultation exercise as to the appropriate terms of the protocol has been under way since January 2016. I have been consulted by the Inquiry's counsel team from

UNDERCOVER POLICING INQUIRY

time to time and I have been kept informed of progress and developments. The latest round of representations has culminated in a written [Response from the Inquiry's legal team](#), dated 26 May 2017, whose comments and reasoning I accept and adopt, together with a final draft of the protocol. I am well aware of the contributions made by several core participants, in particular by the Metropolitan Police Service and the non-police, non-state core participants, and I am grateful for their efforts.

8. While the consultation exercise has been taking place the Inquiry has been working with the Metropolitan Police Service and others to develop the practice of making and processing applications for restriction on generic grounds.
9. The result of this process of drafting, consultation and experience is the document appended to this Statement entitled "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").
10. The purpose of this Statement is to announce my approval of the Restrictions Protocol and its formal adoption by the Inquiry from this date, with the aims and for the purposes stated within it.

30 May 2017

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry

Protocol for the Imposition of Restrictions to the Publication of Documents and other Evidence Produced 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 to receive and determine applications for restriction orders over documents and other evidence produced to the Inquiry by the Metropolitan Police Service, 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. The Chairman has already decided that applications for restriction orders that seek to preserve the anonymity of police officers who served in the Special Operations Squad, Special Demonstration Squad and Special Duties Section are so sensitive that their management requires bespoke directions outside the ambit of this Protocol. The Inquiry will almost certainly adopt a similar approach to applications made by all police officers who seek to be or remain anonymous.
3. 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”). Both the Act and the Rules can be found on legislation.gov.uk.
4. Although this protocol primarily concerns ‘Information’ (as defined in the Disclosure protocol) provided to the Inquiry by the Metropolitan Police Service, the Inquiry would ordinarily expect to adopt the approach set out in this Protocol in relation to any Information provided by other police bodies, and government agencies and departments. 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.
5. This Protocol applies to all Information which falls to be produced to the Inquiry in accordance with the obligations set out in the Disclosure Protocol, and which the Inquiry decides is relevant and necessary Information. Decisions as to what is necessary for the purposes of discharging the terms of reference are a matter for the Chairman, assisted by the Inquiry legal team, and fall outside the scope of this protocol.

Aims

6. This protocol is designed to ensure:
 - (i) that all core participants and the public are aware of the procedure for applications for restriction orders. Practical and transparent procedures in this regard will be an important part of the effective running of the Inquiry;
 - (ii) that the provision of Information to the Inquiry is not delayed by applications for restriction orders pursuant to section 19 of the Act;
 - (iii) that the distribution of Information to other core participants is achieved expeditiously even when documents are the subject of restriction orders;
 - (iv) that appropriate provision is made for the Metropolitan Police Service, and where necessary other State bodies, to make applications for a restriction order;
 - (v) that the redaction, gisting or withholding from publication of documentary evidence considered by the Inquiry to be relevant and necessary is conducted in accordance with sections 19 and 22 of the Act;
 - (vi) that where core participants have concerns about particular redactions, gists or withheld documents, the issues they raise are determined by the Chairman, but that where there are no such concerns the redaction procedures do not cause unnecessary delay to the substantive work of the Inquiry;
 - (vii) that private information relating to living individuals is not disclosed save where it is necessary to do so in order for the Inquiry to fulfil its terms of reference;
 - (viii) that the Chairman complies with his obligations to act in the public interest and in accordance with law.

7. To these ends, the scheme under this protocol may be summarised as follows. Where, but only where, a restriction application appears justified to the Inquiry legal team, a provisional redaction will be made and the Chairman will not automatically be asked to consider the application on its merits. Where the Metropolitan Police Service wish to argue that a restriction should be made which does not appear justified to the Inquiry legal team, or a core participant affected by the restriction wishes to argue that a provisional restriction which appeared justified to the Inquiry

legal team should be removed, the application will be referred to the Chairman who will determine the application on its merits. The media may raise objections when redacted documents or gists are put into the public domain or an order restricting publication of an entire document is published.

