

# Protocol for Receipt and Handling of Documents, Redaction and Records Management

## Introduction

1. This Protocol addresses:
  - a. The production of documents to the Inquiry by core participants, providers of documents and the public.
  - b. The handling and receipt of such documents.
  - c. The redaction of such documents.
  - d. Records management and security by the Inquiry team.

## Aims

2. This Protocol is designed to facilitate the prompt delivery of documents to the Inquiry by ensuring that all core participants, providers of documents and the public are aware of and understand the Inquiry's procedure for the:
  - a. Provision of documents to the Inquiry and the handling of such documents.
  - b. Prompt delivery of documents to the Inquiry.
3. The procedures set out in this Protocol are not intended to cover every eventuality. It follows that, in exceptional cases, where the interests of justice and fairness require it, the Inquiry may need to depart from this Protocol. Further, this Protocol may be amended from time to time, in which case an amended version will be published on the Inquiry website.
4. Where the Commissioner needs to make a decision as to the procedure or conduct of the Inquiry not covered by this Protocol, he will, in accordance with his obligations under the Commissions of Inquiry Act 1888 ("**the Act**"), act fairly and with regard to the need to avoid unnecessary cost.

## Definitions

5. In this Protocol:

"**Business information**" includes any document which is generated by the Inquiry and its team during the course of its work and does not include evidential material supplied by PODs.

"**Core Participant ("CP")**" means Core Participant as more particularly defined in the Core Participants Policy.

"**Document**" means anything in which information of any description is recorded, whether in paper or in electronic form. It will include but is not limited to, contract documents, design plans, technical drawings, blueprints, reports, reviews, committee/board minutes, meeting/attendance notes, manuscript notes, memoranda, letters, leaflets, circulars, emails/texts/instant messages, legislation, policy

documents/statements, photographs, video and audio recordings and physical evidence.

**“Provider of documents (‘‘POD’’)** means any person, institution or organisation, which has been asked to provide documents to the Inquiry or which has provided documents to the Inquiry (and includes any CP who has been asked or required to provide documents to the Inquiry). For the avoidance of doubt, it includes Her Majesty’s Government of Gibraltar and any Department of Government or Minister of the Crown.

**“Relevant documents’’** are those which, having regard to the Inquiry’s Terms of Reference, it is likely that the Inquiry panel would (if aware of their existence) wish to be provided with.

## **PART A: PRODUCTION, HANDLING AND RECEIPT OF DOCUMENTATION**

6. The Inquiry requests anyone who holds relevant documents to supply those documents to the Inquiry.
7. Any person who is in possession of relevant documents should contact the Inquiry as soon as possible so that the necessary arrangements can be made for receipt of those documents, via email to the Solicitor to the Inquiry: [Charles.simpson@retcom.gi](mailto:Charles.simpson@retcom.gi) and [Sebastian.triay@retcom.gi](mailto:Sebastian.triay@retcom.gi).
8. Wherever possible the Commissioner intends to rely on voluntary co-operation for production to the Inquiry of the documents he considers necessary to fulfil the Terms of Reference.
9. The Commissioner will normally make a request for voluntary production of documents by means of a letter from the Solicitor to the Inquiry to the person believed to have custody or control of them. The Commissioner expects that all parties to whom a request of this kind is addressed will co-operate with the Inquiry and will provide all relevant material without the need for him to exercise his powers of compulsion of documents or evidence under section 8 of the Act. However, the Commissioner will consider exercising those powers if the response to such or any later request is, for example, refused, or incomplete, or not provided by the stated deadline.
10. PODs, including legal representatives, should provide documents requested by the Commissioner, together with any other documents they consider to be relevant to the Inquiry’s Terms of Reference, without delay and within the time limits specified by the Inquiry. PODs are required to undertake comprehensive, thorough and rigorous searches in response to a request for documents.
11. The Inquiry expects that once documents have been identified every care is taken to ensure that all such documents are preserved in their original form including the associated metadata.
12. The following requirements shall apply in relation to the production of documents:

