

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

Revised and updated as at 22 July 2020

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, Special Duties Section and the National Public Order Intelligence Unit are so sensitive that their management requires bespoke directions outside the ambit of this Protocol.
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. Such a list will include the National Police Chiefs’ Council and the National Crime Agency.
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 (and other police bodies and government agencies and departments) 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 has been adopted by the Inquiry.
9. The Metropolitan Police Service, the National Police Chiefs' Council and the National Crime Agency have, following liaison with the Inquiry, jointly produced a set of Open generic grounds for restriction ("the Open Schedule"), which sets out the broad categories of reasons why relevant Information may meet the test for a restriction order to be made. The Open Schedule is supported by a Closed counterpart ("the Closed Schedule") that, within each category of open reason, sets out all applicable sub-categories including those which cannot be described publicly. A sub-category only appears exclusively on the Closed Schedule if and to the extent that it cannot be described publicly.
10. The Open and Closed Schedules are supported by Open and Closed versions of evidence and submissions, which set out the arguments and factual basis for making restriction orders over Information falling within each generic category and subcategory listed in the Open and Closed Schedules. The Open Generic Submissions and Open Generic Evidence set out those arguments and facts which can be made public. The Closed Generic Evidence and Closed Generic Submissions set out those arguments and facts which cannot be relied on publicly. Arguments and evidence only appear exclusively in the Closed Generic Evidence and Closed Generic Submissions if and to the extent that they cannot be described publicly.
11. The Open generic material, namely the Open Schedule, Open Generic Evidence and Open Generic Submissions, is published on the Inquiry's website:
 - a. [The Open Schedule](#)
 - b. Generic evidence in support of the grounds:
 - i. [Witness statement of Chief Constable Alan Pughsley](#) on behalf of the National Police Chiefs' Council, dated 14 February 2018;

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- ii. [Witness statement of Geoff Bluemel](#) on behalf of the National Crime Agency, dated 28 September 2017;
 - iii. [Gisted witness statement of Christopher Farrimond](#) on behalf of the National Crime Agency, dated 27 September 2017
 - iv. [Witness statement of Cairo](#) on behalf of the Metropolitan Police Service, dated 4 August 2017
 - c. Generic submissions:
 - i. [On behalf of the National Police Chiefs' Council](#), dated 22 January 2018, along with [accompanying table](#);
 - ii. [On behalf of the Metropolitan Police Service](#), dated 14 February 2018.
12. The Open Schedule, Open Generic Evidence and Open Generic Submissions were first published on 19 March 2018, together with [an explanatory note from Counsel to the Inquiry](#), to afford an opportunity to core participants and the media to respond to the Open generic material. Submissions were received on behalf of the [non-police, non-state core participants](#) and [Peter Francis](#). Those submissions were responded to by way of a [Note from Counsel to the Inquiry](#) dated 17 May 2018. There was no amendment to the Open Schedule as a result of that consultation process.
13. It is intended that these generic documents will be expanded or updated as necessary to reflect any new applications on grounds not already covered in these documents (see paragraph 18 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.
14. In addition, the Chairman's '[Statement on the Inquiry's Approach to Disclosing Photographs](#)' sets out the Open explanation of the evidence taken into account regarding the potential identification of undercover officers from photographs. This statement was published on 29 January 2020. Submissions were received from state and non-state core participants and taken into account by the Chairman resulting in his '[Second Statement on the Inquiry's Approach to Disclosing Photographs](#)' published on 7 April 2020.

Notification of restrictions sought / Applications for a restriction order

15. 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

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respect of Information indicated to be relevant and necessary (and where it has not already done so):

- (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 closed category claimed in respect of each. 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 closed category 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 17). By way of exception to the requirement to provide a closed category for each restriction sought, where the sole effect of a redaction and/or gist is to replace a name, identifying mark or signature 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. In addition, where the Inquiry has determined that the name (or signature) of a police officer/staff is irrelevant and/or unnecessary, marking a redaction will also suffice and no other information is required. This will ordinarily include, but is not limited to, police officers/staff below the rank of Chief Superintendent who were not involved in units dealing with undercover policing.

16. 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.

17. 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 Closed Schedule and, where necessary to the Closed Generic Submissions and Generic Evidence; and

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- (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 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.

18. 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 will be updated after such instances and core participants afforded an opportunity to respond to the new Generic Open Submissions and Open Evidence.
19. 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 23 (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.
20. 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 19 above. Joint applications of this kind should clearly indicate which forces have been consulted and on behalf of which forces the application is made.