Generic Documents

8. In order to facilitate the processing of large numbers of documents, and to avoid the need for the Metropolitan Police Service to repeat identical submissions over and over again, a system which uses generic documents to record grounds, submissions and evidence which it is anticipated will be common to many applications for restrictions will be adopted. The Metropolitan Police Service should provide to the Inquiry a sequentially numbered schedule (“the Open Schedule”) of the broad categories of reasons why relevant Information may meet the test for a restriction order to be made¹. The Open Schedule may also include sub-categories specifically tailored to the types of sensitive Information encountered in the documents to be disclosed, to the extent that these can be described publicly. The Open Schedule should be supported by a closed counterpart (“the Closed Schedule”) that, within each category of open reason, sets out all applicable sub-categories including those which could not be described publicly. A sub-category should only appear exclusively on the Closed Schedule if and to the extent that it cannot be described publicly.
9. The Open and Closed Schedules should be supported by open versions of the applicant’s submissions and evidence (“Open Generic Submissions”; “Open Generic Evidence”), which should set out the arguments and factual basis for making restriction orders over Information falling within each generic category and subcategory listed in the Schedules. Where there are some arguments and facts which cannot be made public, Open Generic Submissions and Open Generic Evidence should be prepared containing the arguments and facts which can be made public, while closed versions (“Closed Generic Submissions”; “Closed Generic Evidence”) should set out all the arguments and facts relied on including those which could not be relied on publicly. Arguments and evidence should only appear exclusively in the Closed Generic Submissions and Closed Generic Evidence if and to the extent that they cannot be described publicly.

¹ Nothing in this section should be read as preventing collaboration between the Metropolitan Police Service and other police forces (or the National Police Chiefs’ Council on their behalf) in order to provide a single agreed set of generic documents to be used by all police forces. The Inquiry is encouraging the development of such a set of generic documents.

UNDERCOVER POLICING INQUIRY

10. By way of example only, a category on the Open Schedule might be “reduces the effectiveness of covert techniques by increasing public knowledge about them”. The related subcategories on the Closed Schedule might list specific techniques which cannot be disclosed without undermining an application to restrict them. Generic evidence would address the extent to which the techniques are known to the public and address the risk of harm or damage that would arise from increasing public knowledge about them. Generic submissions would need to address why, having regard to these matters and general competing interests such as the presumption of openness, the Metropolitan Police Service submitted it was necessary in the public interest to restrict information describing the technique.
11. The Inquiry will publish the Open Schedule, Open Generic Submissions and Open Generic Evidence. The Closed Schedule, Closed Generic Submissions and Closed Generic Evidence will be considered only by members of the Inquiry legal team (solicitors, barristers and paralegals with appropriate levels of security clearance) and where necessary the Chairman, and will not be made public by the Inquiry. Core participants and the media will be afforded the opportunity to respond to the Open Schedule, Open Generic Submissions and Open Generic Evidence.
12. The documents should be expanded or updated as necessary to reflect any new applications on grounds not already covered in these documents (see paragraph 17 below). Core participants and the media will be afforded the opportunity to respond to any such changes to the Open Schedule and supporting Open Generic Submissions and Open Generic Evidence.
13. In the event of delay in the production of a full set of open and closed generic documents, the Inquiry’s restriction order work will not be suspended. All applications for restriction orders will need to be supported by individual grounds, submissions and, other than in cases which are self evident, evidence.