- a. All documents provided to the Inquiry must be in original form or if not available, in the best available copies.
  - b. All documents should be accompanied by an inventory listing them and signed by or under the authority of the person providing them.
  - c. All documents should be provided electronically where possible. Electronic documents should be provided either in their native format, for example Microsoft Word, Microsoft Excel, MSG email files/PST email containers, or by converting any proprietary file formats to Adobe PDF, with all metadata (as defined in paragraph 5(7) of CPR Practice Direction 31B) preserved as far as possible.
  - d. Where hard copy documentation is provided these should be digitised beforehand to multipage PDF format. If the document is mainly text based, this should be scanned in black and white and should only be scanned in colour where it is critical to the legibility of the document. Scanning settings should be set to 300 dpi (number of dots per inch as scanned) for both black and white and colour documents.
  - e. Except where legal professional privilege or another legal bar to disclosure to the Inquiry is asserted (with detailed reasons being provided) in respect of any document or part of document, all documents must be provided to the Inquiry in unredacted form. Production must not be delayed on grounds that redactions are sought by the POD.
13. A person will not be required to give, produce or provide any evidence or document if:
- (i) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in Gibraltar; or (ii) the requirement would be incompatible with retained EU legislation. Claims to privilege or public interest immunity in respect of evidence to the Inquiry will be handled as follows:
- a. If, and to the extent that the POD wishes to rely on legal professional privilege or another legal rule (including public interest immunity) as a reason for not producing a document, part document or part of a document, the POD 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 POD believes that the privilege or other legal rule prohibiting disclosure to the Inquiry applies.
  - b. Guidance on the applicable tests and definitions of legal professional privilege are located in the White Book 2022 at para 31.3. Before asserting legal professional privilege, PODs should consider carefully whether they should waive that privilege to assist the Inquiry in its work in the public interest.
  - c. The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to the Inquiry as they apply in relation to civil proceedings in a court in Gibraltar. For

the avoidance of doubt, the Inquiry will follow the procedure in CPR r.31.19 to the extent that is practicable. Applications should only be made without notice where absolutely necessary. Where an application has been made without notice, the Commissioner may give other Core Participants the opportunity to make submissions on the application, for example by disclosing a redacted version of the document and/or requiring undertakings from the Core Participants and their representatives that the disclosed information will not be shared more widely.

- d. Applications on the ground of public interest immunity will be decided in accordance with the following test:
  - i. What is the material that is sought to be withheld? This must be considered in detail.
  - ii. Is the material such as may weaken a party's case or strengthen that of his opponent?
  - iii. Is there a real or serious risk of prejudice to an important public interest if full disclosure of the material is ordered?
  - iv. If the answer to (ii) or (iii) is yes, can the interests of the party not asserting the privilege be protected without disclosure or disclosure be ordered in such a way as to give adequate protection to the public interests in question and also afford adequate protection to those interests? This question requires consideration, with specific reference to the material sought to be withheld and the facts of the case and the issues as disclosed, whether it is possible for formal admissions to be made, or whether disclosure short of full disclosure may be ordered. This may be done in appropriate cases by the preparation of summaries (or 'gists'), extracts of evidence, or the provision of documents in redacted form and approved by the tribunal.
  - v. Do the measures proposed in answer to (iv) represent the minimum derogation necessary to protect the public interest in question?
  - vi. If limited disclosure pursuant to (iv) or (v) is ordered, may its effect be to render the trial process viewed as a whole unfair?
  - vii. These matters relating to disclosure and the assertion of public interest immunity must be kept under review throughout the trial process.
  
- e. The Commissioner will address issues of privilege and immunity as and when they are raised, whether at the time of disclosure to the Inquiry, dissemination to other parties or at or prior to the main hearing. Core Participants are encouraged to raise any issue of privilege or immunity at the earliest possible stage.

14. The Inquiry, being a public inquiry, seeks to be as transparent as possible. This means that it expects to disclose material to core participants and may (regardless of disclosure to any person) seek to use such material as part of its body of documentary evidence to which reference may be made by its experts or in its reports and as such may form part of the Inquiry record, including being published on the Inquiry website.

15. The Inquiry will work on the assumption that any material in its possession may be disclosed or used in the manner set out above. Should a POD seek to object to disclosure or use by the Inquiry, then it should identify its objection in full by reference to specific documents or categories of documents, and support it by legal submissions in any covering letter accompanying the material, explaining why this course should not be followed in the specific circumstances.

## **PART B: REDACTION OF DOCUMENTS**

16. It is important that the Inquiry sees all documents it obtains from participants, witnesses and other sources which are relevant to its work in complete form. However, there may be legal reasons why the Inquiry may need to apply redactions to documents before they are disclosed to Core Participants and ultimately to the general public via a public hearing or a report.
17. This Protocol sets out the approach that will be taken by the Inquiry to the redaction of documents. Its purpose is to ensure that PODs understand how the Inquiry will deal with documents it intends to publish.
18. 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 a POD.

