

UNDERCOVER POLICING INQUIRY

INTERNAL GUIDANCE FOR THE APPLICATION OF PUBLIC EYES PRIVACY RESTRICTIONS

Introduction

1. This guidance is intended for those investigating lawyers and junior barristers who are applying privacy redactions and/or gists to documents which the Inquiry proposes to publish either in its Open Hearings Bundles or on its website.

Background

2. The process of considering whether a document requires redaction or gisting follows a number of stages, summarised below, and depends on the precise purpose for which it is being prepared at any given time. The sequence of steps is set out below. Some documents follow all of these steps, others only some of them, depending upon what the Inquiry is using them for. Redactions and gists applied as a result of these processes are applied cumulatively, in layers, as a document progresses through the processes.

A. Preparation of any documents from the Security Service for sight by the Commissioner's Legal Team ("the CL team") or other police body ("MPS eyes" checks)

- 2.1. The Security Service is given the opportunity to apply for restrictions to its material before it is supplied to the police.

B. Preparation for sight by a current or former police officer for the purposes of providing a witness statement to the Inquiry ("Officer eyes" checks).

- 2.2. Officer eyes checks and applications for restrictions made by the CL team or other police body.
- 2.3. Officer eyes checks and applications for restrictions made by the Security Service.

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C. Removal of information on public interest grounds for the purposes of providing the documents to civilian witnesses, core participants and the public (“Public Interest” checks).

2.4. Co-ordinated public interest checks and applications for restrictions made by the CL and Designated Lawyers’ teams (or other police body and/or other solicitors acting for officers).

2.5. Public interest checks and applications for restrictions made by the Security Service and/or other third parties.

2.6. This stage, despite its name, also incorporates any privacy based applications made by or on behalf of police officers/state parties.

D. Removal of information so private that a civilian witness subject to a restriction order should not be shown it (“Civilian eyes” checks).

2.7. Civilian witness eyes checks and the application of restrictions and gists by the Inquiry Legal Team.

E. Removal of information on privacy grounds that should not be made public (“Public eyes privacy” checks)

2.8. Public eyes checks and the application of restrictions and gists by the Inquiry Legal Team.

2.9. Applications for restrictions on privacy grounds by Non State, Non Police Core Participants (“NSNPCPs”) and civilian witnesses.

3. A document reaches the Public Eyes Privacy Checks restriction stage after it has been through at least police Public Interest Checks. It may also have been through Officer Eyes and/or Civilian Eyes Checks, dependent on the type of document and its original security classification. It is, therefore, almost certain to have some restrictions applied to it before it falls to be considered for Public Eyes Privacy Checks.

4. The aim of the Public Eyes Privacy Checks process is to add further restrictions (or, where appropriate, gists) to ensure that we observe the privacy and data protection rights of everyone about whom there is information in any given document. The outcome must also be fair.

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5. There are two elements to the Public Eyes Privacy Check. First, restrictions/gists applied by the Inquiry of its own volition. Second, restrictions/gists applied as a result of applications made by relevant NSNPCPs and civilian witnesses. Documents that fall to be considered at the Public Eyes Privacy Check can be split into two categories. Those that have been sent to NSNPCPs and civilian witnesses and those which have not. In the former case, both elements of the check need to be conducted (i.e. the application of privacy restrictions by the Inquiry plus any resulting from applications). They can be conducted sequentially or concurrently. The latter category of document, requires only the first element (i.e. the application of privacy restrictions by the Inquiry of its own volition). This guidance is directed at those restrictions / gists that the Inquiry must apply of its own volition. They protect the rights of those whose personal data is contained in the documents, but who are not given the opportunity to make an application themselves.

Sources of Relevant Law

6. The relevant legal requirements with which we must comply are those provided by:
 - 6.1. the General Data Protection Regulation ("GDPR"); the Data Protection Act 2018;
 - 6.2. the Data Protection Act 2018;
 - 6.3. the Human Rights Act 1998 read with Article 8 of the European Convention on Human Rights (the right to private and family life);
 - 6.4. the statutory duty of fairness: s.17(3) Inquiries Act 2005; and
 - 6.5. the common law duty of fairness.
7. Annex 1 contains a legal summary which explains the Inquiry's analysis of its legal obligations insofar as they are relevant to this exercise.

Relevant Inquiry Documents

8. The Inquiry has a number of policies relevant to public eyes privacy checks that anyone applying redactions or gisting information on these grounds must comply with.