Notification of restrictions sought / Applications for a restriction order

14. As soon as it is in a position to do so after the production to the Inquiry of unredacted Information (or Information with provisional redactions shown, if this does not cause delay in its production), the Inquiry will indicate to the Metropolitan Police Service the Information considered to be relevant and necessary. The Metropolitan Police Service must as soon as reasonably practicable thereafter in respect of Information indicated to be relevant and necessary (and where it has not already done so):

UNDERCOVER POLICING INQUIRY

- (i) confirm in writing (which may include information provided electronically) that no restrictions in respect of that Information are sought; or
 - (ii) provide information electronically to enable the Inquiry to view the Information with the provisional redactions or gists marked legibly on it and to see the number of the open category and any closed subcategory claimed in respect of each (e.g. 1b, or 2f). If not providing the Information electronically, the Metropolitan Police Service must provide copies of the document with the provisional redactions or gists marked legibly on them (e.g. using yellow highlighting where a new restriction order is sought, or pink highlighting if the redaction is required to avoid undermining an existing restriction order) and make clear in respect of each which open category and any closed subcategory is being claimed. The electronic information or the copy of the document should be accompanied by an application for a restriction order pursuant to section 19(2)(b) of the Act (as to which see paragraph 16). By way of exception to this, where the sole effect of a redaction and gist is to replace a name with a cipher or pseudonym in order to give effect to an anonymity order already made by the Chairman, marking a redaction with the cipher or pseudonym will suffice and no other information is required.
15. In the case of material already disclosed to the Inquiry by the Metropolitan Police Service, following an indication by the Inquiry that any part of the material is considered to be relevant and necessary, at the time of publication of this Protocol, the Metropolitan Police Service should as soon as possible provide the matters set out in the foregoing paragraph.
16. An application for a restriction order should consist of a schedule which:
- (i) sets out the category(ies) and any subcategory(ies) claimed for each redaction in the document by reference to the Open and Closed Schedules and to the Open and Closed Generic Submissions and Generic Evidence (described at paragraphs 8 – 9 above); and
 - (ii) provides brief Specific Submissions and Specific Evidence, unless the nature of the proposed redaction is such that it can be adequately explained by reference to the Generic Submissions and Generic Evidence alone.

An application for a restriction order may be provided in electronic form, including by the provision of electronic information associated with the document, provided that it contains the information specified in this paragraph and that the proposed redactions or gists to which any part of the application relates may readily be

UNDERCOVER POLICING INQUIRY

identified. Where any application relies on Specific Evidence not already forming part of the Open Generic Evidence or Closed Generic Evidence, the facts or information should be attested by a signature (which may be an electronic signature or confirmation) recording that an identified person on an identified date confirms that he or she believes the facts stated to be true.

17. Where the Generic Grounds do not already include a category with a justification for the restriction sought, the application should identify the new ground and provide Generic Open Submissions and Generic Open Evidence that sets out the reasons and argument as to why it is said that a restriction is necessary, having regard to section 19(3) of the Act. The generic documents described at paragraphs 8 – 9 above will be updated after such instances and core participants afforded an opportunity to respond to the new Generic Open Submissions and Open Evidence.
18. Where the Metropolitan Police Service considers that a third party state body (e.g. another police force) has an interest in a potential restriction, this should be indicated at the time of making any application (or at the time of confirming that no restriction over the Information is sought by the Metropolitan Police Service). An indication that a third party state body has an interest in a potential restriction shall be treated by the Inquiry as indicating consent to disclose the relevant part of the Information to that body. Where a third party state body may have an interest, the Metropolitan Police Service should make clear whether it is in any event making an application for a restriction order that it would maintain irrespective of the views of that third party state body. Any indication that a third party state body has an interest in a potential restriction will be treated in accordance with paragraph 22 (iii) below. The Inquiry may also conclude that a third party state body has an interest in a potential restriction, and upon doing so will treat that third party in the same way as if it had been identified by the Metropolitan Police Service under this paragraph.
19. The Metropolitan Police Service may alternatively liaise with other police forces in relation to documents which the Metropolitan Police Service has provided to the Inquiry and in which other police forces are likely to have an interest in making applications for restrictions. In relation to such documents the Metropolitan Police Service may apply both in its own right and on behalf of other police forces instead of adopting the procedure at paragraph 18 above. Joint applications of this kind should clearly indicate which forces have been consulted and on behalf of which forces the application is made.
20. The Inquiry expects the Metropolitan Police Service to adopt a restrained and measured approach to the provisional redaction of its documents. Documents must