21. 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”

22. 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 by the Inquiry Legal Team and is not maintained; or the application has been determined by the Chairman in accordance with paragraph 24 below and has been refused but, in either case, only 14 days after promulgation of the decision to refuse.

Consideration of provisional restrictions by the Inquiry team

23. 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.
 - (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 either the Metropolitan Police Service has indicated or the Inquiry Legal Team has identified 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 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.
24. Where, notwithstanding that it has afforded the Metropolitan Police Service an opportunity to withdraw or modify a restriction sought in accordance with paragraph 23(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 57 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 (at a Closed hearing if necessary).

25. 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 variation of the redaction, see paragraphs 57 and following below.

Privacy

26. The Inquiry’s approach to privacy is designed to ensure compliance with the relevant legal obligations, including those owed pursuant to the Data Protection Act 2018; the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) (“GDPR”); 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; and the Inquiry’s duties both pursuant to section 17 of the Act and at common law to act fairly.

Data Protection

27. The GDPR, read together with part 2, Chapter 2 of the Data Protection Act 2018, sets out the data protection framework within which the Inquiry must operate when processing personal data.
28. Article 6(1) of the GDPR sets out the circumstances in which processing of personal data shall be lawful:
- “1. Processing shall be lawful only if and to the extent that at least one of the following applies:*
- ...
(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.”*
29. Article 6(3) of the GDPR specifies that the basis for the processing referred to in Article 6(1)(e) shall be laid down by Union law or Member State law to which the controller is subject. In the United Kingdom, the qualifying conditions in this regard are set out in section 8 of the Data Protection Act 2018. The Inquiry’s work falls within section 8(c) of the 2018 Act: the function of inquiring into and reporting upon undercover policing is conferred upon the Chair by section 1(1) of the Inquiries Act 2005. Accordingly, processing of personal data by the Inquiry that is necessary in order to fulfil the terms of reference is lawful.
30. The Inquiry recognises that the GDPR affords enhanced protection to special categories of personal data, which are considered to be particularly sensitive. Article 9(1) states that:

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“Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.”

31. The processing of special category data is prohibited except in the circumstances set out in Article 9(2). The part of Article 9(2) which permits the Inquiry to process special category data is Article 9(2)(g), which states:

“(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.”

[emphasis added]

32. In the United Kingdom, the qualifying conditions in relation to special category data are set out in section 10(3) and Schedule 1, Part 2, paragraphs 5(1) and 6(1) and (2)(a) of the 2018 Act.

33. Section 10(3) of the 2018 Act states that:

“(3) The processing meets the requirement in point (g) of Article 9(2) of the GDPR for a basis in the law of the United Kingdom or a part of the United Kingdom only of it meets a condition in Part 2 of Schedule 1.”

34. Paragraphs 5 and 6 of Part 2 of Schedule 1 of the 2018 Act (headed “Substantial Public Interest Conditions”) state:

“Requirement for an appropriate policy document when relying on conditions in this Part

5 (1) Except as otherwise provided, a condition in this Part of this Schedule is met only if, when the processing is carried out, the controller has an appropriate policy document in place (see paragraph 39 in Part 4 of this Schedule).

(2) See also the additional safeguards in Part 4 of this Schedule.

Statutory etc and government purposes

6 (1) This condition is met if the processing—

(a) is necessary for a purpose listed in sub-paragraph (2), and

(b) is necessary for reasons of substantial public interest.

(2) Those purposes are—

(a) the exercise of a function conferred on a person by an enactment or rule of law;

(b) the exercise of a function of the Crown, a Minister of the Crown or a government department.”

