

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

- Protocol on Redaction of Documents -

Introduction

1. It is important that the Inquiry sees complete (i.e. un-redacted) copies of all documents it obtains from institutions and individuals which touch upon its Terms of Reference. However, there may be legal reasons why the Inquiry may need to apply redactions to documents before they are disclosed to Core Participants (CPs) and to the general public via a public hearing or a report made by the Inquiry. This Protocol sets out the approach that will be taken by the Inquiry to the redaction of relevant documents it receives from material providers (MPs).
2. It is for the Inquiry to determine the relevance of any particular document and for the Inquiry to determine whether a redaction should be applied, whether or not that redaction has been requested by an MP.
3. The procedures outlined below are not intended to cover every eventuality or every procedural issue that will arise. It follows that, where the interests of justice and fairness require it, the Inquiry may need to depart from this Protocol in exceptional cases. Further, this Protocol may be amended as necessary. Should the Protocol be amended, the revised version will be circulated to CPs.
4. This Protocol should be read in conjunction with the Inquiry's protocol on Applications for Restriction Orders.
5. This Protocol only applies to material which will be disclosed to CPs for OPEN hearings.

Definitions

6. In this Protocol, any references to "information" includes documents and witness statements; and "document" or "documents" means anything in which information of any description is recorded, whether in paper or electronic form, and includes, but is not limited to, reports, reviews, board/committee minutes, governing/constitutional documents, legislation, letters/emails (internal and external), information from websites, guides/codes of conduct, policy documents and articles, and audio recordings of interviews.
7. The Inquiry's request for documents is wide ranging and may include a request for physical evidence: where it does; references in this Protocol to "documents" should also be taken to include references to physical evidence.

Purpose

8. This protocol is designed to set out a consistent approach to redaction and to ensure that MPs understand how the Inquiry will treat the information it intends to publish.

Redaction of documents

9. Subject to any restriction orders or notices which may be made under section 19 of the Inquiries Act 2005, the Chair must take reasonable steps to ensure that members of the public may have access to a record of evidence produced at the Inquiry. The Inquiry will publish such documents following the relevant hearing, having regard to the Inquiry timetable.
10. There are a number of reasons why documents or parts of documents provided to the Inquiry should be withheld from wider dissemination and / or redacted prior to disclosure to Core Participants or inclusion in evidence. These include the following:
 - a. The information in question is both sensitive **and** irrelevant to the Inquiry's work, for example it refers to details of a police investigation that has no connection or relationship to the events around the death of Jermaine Baker;
 - b. The information in question constitutes personal data within the meaning of data protection legislation, further disclosure of which is prohibited by that legislation; and
 - c. The information in question is covered by a Restriction Notice or Order made under section 19(2)(a) or (b) of the Inquiries Act 2005.
11. Save where it is necessary for a different decision to be reached, the Inquiry anticipates that the following information will be redacted as it falls within either paragraph 10(a) or (b) above. This is not intended to be an exhaustive list:
 - a. Day and month of birth (save for that of the deceased);
 - b. Personal telephone numbers (save for the last three digits);
 - c. Personal email addresses;
 - d. Personal social media identifiers;
 - e. Identification numbers, such as passport numbers and national security numbers;
 - f. Home addresses;
 - g. Places of work (for non-police witnesses) where these are sufficiently specific to identify the witness;
 - h. Vehicle registration numbers for personal and private vehicles; and
 - i. Signatures of non-professional witnesses and members of the public.
12. Where, in response to a request from the Inquiry, an MP is collating material for disclosure

to the Inquiry, the Inquiry will ask it to take the following approach. The MP should provide a clean (unmarked) copy of the material. Pursuant to the direction of the Chairman dated 30 March 2020, MPs who are likely to need to protect security or operational sensitivities have been asked to supply a document listing those categories (List of Security Sensitivities), to aid the Inquiry Team. If there are any novel sensitivities in the material being provided which are not addressed in the List of Sensitivities, the MP should also provide a document that sets out information that it requests the Inquiry redacts and the reasons for those requests.

13. If, and to the extent that the MP wishes to rely on LPP or another legal rule as a reason for not producing a document, part document or part of a document, the MP must identify the document in question and specify the reason in writing to the Solicitor to the Inquiry, together with a summary setting out why the MP believes that the legal rule prohibiting disclosure to the Inquiry applies. Before asserting LPP, MPs should consider carefully whether they should waive that privilege to aid transparency and assist the Inquiry in its work in the public interest.
14. The Inquiry expects MPs to adopt a measured approach when seeking redactions. The Inquiry will consider the List of Sensitivities provided by MPs when it is reviewing material provided. It will only redact information where the case for this is properly made out, bearing in mind the applicable tests in the Inquiries Act 2005, and other relevant legislation and recognising the need for the Chair to ensure that members of the public are able to view a record of evidence and documents provided to the Inquiry in accordance with the provisions of section 18 of the 2005 Act.
15. The Inquiry will consider all requests for redaction carefully and in accordance with the principles above.
16. The Inquiry may also request that redactions requested / non-disclosure of a document be instead addressed by way of a "gist", which would allow the Inquiry to disclose all relevant information in a document to CPs. If a gisting exercise can be undertaken the Inquiry will require the MP to provide a proposed Form of Words for consideration by the Inquiry to enable the fullest possible disclosure to CPs.
17. In relation to applications for Restriction Orders, it may be necessary, in some instances, to disclose or put documents into evidence before the applications in question have been fully determined. Pending final resolution, all documents which are disseminated beyond the Inquiry itself will include all the redactions sought, on a provisional basis, in accordance with Rule 12(2) of The Inquiry Rules 2006.
18. Where documents have been provided to the Inquiry, the MP will be given a reasonable time (five working days, save where a different deadline has been agreed) to review redactions applied by the Inquiry before those documents are disclosed to CPs. If no objection is raised within that fixed period of time, the Inquiry will proceed on the basis that the MP has no objections to onwards disclosure.
19. Where documents have been provided by an MP who received those documents from a

law enforcement agency (such as the Independent Office for Police Conduct providing documents which it received from the Metropolitan Police Service), the law enforcement agency which created the documents will be given a reasonable time (five working days, save where a different deadline has been agreed) to review redactions applied by the Inquiry before those documents are disclosed to CPs. If no objection is raised within that fixed period of time, the Inquiry will proceed on the basis that the MP has no objections to onwards disclosure.

20. The National Crime Agency (NCA) will be given the opportunity to review all documents before they are disclosed to CPs (whether or not those documents originated from the NCA). The NCA will be given a reasonable time (five working days, save where a different deadline has been agreed) to review redactions applied by the Inquiry before those documents are disclosed to CPs. If no objection is raised within that fixed period of time, the Inquiry will proceed on the basis that the NCA has no objections to onwards disclosure.
21. Where under paragraphs 18 - 20 above an MP or law enforcement agency requests a redaction which the Inquiry does not agree to make, the MP or law enforcement agency may make an application for a Restriction Order under section 19 of the Inquiries Act 2005.
 - a. Such applications should be made in accordance with the Protocol on Applications for Restriction Orders and within five working days of the Inquiry informing the MP or law enforcement agency that it will not make the requested redaction.
 - b. If no such application is made within five working days, the Inquiry will proceed on the basis that the MP or law enforcement agency does not maintain its objections to onwards disclosure.
 - c. Before such an application is resolved, the Inquiry may disclose the documents to CPs in accordance with paragraph 17 above, or in accordance with Rule 12(3) of The Inquiry Rules 2006.

14 December 2020