be provisionally redacted only where the Metropolitan Police Service considers that the redaction can properly be justified under section 19(3) or section 22 of the Act. Regard should be had to the need for other core participants to understand the context of relevant passages within documents. Where extensive redaction is applied for the Inquiry will normally expect the Information being redacted to be gisted. Accordingly, a draft gist should be submitted with any such provisional redactions. In cases where the redaction is not extensive, a gist may nevertheless be appropriate, and may be proposed either by the Metropolitan Police Service in its application, or by the Inquiry in its response.

Treatment of “potentially restricted evidence”

21. In any case where the Metropolitan Police Service has indicated provisional redactions to Information, the Inquiry will treat the Information as being “potentially restricted evidence” and as evidence “which is the subject of a relevant application which has not been determined” under rule 12 of the Rules. Accordingly, the Inquiry will not publish the provisionally redacted parts of the Information or reveal the provisionally redacted parts to other core participants or to any witness unless:
- (i) the conditions in rule 12(4) of the Rules are met; or
 - (ii) an individual witness or core participant was the author or recipient of the unredacted document and is thus entitled to see the document in its unredacted form; or
 - (iii) the Metropolitan Police Service has subsequently agreed in writing to the removal of the redactions; or
 - (iv) a written application by the Metropolitan Police Service for a restriction order has been refused but, in this case, only 14 days after promulgation of the Chairman’s Ruling.

Consideration of provisional restrictions by the Inquiry team

22. The Inquiry legal team will consider the Metropolitan Police Service’s provisional restrictions as follows.
- (i) Where the Inquiry legal team considers that a restriction which is sought by the Metropolitan Police Service is not justified, whether in whole or in part, then it will explain why to the Metropolitan Police Service and afford the Metropolitan Police Service an opportunity to withdraw or modify its application.

UNDERCOVER POLICING INQUIRY

- (ii) Where the Inquiry legal team considers that further evidence or information is required before it can decide whether an application for a restriction should be supported or opposed, it will make a request for such evidence or information of the Metropolitan Police Service.
 - (iii) Where the Inquiry legal team provisionally considers that a restriction which is sought by the Metropolitan Police Service is not justified, but the Metropolitan Police Service has indicated that a third party state body has an interest in it, the Inquiry will afford the third party state body an opportunity to make submissions and submit evidence in support of the application within a specified timeframe. The Inquiry legal team may also afford any third party state body identified by the Metropolitan Police Service an opportunity to make submissions and submit evidence without (or before) reaching a final view that a redaction is unjustified where it appears that it may be more expeditious to do so.
23. Where, notwithstanding that it has afforded the Metropolitan Police Service an opportunity to withdraw or modify a restriction sought in accordance with paragraph 22(i) above, the Metropolitan Police Service maintains an application for restriction which the Inquiry legal team considers is not justified, whether in whole or in part, the Chairman will determine the application in accordance with the procedure set out at paragraphs 42 and following below. He will be informed that the Inquiry legal team opposes the application and its reasons for so doing. Where the Inquiry legal team considers that the Chairman should exercise his powers under rule 12(3) of the Rules then it will make submissions to that effect to him. Upon receiving such a submission, the Chairman will determine whether the exercise of his powers under rule 12(3) is necessary, and having concluded any such process will determine the application (or the part thereof which the Inquiry legal team considers is not justified).
24. Where the Inquiry legal team considers that a restriction sought by the Metropolitan Police Service is justified, it will not ordinarily invite the Chairman to determine the application at that stage (with the result that the Information will remain “potentially restricted evidence” under Rule 12 of the Rules at this time); but as to the later determination of the application, see paragraphs 42 and following below.