35. In relation to the work of the Inquiry, therefore, the processing of special category data is lawful pursuant to Article 9(2)(g) of the GDPR, read together with section 10(3) of the 2018 Act and part 2 of Schedule 1 to the 2018 Act, where it:
- (i) is necessary for the purposes of the Inquiry's exercise of its functions as a public inquiry;
 - (ii) is necessary for reasons of substantial public interest;
 - (iii) is proportionate;
 - (iv) respects the essence of the right to data protection; and
 - (v) provides for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.
36. Enhanced protection is also afforded, by Article 10 of the GDPR, to data relating to criminal convictions and offences. The processing of such personal data is lawful, pursuant to section 10(4) of, and paragraph 6(1) of Schedule 1 to, the 2018 Act, where the processing is necessary both for the purposes of the Inquiry's exercise of its functions as a public inquiry and for reasons of substantial public interest.
37. For the avoidance of doubt, in relation to paragraph 5(1) of Part 2 of Schedule 1 of the 2018 Act, the Inquiry has a data protection policy in place: see the Inquiry's policy on processing special categories of personal data and criminal convictions data - [https://www.ucpi.org.uk/wp-content/uploads/2018/05/20180525-UCPI-Processing Special Category and Criminal Convictions Data.pdf](https://www.ucpi.org.uk/wp-content/uploads/2018/05/20180525-UCPI-Processing%20Special%20Category%20and%20Criminal%20Convictions%20Data.pdf).

Article 8 of the Convention

38. 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

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unrealistic or impractical approach and that relevant policies must be sufficiently flexible.

39. The scheme of the Inquiry's approach, which is set out more fully below, is as follows:
- (i) 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 (paragraph 40 below).
 - (ii) The documents which will be disclosed to core participants and witnesses for the purposes of making a witness statement will be those which are relevant and necessary for him/her to see to enable them to provide evidence to the Inquiry. They will include any document in which that person is named in the text of the document or is otherwise identified in the document. The documents will be unredacted, except where the public interest or a rule of law requires that they should be. Redactions will not routinely be made because they refer to personal data, including special category personal data (paragraph 41).
 - (iii) The data protection rights of those about whom information appears in these documents, other than the person from whom evidence is sought, will be protected by the making of a restriction order under section 19 of the Act (paragraph 42).
 - (iv) By way of exception, if the Inquiry deems it necessary to make disclosure to any core participant or individual before the time at which they are asked to provide a witness statement, the Inquiry Legal Team will consider what, if any, redaction is required. This material may be disclosed with the redaction of personal data, including special category personal data applied, and will likewise be protected by the making of a restriction order under section 19 of the 2005 Act.
 - (v) Following receipt of these documents, the individual(s) to whom they were disclosed will then be able to make any application for a restriction order over such information as refers to themselves (paragraph 43).
 - (vi) For the purposes of preparing documents for publication, irrelevant and/or unnecessary personal information will be redacted by the Inquiry legal team (paragraphs 45 and 46 below).

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- (vii) 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 which the Inquiry is minded to publish (paragraph 47). It will be disproportionate to contact a person if: (a) the Inquiry considers that the information cannot reasonably be expected to have been private; or (b) the person is not readily contactable (i.e. without tracing, doing more than minimal research, or having to contact third parties).
 - (viii) 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 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 47).
 - (ix) 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 Data Protection Act 2018, the GDPR, the affected person's Article 8 rights and the duty to act fairly (paragraph 48).
40. 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, at the point in time when the Inquiry approaches the core participant or witness for a witness statement in relation to those documents¹. This will not prevent the earlier provision of documents under paragraph 22(ii) above.
41. The Inquiry recognises that, in some instances, the particularly sensitive nature of the personal data contained in documents disclosed to core participants or witnesses at the statement taking stage will require particular scrutiny before

¹ The process which the Inquiry adopts to the disclosure of documents and witness statements made by former undercover officers to non-police, non-state core participants and civilian witnesses for the purpose of taking statements from them is set out in the ["Chairman's Second Statement on Data Protection and Privacy, Disclosure to Non-Police, Non-State Core Participants and Civilian Witnesses"](#), and the associated update contained in ["Data Protection and Privacy, Counsel to the Inquiry's note regarding disclosure to Non-Police, Non-State Core Participants and Civilian Witnesses"](#).

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disclosure to another. However, it is anticipated that the net result will be that almost all personal data, including special category personal data, will not normally be restricted from disclosure to a witness from whom evidence is sought.

42. The data protection rights of those about whom information appears in these documents, other than the person from whom evidence is sought, will be protected by the making of a restriction order under section 19 of the 2005 Act, prohibiting the disclosure of any part of any such document to any other person except his/her Recognised Legal Representative. Both the individual and their Recognised Legal Representative will be required to agree in advance to this process, and to acknowledge receipt of the restriction order in writing. They will be bound by its terms. No document will be disclosed to any witness or legal representative who does not agree to be bound by the terms of the restriction order.
43. The person to whom the documents are provided may then themselves make any application for a restriction order on privacy grounds over any of their own personal data contained within the documents. If the documents are provided for the purposes of making a witness statement, any application for a restriction order on privacy grounds should accompany the witness statement when it is supplied to the Inquiry. Otherwise, any such application for a restriction order on privacy grounds should be made within 14 days of receipt of the documents or such other period as the Inquiry may specify.
44. 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 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 subject to a 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.
45. When it comes to preparing documents for publication in the hearing bundle, 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 basis for this approach is that details such as those listed above will generally be irrelevant and/or unnecessary. For the avoidance of doubt, this does not include

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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.