### **Production of Documents to Core Participants**

19. On 6 April 2023 and 16 May 2023, the Inquiry has provided the documents which the Inquiry received prior to 8 February 2023 and which it has deemed relevant to the Issues (the “Documents”) to the CPs who are CPs in respect of all issues.
20. There have been a number of requests for redactions by the various PODs, which the Inquiry is processing. To date the Inquiry has not determined all the redaction requests and will be writing to the PODs in this regard. Each of these participants (and each member of their legal team) undertook to keep the Documents confidential, unless and until it was called to evidence at a public hearing of the Inquiry.
21. Prior to the Documents being called into evidence and/or being published to the Inquiry website, each POD may indicate in writing to the Solicitor to the Inquiry (copied to all other CPs) which part or parts of the Documents (if any) it seeks to have redacted. Reasons must be given for each proposed redaction.

### **Redaction of further documents and evidence**

22. Following the receipt of witness evidence and/or disclosure, and once the Inquiry has decided which documents it intends to disclose to CPs with a view to putting them in evidence, it will notify the POD, so that the POD may indicate which part or parts of the document (if any) it seeks to have redacted. The POD should make any such indication within 14 days of receipt of notification from the Inquiry, in writing to the

Solicitor to the Inquiry. If the POD is a Core Participant, save where prior leave is granted by the Commissioner, the indication should be copied to all other Core Participants. Reasons must be given for each proposed redaction, and the POD should indicate whether the redaction is sought:

- a. in order to prevent the information becoming accessible to the public; or
- b. in order to prevent the information becoming accessible to other Core Participants as well as the public.

23. If any Core Participant objects to a proposed redaction, it should, within 7 days of receipt of an indication in accordance with paragraph 22 above, state its objection with reasons in writing to the Solicitor to the Inquiry (copied to all other Core Participants).

### **Reasons for redaction**

24. It is the Commissioner's intention that members of the public have access to a record of evidence produced at the Inquiry, and will publish documents as soon as is practicable at or following the relevant hearing. The Inquiry expects PODs to adopt a measured approach when seeking redactions and will only redact information where the case for this is properly made out, recognising the need for the Commissioner to ensure as far as possible that members of the public are able to view a record of evidence and documents provided to the Inquiry.

25. There are a number of reasons why documents or parts of documents provided to the Inquiry may be withheld from wider dissemination and/or redacted prior to disclosure to Core Participants and/or inclusion in evidence. In exceptional circumstances, the Inquiry may also hear evidence in private. Those reasons include the following:

- a. the information in question is sensitive and irrelevant to the Inquiry's work;
- b. the information in question constitutes personal data within the meaning of data protection legislation, further disclosure of which is prohibited by that legislation;
- c. the information in question would cause harm or damage to the public interest, such that it is contended that the Commissioner should impose restrictions on its disclosure or publication, including where conditions as to confidentiality applied to the circumstances in which the information was obtained, or circumstances where publication of information would lead to:
  - i. death or injury;
  - ii. damage to national security or international relations;
  - iii. damage to the economic interests of Gibraltar;
  - iv. damage caused by disclosure of commercially sensitive information;
  - v. harm or damage to the public interest on grounds of public interest immunity; and

- vi. prejudice to the course or outcome of any ongoing criminal investigation or prosecution into matters relating to the information proposed for release.

### **Determination of requests for redaction**

26. The Commissioner will consider all requests for redaction carefully.
27. If the Commissioner determines that it is appropriate to redact any document, it will be available for disclosure to CPs or use in evidence (as the case may be) in redacted form only, and will be published in that form on the Inquiry's website following the hearing.
28. If the Commissioner does not consider that grounds for redaction have been made out, the Inquiry will notify the POD before the document in question is disclosed to the CPs (or, in the case of the Documents, put into evidence).

### **Redaction of Personal Data**

29. The Inquiry will review all documents before disclosing them to other parties, calling them into evidence and/or publishing them on the Inquiry's website, to ensure that it complies with its own obligations under the Gibraltar General Data Protection Regulation and the Data Protection Act 2004 in respect of personal data. The Inquiry's approach to redaction of personal data is governed by the relevance of that data to the Inquiry and the necessity of its disclosure.
30. PODs are expected to ensure that all personal data is identified for the purposes of redaction. If members of the Inquiry team identify any personal data that has not been identified by the POD they will redact it without further notice unless the Commissioner considers that it is of relevance and necessary for the purposes of the Inquiry.
31. The Inquiry will normally treat as personal information:
  - a. home addresses;
  - b. private email addresses;
  - c. private telephone numbers;
  - d. identification card numbers;
  - e. an Internet Protocol (IP) address;
  - f. dates of birth;
  - g. medical information (including information about medical treatment); and
  - h. personal financial information.