Privacy

25. The Inquiry’s approach to privacy is designed to ensure compliance with the relevant legal obligations, including those owed pursuant to Article 8 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms (“the Convention”), read with section 6 of the Human Rights Act 1998; the Data Protection Act 1998; and the Inquiry’s duties both pursuant to section 17 of the Act and at common law to act fairly.

26. In relation to Article 8 of the Convention, the Inquiry recognises that the threshold test for the right to respect for private and family life, home and correspondence, in respect of a living person, in the context of publication generally, is whether the individual concerned would have a reasonable expectation of privacy in relation to the personal information in question. It further recognises that the systemic collection and storage of information about an identifiable living individual constitutes an interference with that individual’s rights under Article 8 of the Convention and that publication of such material will also constitute a further such interference. Any interference with the right to respect for private and family life, home and correspondence must be in accordance with law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. In devising the procedure explained below the Inquiry has also had regard to the Strasbourg case law which acknowledges that Article 8 does not require an unrealistic or impractical approach and that relevant policies must be sufficiently flexible. The scheme of the Inquiry’s approach, which is set out more fully below, is as follows:

- (i) Irrelevant and/or unnecessary personal information will be redacted by the Inquiry legal team (paragraphs 27 and 28 below).
- (ii) Core participants and witnesses will have the opportunity to consider references to themselves in documents which the Inquiry proposes to use at the point in time when they are provided to them for the purposes of making a witness statement. They will then be able to make any application for a restriction order over such information (paragraph 29).
- (iii) Persons who are neither core participants nor witnesses will be contacted by the Inquiry, unless in all the circumstances it would be disproportionate to do so, and given the opportunity to make an application for a restriction order over any relevant and necessary personal information (paragraph 32).
- (iv) References to relevant and necessary personal information relating to persons whom it would be disproportionate to contact will be considered for redaction by the Inquiry legal team. The Inquiry legal team will decide whether to provisionally redact references to such persons applying the

UNDERCOVER POLICING INQUIRY

relevant legal principles and mindful of the fact that the person affected will not have had an opportunity to apply for a restriction order (paragraph 33).

- (v) If any issue arises which is not expressly covered by the protocol the Inquiry legal team will decide how to deal with it and will do so in a way which complies with the affected person's Article 8 rights, the Data Protection Act 1998 and the duty to act fairly (paragraph 34).

27. Irrelevant and/or unnecessary personal information will be redacted by the Inquiry legal team. In particular, the Inquiry legal team will generally redact, without requiring any application, information comprising personal information other than names, such as dates of birth, telephone numbers, home or office addresses and any other contact details, whether these relate to state or non-state individuals. The Inquiry legal team will seek to ensure such personal information is redacted from documents supplied to it prior to disclosure to core participants and the public in accordance with data protection requirements. The basis for this approach is that details such as those listed above will generally be irrelevant and/or unnecessary for the Inquiry's purposes. For the avoidance of doubt, this does not include information which is "personal information" only in the sense that it is or was part of an undercover police officer's cover identity. Any restriction sought over details associated with a cover identity must be specifically applied for by the Metropolitan Police Service.
28. The Inquiry legal team will also proactively redact names if and insofar as they are irrelevant and unnecessary.
29. Copies of documents containing personal information about both core participants and witnesses to the Inquiry, which the Inquiry is proposing to publish, and insofar as they have not already been restricted, will generally be provided to the core participant or witness in question, before the documents are put to other non-police, non-state core participants or witnesses or into the public domain, at the point in time when the Inquiry approaches the core participant or witness for a witness statement in relation to those documents. This will not prevent the earlier provision of documents under paragraph 21(2) above. Copies of such documents will be provided to the person concerned either in confidence or subject to a temporary restriction order. The person to whom the documents are provided may then make any application for a restriction order on privacy grounds within 14 days or such other period as the Inquiry may specify.
30. In those cases in which the Inquiry considers that it is appropriate to take a witness statement from a state core participant or witness before approaching a non-state

UNDERCOVER POLICING INQUIRY

core participant or witness, the documents may necessarily have been shown to the state witness before being shown to the non-state core participant or witness. On such occasions any private information will be shown to the state core participant or witness in confidence or subject to a provisional restriction order. The documents to which this would apply will be those which have been provided to the Inquiry by state or police bodies and individuals rather than non-state core participants or witnesses.