46. The Inquiry legal team will also proactively redact names if and insofar as they are irrelevant and/or unnecessary.
47. Where a document contains relevant and necessary personal information about a living person who is neither a core participant nor a witness then the Inquiry will consider whether there is a reasonable expectation of privacy. If so, the Inquiry will consider whether the need to publish the information outweighs competing considerations. If so, it will consider whether the person affected is readily contactable (i.e. without tracing, doing more than minimal research, or having to contact third parties). If so, 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.
48. 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 above. The Inquiry legal team may refer any question arising from such an eventuality to the Chairman.
49. The object of the exercise is to prevent an ordinary member of the public who does not have prior knowledge of the individual named from discerning their identity from what is published by the Inquiry. The Inquiry does not seek to prevent a person who knows or knew the information at the time from being able to piece together the identity of the person concerned. This would require much more extensive restriction and therefore impair the ability of the public to follow the work of the Inquiry.

Restrictions imposed for other reasons

50. 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:

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- (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

51. 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 23 – 25 has been indelibly redacted from them;
 - (ii) any material over which the Chairman has made a restriction order (whether as a result of an application by any person or of the Inquiry's own volition for privacy, data protection or other reasons under paragraphs 26-49 above) has been indelibly redacted from them; and
 - (iii) at least 14 days have elapsed after notification that a written application by the MPS for a restriction order has been refused by the Inquiry legal team; or any order has been made by the Chairman refusing an application for a restriction order over the document in whole or in part.
52. 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 will be disclosed (subject to an interim restriction order restricting further dissemination prior to the publication by the Inquiry of the evidence and subject to suitable handling arrangements) 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.

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53. The Inquiry recognises the desirability of publishing information regarding the reason(s) for documents being redacted. Regrettably, the technology which the Inquiry had intended to use to do so has proved not to be viable and therefore the Inquiry is exploring other options regarding how this might be achieved. Presently, it remains the Inquiry's intention that 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 in the Open Schedule;
 - (iii) be the subject of a general explanatory note from Counsel to the Inquiry which indicates the types of redactions, with reference to their relevant category(ies) in the Open Schedule, which have been applied; or
 - (iv) indicate that the redaction is made by the Inquiry legal team on privacy or other specified grounds.

It was the Inquiry's intention that the redacted version would also indicate whether the redaction arose from an order made by the Chairman or from protection under rule 12 of the Rules. However, the practical application of the restriction process has meant that it is no longer proportionate to do so. The timing of publication to core participants will be a matter for the Inquiry.

54. 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.
55. 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 51(i)). In these circumstances, it will be made clear that the restriction application remains under consideration by the Inquiry legal team.

56. The Inquiry maintains 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 variation by the Chairman

57. It will be open to a core participant who may be dissatisfied with the extent of any redaction to request in writing that the Chairman vary it. Any such request 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 must identify the redaction 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 and copies of documents should not be provided.
58. It will be open to a witness whose evidence refers to Information which has been redacted to request in writing that the Chairman vary it.
59. Where any request is made for the Chairman to vary a redaction under paragraphs 57 - 58 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 redaction is justified, and may take any of the steps set out in paragraph 23 above before referring the application to the Chairman and advising him of their position.

Procedure where the Chairman considers a Restriction Order Application

60. 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 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.
61. Having done so, the Chairman may:
- (i) Agree that the restrictions are necessary;

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- (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).
62. 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.
63. 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.
64. Where the Chairman agrees that restriction is necessary, this will be recorded and a restriction order encompassing such determinations will be made.

Procedure where Chairman declines to make a restriction order

65. 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.
66. 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 22 above in respect of those redactions.

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

67. 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 vary particular redactions under paragraphs 57-58 above, the Chairman may make a restriction order in relation to any redaction 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

68. 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

69. 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

70. 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.

Re-issued under the authority of the Chairman on 22 July 2020.