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- 8.1. Personal Information Processing Statement <https://www.ucpi.org.uk/privacy-information-notice/>
- 8.2. Data Protection Policy <https://www.ucpi.org.uk/wp-content/uploads/2018/05/20180525-UCPI-Data Protection Policy.pdf>
- 8.3. 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>
- 8.4. Detailed Privacy Information Notice <https://www.ucpi.org.uk/wp-content/uploads/2019/01/20190129Privacy Information Notice -v1.3.pdf>
- 8.5. Restrictions Protocol, as updated (see especially the privacy section and the assurances given at paragraphs 45 & 46¹) https://www.ucpi.org.uk/wp-content/uploads/2020/07/20200722_restriction_protocol.pdf
- 8.6. Legal principles ruling, 3 May 2016, p.85 <https://www.ucpi.org.uk/wp-content/uploads/2016/05/160503-ruling-legal-approach-to-restriction-orders.pdf>

Practical Application

9. This section sets out guidance for specific types of information and circumstances in which it is likely to be found to assist those applying public eyes privacy restrictions and/or gists consistently and lawfully.
10. Inquiry copies of documents which are already in the public domain in un-redacted or partly redacted form should not have privacy redactions applied which redact names or related information that is already in the public domain. A living document setting out necessary material which we are aware has been published on the internet or is otherwise public can be found on *[a UCPI computer system]*.

¹ Note that the Restrictions Protocol has been amended / supplemented by the Chairman's subsequent privacy statements in relation to the provision of information to civilian witnesses. However, it remains in force in relation to public eyes privacy restrictions.

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Lists of Names and File References etc. at the End of Intelligence Reports

11. The default position is that lists of names typically found at the end of intelligence reports, in conjunction with file references etc. should be restricted on privacy / data protection grounds.
12. The same applies to lists of names of those who attended a meeting etc. incorporated into the body of a report.
13. In both of the above cases an exception should be made if a name and file reference is that of a core participant or witness who is not anonymous. In such cases, the name and reference should remain un-redacted unless there has been a specific application to restrict it/them. If there has been specific application(s) to restrict, they will be considered on their merits in the first instance by a member of the Senior Counsel Team.
14. Further exceptions apply where a person is known to be deceased or has no reasonable expectation of privacy in the circumstances (below). Where a person is known to be deceased, their privacy rights have expired so names and file references can remain. Where a person has no reasonable expectation of privacy, however, the information which can remain only extends to that which arises (or can be inferred) from their involvement in the public event which is the subject of the report. This would encompass name, physical description, things said and the fact they did/did not have a Special Branch file (Special Branch interest can be inferred). This would not include incidental matters, such as, unrelated personal information added by the author of the report. In such cases, the Special Branch file references themselves should also be redacted for privacy to remove the date on which the file was opened (the middle two digits only), as this could indicate unrelated personal information, such as, previous political affiliations.

Reports on Individuals

15. A common form of report is one that records specific personal information about an individual or individuals, e.g. change of address, change of employment, marriage, change of partner, birth of a child. The default position is that the name and personal information should be redacted. A judgment needs to be made as to

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whether redacting the name alone strikes the right balance or whether the information should be replaced with a gist which records the type of information recorded but not the details. For example, the fact that a person was a student at a particular college is likely to be sufficiently protected if the name alone is redacted. On the other hand, bank details or vehicle registration numbers should normally be gisted.

Civilian Names

16. If the name is that of a core participant or witness who is anonymous, the name should be redacted and replaced with his or her cypher. Otherwise, the default position is that civilian names and any other identifying information should be redacted. Exceptions to this general rule are as follows.

16.1. The cover names of officers with no restriction order in place.²

16.2. The name is that of a core participant or witness who is not anonymous. In this case, the name should be left unless a specific application to restrict it has been made. Any such application should be considered on its merits by a member of the Senior Counsel Team.

16.3. The name is that of a figure with no reasonable expectation of privacy in the circumstances, e.g. a person in public life (whether at the time of the report or now), such as, a Member of Parliament acting as such, or a person not in public life speaking at a public meeting (but not the same person speaking at a private meeting). If the person concerned is one who has expressed particular concern about their privacy (there is a specific list incorporated into the Central Anonymity Record on *[a UCPI computer system]*) then they should be warned of the Inquiry's intention to publish.