31. In cases where a document refers to multiple non-state persons the Inquiry legal team will exercise its own judgment, having regard to the guiding legal principles and the paramount requirement to act lawfully as to the appropriate way forward. In a case in which there is no reason to suppose that showing the document to all the non-state persons concerned will cause an unjustified interference with the right to privacy the Inquiry will not prepare multiple copies each redacted so as only to reveal the name of that one non-state person before showing it to that non-state person. In a case in which there is reason to suppose that there is a real risk of such an interference then the Inquiry will prepare multiple provisionally redacted copies insofar as is required to obviate that risk. Non-state core participants or witnesses will then be shown the appropriate provisionally redacted copy when the Inquiry requests a witness statement from them in relation to the document.
32. Where a document contains relevant and necessary personal information about a person who is neither a core participant nor a witness then the Inquiry will consider whether it is conceivable that an arguable application for a restriction order might be made, and if so whether the person affected is readily contactable. In cases in which those two conditions are met, the person will be contacted and afforded the opportunity to make an application for a restriction order before further dissemination of the personal information about that person in the document.
33. In cases where the non-core participant, non-witness is not readily contactable then the Inquiry legal team will decide whether or not the information should be provisionally restricted having regard to the legal rights referred to in paragraphs 25 and 26 above and mindful when doing so of the fact that the individual concerned is not able to make his or her own application. In considering whether a person is readily contactable, the Inquiry will have regard to the risk of intrusion into private lives which may arise if documents are disclosed to the wrong person as a result of incomplete information, and to the intrusion inherent in contacting individuals.
34. In any eventuality relating to privacy which is not expressly covered above the Inquiry legal team will exercise its judgment as to how best to proceed having

regard to the need to act in accordance with the legal obligations set out at paragraphs 25 and 26 above. The Inquiry legal team may refer any question arising from such an eventuality to the Chairman.

Restrictions imposed for other reasons

35. The Inquiry legal team will consider all Information provided by the Metropolitan Police Service which is relevant and necessary and over which no application for a restriction order is made by the Metropolitan Police Service. They will consider the extent to which a restriction order should be made at the instigation of the Inquiry. The purpose of this step is to:

- (i) protect legally professionally privileged Information, which will be redacted unless privilege has been waived;
- (ii) ensure that there is no publication of Information which it is not in the overall public interest to publish;
- (iii) ensure that existing restriction orders are given effect; and
- (iv) ensure that the Inquiry makes any other restriction required by law.

Initial distribution and publication of documents in provisionally redacted form

36. The Inquiry will maintain an electronic disclosure system, the purpose of which is to make documents available to core participants. Documents provided to the Inquiry by the Metropolitan Police Service will not be uploaded onto the Inquiry's electronic disclosure system save to the extent that the Metropolitan Police Service has been given an opportunity to apply for restrictions over them and:

- (i) any potentially restricted evidence or information redacted by the Inquiry legal team under paragraphs 22 – 24 has been indelibly redacted from them;
- (ii) any material over which the Chairman has made a restriction order has been indelibly redacted from them; and
- (iii) at least 14 days have elapsed after any order has been made by the Chairman refusing an application for a restriction order over the document in whole or in part.