Such information will be redacted without the need for any restriction order or order for anonymity.

32. Anyone who contends that a document produced or provided to the Inquiry should be anonymised or redacted otherwise than in accordance with the preceding paragraphs of this Protocol may make an application to the Commissioner in writing. Any such application must include a copy of the document in question marked up with the proposed redaction and must contain a brief statement of the grounds on which it is made.

## **PART C: RECORDS MANAGEMENT**

33. Business information should be held in digital format. Significant emails must not be stored solely in personal mailboxes without a backup.
34. It is important that business information is captured so that important records survive which capture the following:
  - a. A decision and how that decision was reached (e.g. minutes of meetings, correspondence prior to and after the meeting that result in a decision being made and/or an action taken forward).
  - b. How procedures work (e.g. work plans, standard operating procedures and changes to them).
  - c. Contractual/purchasing arrangements (e.g. service delivery contracts, purchase orders).
35. Additionally large numbers of evidential documents have been received from contributing organisations and individuals. These will be managed so that information is available only to those who need to access and share it, allowing them to work securely and effectively.

### **Sharing and handling of data**

36. The Inquiry has many stakeholders and it will sometimes be necessary to share data with them. The Inquiry's stakeholders are the Core Participants, the other persons or entities mentioned in paragraph 20 of the Privacy Notice and such other persons as the Commissioner may consider appropriate in discharging his Commission. Data will be shared securely in line with data protection legislation.
37. The Inquiry is registered with the Information Commissioner's Office as a data controller because the Inquiry decides how both personal and sensitive personal data are processed.

### **Requests under the Freedom of Information Act**



38. The Inquiry is not a public authority for the purposes of the Freedom of Information Act (Fol) 2018. Therefore, while the Inquiry is in the course of its work and before its conclusion, the Act does not strictly apply and any requests for information made under the Act will not be considered.
39. However, to balance this approach the Inquiry will operate on a presumption of openness and transparency. As much information as possible will be provided publicly, mainly through the Inquiry's website.

### **Security of information**

40. The security of information that the Inquiry gathers, holds and has access to is fundamental to its integrity. It will also assist in delivering the success of the Inquiry. Therefore, information must be protected and kept secure.
41. As well as document handling and clear desk policies in the office and off-site, the Inquiry team must observe the need for security when working from home, by not removing material from the office environment, when working on public transport and in discussions about the work of the Inquiry with family, friends, and other third parties including officials from government departments.
42. As far as possible, digital documents will not be printed; where it is necessary to print, paper copies will be placed in shredding cabinets as soon as they are no longer needed and the clear desk policy will be adhered to at all times i.e. no papers left unattended on desks, and all papers cleared away at the end of day and either locked away or shredded.
43. Members of the Inquiry team will conduct all business of the Inquiry on secure devices.
44. Members of the Inquiry team must not email any information relating to the Inquiry to any personal devices or email accounts.

### **Retention and disposal of emails**

45. Significant dialogue and decision making now often takes place by email. Storing such emails in personal mailboxes means they cannot be shared appropriately with other colleagues.
46. Any substantive discussions/decisions should be recorded via email or documents in accordance with retention of the decision-making process for key outcomes. The Inquiry also uses other means of communication to maintain communication if the primary system is offline for any reason, and for purely administrative issues. No business decisions are to be recorded in this application.
47. Emails need to be managed, so that:
  - a. substantive emails should be saved appropriately;

- b. retention schedules will be applied to all substantive emails;
  - c. ephemeral emails which will not become a matter of record should be deleted as soon as possible, and personal email accounts will not be retained.
48. At the end of the retention period, records will either be destroyed, or will be stored by the Secretary to the Inquiry in a suitable location, to be designated at his discretion. Before transfer, the records, regardless of format, will be reviewed and any FoI exemptions identified and records appropriately marked or redacted.

### **Roles and responsibilities**

49. Sir Peter Openshaw, as the Commissioner of the Inquiry, has ultimate responsibility for the Inquiry's records and must ensure that appropriate functions, policies and procedures are in place to support the Inquiry during its lifetime and to produce a permanent record once the final report has been published.
50. All members of the Inquiry team must ensure that comprehensive records are kept of the Inquiry's activities.

### **Compliance**

51. This policy applies to all members of the Inquiry team, consultants and contractors. Third party suppliers and anyone providing a service on the Inquiry's behalf should also be aware of the content of the policy.

**Issued under the authority of the Commissioner on 23 September 2022; updated on 22 May 2023**