16.4. The person is deceased, e.g. a number of prominent leaders and speakers referred to in early SDS documents have passed away and publishing their names will enhance public understanding of the Inquiry's work (a non-exhaustive list of those already confirmed as deceased, or so prominent that they have no reasonable expectation of privacy, above, can be found on *[a UCPI computer system]*). Please add to the list if you can confirm a relevant person as deceased or ask *[an Inquiry Lawyer]* to conduct inquiries. Please

² Please see the closed annex to this guidance *[link to a UCPI computer system]* which supplements this paragraph.

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Speak to the Senior Counsel Team for guidance if you are unsure whether someone qualifies as prominent.

16.5. The need to publish the name and any associated information outweighs competing considerations. Such instances are likely to arise in relation to the most significant and factually controversial deployments.

16.5.1. Discuss the evidential significance of the documents that you are redacting with an appropriate member of the Senior Counsel Team to assist identifying which names, if any, may fall into this category.

16.5.2. If the person is readily contactable (i.e. without tracing, doing more than minimal research, or having to contact third parties) the person should be contacted, notified of the intention to publish and given the opportunity to apply for a restriction order.

16.5.3. The Chairman should approve the publication of information in this category before any such information is sent out.

16.5.4. Particular care should be taken if the person concerned is one who has expressed particular concern about their privacy.

17. 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. We do 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. For example, if a report records that an activist has been elected to, or held, a particular position in the organisation, and absent any other considerations, redact the name but not the fact of appointment or the post.

Police Names

18. All necessary restrictions to police names should have already been made to the document at the Public Interest stage and therefore before it reaches the Public Eyes Privacy stage.³

³ As above.

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Legal Professional Privilege

19. Any legally professionally privileged information in respect of which privilege vests in a State body or police officer should have been considered at the Public Interest stage of the restrictions journey. It should either have been redacted or left in situ because LPP has been waived. However, where the privilege vests in a civilian, it falls for consideration at the Public Eyes stage.
- 19.1. If it relates to a core participant or a witness it should be redacted unless the core participant or witness has consented to its publication.
- 19.2. If it relates to any other civilian it must be redacted.
20. Annex 2 contains guidance to assist you to identify what is and is not legally privileged material. In the event of doubt, please consult the Chairman or a member of the Senior Counsel Team.

Personal Addresses and Telephone Numbers

21. The default position for personal information in any of the following categories is that it will be redacted. In the case of a core participant or witness it may be left in if the person concerned has consented or the Chairman has decided that it should be published.
- 21.1. Home and office address (other than the address of police stations in State documents)
- 21.2. Telephone number
- 21.3. Other contact information
- 21.4. Dates of birth
- 21.5. Family details (such as familial relationships)
- 21.6. Medical details
- 21.7. Car registration numbers
22. The above DOES NOT apply to like details which form part of an undercover officer's false identity. Any applications to restrict such information will have been considered at the Public Interest stage and does not need further consideration at the Public Eyes stage.

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Photographs

23. Whether or not a photograph of a civilian or civilians should be published is entirely fact dependent. We anticipate a variety ranging from very old photographs of large crowds through to photographs which would disclose a person's hitherto private political beliefs or intimate relationships. Consult a member of the Senior Counsel Team for an assessment of the competing considerations. No photograph of an identifiable civilian should be left un-redacted, in the absence of the consent of the subject, without the Chairman's approval.

Record keeping, checking and assistance

24. A record must be kept by the redactor of decisions to deviate from the default positions indicated above. Reasons may be recorded very briefly on the appropriate pane in *[a UCPI computer system]*: an IT guide is at Annex 3.

25. All redaction work must be checked before publication (a separate checking procedure is being developed, if in doubt please speak to *[a Deputy Solicitor to the Inquiry]*).

26. Any decisions of general application should be taken with reference to a member of the Senior Counsel Team. A record of such decisions is kept on *[a UCPI computer system]*. This should be the first point of reference for any generic privacy decisions and should be kept up to date as we progress to ensure consistency (as far as possible).

27. If you are in doubt about any aspect of your work, ask a member of the Senior Counsel Team for assistance.

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Annex 1 – Legal Summary ***[NOT FOR PUBLICATION]***

Annex 2 – Guidance on Legal Professional Privilege ***[NOT FOR PUBLICATION]***

Annex 3 – IT Instructions ***[NOT FOR PUBLICATION]***