37. The version of the Information redacted according to the foregoing paragraphs will be uploaded onto the Inquiry's electronic disclosure system and each document will be automatically assigned a Unique Reference Number. Thereafter the Information

UNDERCOVER POLICING INQUIRY

will be disclosed in confidence (or subject to an interim restriction order restricting further dissemination prior to the publication by the Inquiry of the evidence) at this stage to such core participants as may be appropriate via the electronic disclosure system. The effect of this paragraph, together with the preceding provisions, is that the material redacted from the documents disclosed via the Inquiry's electronic disclosure system will ordinarily only consist of (i) material over which the Chairman has made a restriction order; (ii) material over which the Inquiry legal team consider a restriction order is appropriate.

38. The redacted version of Information will, save where to do so would reveal either the very matter which the order was made to protect, or some other matter requiring restriction, either
- (i) show the Information with the number of the category(ies) claimed by reference to the Open Schedule marked upon or next to the redaction;
 - (ii) be accompanied by a schedule or electronic information indicating the reason for the redaction by reference to the relevant category and any open subcategory number in the Open Schedule; or
 - (iii) indicate that the redaction is made by the Inquiry legal team on privacy or other specified grounds.

The redacted version will also indicate whether the redaction arises from an order by the Chairman or from protection under rule 12 of the Rules in circumstances where the Chairman has not determined the application. The timing of publication to core participants will be a matter for the Inquiry.

39. The Inquiry's preference will be to disclose information via its electronic disclosure system. However it may for any reason, for example to prevent delay, also disclose documents in other ways in circumstances where the documents might have been uploaded to its electronic disclosure system under this Protocol, and provided that redactions are made as are set out in the foregoing paragraph.
40. The Inquiry may however (for example to prevent delay in the distribution of parts of the document over which no restriction is sought) upload a version of a document to the electronic disclosure system, and disclose it in accordance with the foregoing paragraph, prior to consideration by the Inquiry legal team of any restriction application (in which case all evidence over which any restriction is sought will be redacted under paragraph 36(i)). In these circumstances, it will be made clear that the restriction application remains under consideration by the Inquiry legal team.

41. The Inquiry will maintain a record of all Information that at any time is labelled “potentially restricted evidence”, together with the positions taken and any submissions made by the Inquiry legal team and any final decision(s) taken by the Chairman upon the whole or part of any restriction application.

Requests for a determination by the Chairman

42. It will be open to a core participant who may be dissatisfied with the extent of the provisional restriction agreed by the Inquiry legal team, to request in writing that the Chairman determine the application for a restriction order. It will also be open to a core participant who may be dissatisfied with the extent of any restriction order made by the Chairman to request that he exercise his power under section 20(4) of the Act to vary the restriction order. Any such request or application must be made in writing within 7 days of the disclosure of the redacted document or within such other period as the Chairman may permit. The request or application must identify the restriction challenged, and should contain submissions setting out the core participant’s arguments together with any evidence to which the core participant submits the Chairman should have regard. Where a core participant wishes to draw the Chairman’s attention for these purposes to any document(s) already available on the Inquiry’s electronic disclosure system, it will be sufficient to provide the Unique Reference Number(s) for the document(s) in question.
43. It will be open to a witness whose evidence refers to Information which has been provisionally restricted by agreement between the Metropolitan Police Service and Inquiry legal team to request in writing that the Chairman determine the application. It will also be open to a witness whose evidence refers to Information over which the Chairman has granted a restriction order to request that he exercise his power under section 20(4) of the Act to vary the restriction order.
44. Where any request is made for the Chairman to determine an application under paragraphs 42 – 43 above, the Inquiry legal team will first consider whether, in light of the submissions and any evidence submitted by the core participant or witness, it still appears to them that the restriction is justified, and may take any of the steps set out in paragraph 22 above before referring the application to the Chairman and advising him of their position.

Procedure where the Chairman considers a Restriction Order Application

45. In any case where, at any stage, the Chairman considers an application for a restriction order made in accordance with this protocol, he will take account of the provisional restrictions, the grounds for seeking them, the supporting evidence and

UNDERCOVER POLICING INQUIRY

reasons, and the submissions of the Inquiry legal team. He will also take account of any submissions made by any core participant or witness inviting him to consider the application.

46. Having done so, the Chairman may:
 - (i) Agree that the restrictions are necessary;
 - (ii) Consider that less extensive restrictions than those proposed by the Metropolitan Police Service, or third party, are sufficient;
 - (iii) Decide that the provisional restrictions are unnecessary; or
 - (iv) Decide that further evidence, information or submissions are required from the Metropolitan Police Service or a third party (including any witness or core participant who objects to the restriction).
47. If the Chairman decides that further evidence, information or submissions are required from the Metropolitan Police Service following consideration of the original application, the Metropolitan Police Service may be required to submit the same within 14 days of notification of the requirement, or such time as may be specified, or be invited to make an oral application in closed hearing.
48. If the Chairman decides that evidence, information or submissions are required from a third party then that third party may be required to submit such information within a specified time, or be invited to make oral submissions in closed hearing.
49. Where the Chairman agrees that restriction is necessary he will make a restriction order.
50. Unless to do so would reveal either the very matter which the order was made to protect or some other matter requiring restriction, a restriction order will refer to the affected document and indicate the reasons why the redactions have been permitted by reference to the relevant number within the Open Schedule.

Procedure where Chairman declines to make a restriction order

51. If at any stage the Chairman considers an application but declines to make a restriction order, or declines to make a restriction order as extensive as that sought, he will notify the applicant or applicants. Subject to any notice given in accordance with section 19(2)(a) of the Act or application made in accordance with section 38 of the Act being made within 14 days of promulgation of the Chairman's Ruling, the

document will be uploaded onto the Inquiry's electronic disclosure system without redaction, or with redactions only to the extent that the Chairman so orders. It will then be uploaded to the Inquiry's electronic disclosure system and made available to core participants, and may be published on the Inquiry's website at times to be determined by the Inquiry.

52. If at any stage the Chairman declines to make a restriction order, and after the expiry of 14 days after promulgation of the Chairman's ruling, the Inquiry legal team will consider whether this decision affects any positions which they have previously taken that other provisional restrictions are justified. If the Inquiry legal team concludes that any such restrictions are not justified, it will alert the Metropolitan Police Service to the redactions affected, and recommence the procedure under paragraph 21 above in respect of those redactions.

Procedure where the Chairman has not been invited to consider a restriction order

53. When the process of obtaining and redacting Information, including witness statements, in relation to the terms of reference or any part of them is believed to be complete or substantially complete, and witnesses and core participants have been given an opportunity to request that the Chairman determine particular restrictions individually on their merits under paragraphs 42 and 43 above, the Chairman may make a general restriction order in relation to any restriction he has not been invited to determine on its merits under section 19(3)(b) having regard to section 19(4)(d) of the Act.

Publication

54. Documents which are put into evidence will be published on the Inquiry's website in the same format as they are available to core participants on the Inquiry's electronic disclosure system (that is, with redactions indelibly marked both in cases where the Chairman has made a restriction order and cases where he has not been invited to consider a provisional redaction). Any person affected by any redaction, including the media, may apply to the Chairman in writing for him to consider the position within 7 days of publication of the relevant document or such further period as the Chairman may allow. This will be treated either as a request that he determine the application, or an application for variation of the order, as may be appropriate.

Miscellaneous

55. Where public interest issues or other issues under section 19(3) of the Act arise, the Inquiry expects the above procedures to be used for seeking a restriction order from

the Chairman rather than a restriction notice being issued under section 19(2)(a) of the Act by the relevant Minister.

Review

56. The operation of this protocol will be reviewed from time to time to ensure that it is meeting the needs of the Inquiry and it will, if necessary, be amended.

Issued under the authority of the Chairman on 30 May 2017