

Protocol on the Production, Handling and Retention of Documents

Purpose of the Protocol

1. To carry out its investigation effectively, the Eljamel Inquiry (“the Inquiry”) needs to recover documents that relate to matters within the scope of its Terms of Reference.
2. The purpose of this Protocol is to explain:
 - A) Definitions relevant to this Protocol;
 - B) How the Inquiry will request or order the production of and receive documents;
 - C) How the Inquiry will manage documents once they have been received;
 - D) How long the Inquiry will retain documents; and
 - E) How the Inquiry will receive enquiries about this Protocol.
3. As with all of the work of the Inquiry, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry’s Statement on Protocols and Principles. In particular, the Chair may deem it appropriate to change or update the contents of this Protocol in accordance with the provisions of that Statement.
4. Further, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry’s other Protocols and Orders published or to be published in due course, including, in particular, its Protocol on Disclosure, Publication, Restriction and Anonymity and its Restriction Order Application Protocol.

A) Definitions

5. “Redaction” is the removal of information from a document, usually by blacking out words. The Inquiry’s approach to Redaction is or will be set out in its Protocol on Disclosure, Publication, Restriction and Anonymity.
6. “Disclosure” is the process of making available relevant material to core participants and (in some instances) persons from whom the Inquiry proposes to take evidence. Such relevant material is disclosed subject to a strict undertaking to the Inquiry of confidentiality by the recipient of the Disclosure (and their recognised legal representative, if any), not to reveal the whole or any part of that material (or any information contained within it) to others. The Inquiry’s approach to Disclosure is or will be set out in its Orders and its Protocol on Disclosure, Publication, Restriction and Anonymity.
7. “Publication” is the process of making information available to members of the public (a) on the Inquiry website, which is freely accessible (b) during oral hearings of the Inquiry, which are streamed on the Inquiry’s YouTube channel; and (c) as part of any interim or final report, which will be published in accordance with arrangements made under section 25 of the Inquiries Act 2005 (“the Act”). The Inquiry’s approach to Publication is or will be set out in its Orders and its Protocol on Disclosure, Publication, Restriction and Anonymity.
8. “Restriction order” is the name given to an order under section 19 of the Act, which restricts disclosure or publication of information. The Inquiry’s approach to Restriction orders is or will be set out in its Restriction Order Application Protocol.
9. A “document” includes information recorded in any form. This can mean in paper or electronic form. It includes but is not limited to text messages, emails, social media posts, letters, statements, manuscript notes, medical records (including scans),

meeting/attendance notes, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata.

10. A “relevant document” is one which, having regard to the Inquiry’s Terms of Reference, and any specific request for information received from the Inquiry, it is likely that the Inquiry would (if aware of its existence) wish to be provided with.

B) Production of documents to the Inquiry

General

11. Under its Terms of Reference, issues of candour and openness are key considerations for this Inquiry. It is required and determined to conduct its work efficiently. In light of that, the highest levels of cooperation and transparency are expected from all individuals and organisations in responding to requests for documents and information. It is expected that full and prompt disclosure of material will be provided, that deadlines will be complied with and that any concerns will be raised with the Inquiry team at the earliest reasonable time.

Rule 8 requests for documents

12. In the normal course, the Inquiry will issue requests for the production of documents to it under rule 8 of the Inquiries (Scotland) Rules 2007 (“the Rules”) to individuals or organisations known or thought by the Inquiry to hold documents which may be relevant to the Terms of Reference of the Inquiry.
13. Rule 8 requests will detail the documents required by the Inquiry at that time. The Inquiry will impose a deadline for the production of documents from the provider of the documents (the “Material Provider”). The Inquiry will usually contact Material Providers regarding the types and documents which it intends to seek to recover from the Material Provider and the timescales which will be attached to the request, usually with a draft of the request which it intends to serve on the Material Provider.

14. Rule 8 requests will require that sets of documents being produced to the Inquiry be accompanied by a numbered inventory. Further instructions on what to include in the inventory will be issued alongside rule 8 requests for documents.
15. The production of a document or documents to the Inquiry cannot be delayed on the grounds that a party will seek Redaction of or a Restriction order relating to material contained within it/ them.

Section 21 notices

16. In certain circumstances, the Chair of the Inquiry may deem it necessary for the Inquiry to issue a notice under section 21 of the Act. This makes it a legal requirement for a Material Provider to produce documents. To not do so is a criminal offence under section 35 of the Act.
17. Circumstances where a notice under section 21 of the Act may be issued by the Inquiry include:
 - (a) where a Material Provider reasonably indicates that they can only provide documents if required by such a notice, as opposed to in response to a rule 8 request. Where this is a requirement for a Material Provider to produce documents requested by the Inquiry they should indicate this in writing to the Solicitor to the Inquiry as soon as possible; and
 - (b) where a Material Provider fails to comply with a request for documents made under rule 8.
18. The provisions of paragraphs 13 to 15 above will apply to section 21 notices in the same way as they do to rule 8 requests.

Searches for documents by Material Providers

19. The Inquiry expects that once Material Providers have identified that documents are relevant to the Inquiry's Terms of Reference, every care is taken to ensure that all such documents are preserved in their original form until the end of the Inquiry, unless express permission with justification for destruction is sought and granted by the Chair. All such applications should be made to the Chair in writing, through the Solicitor to the Inquiry.
20. Where a rule 8 request is made or a section 21 notice is issued to a Material Provider for the production of documents, the Material Provider should undertake comprehensive, thorough and rigorous searches for all relevant documents falling within the scope of the rule 8 request or section 21 notice.
21. Where electronic searches are being made for documents in response to a rule 8 request or section 21 notice for their production, the Inquiry will (in the normal course) expect Material Providers to explain to the Inquiry what search terms and search methods were used to identify the documents which have been selected for production.
22. In the normal course, the Inquiry will require Material Providers to sign a disclosure statement relating to their response to the rule 8 request or section 21 notice for the production of documents setting out:
- (a) the process they have adopted in preparing the response to the rule 8 request or section 21 notice (including electronic search methodology, as per paragraph 21 above);
 - (b) a confirmation that they have provided the Inquiry with all documents which they hold falling within the terms of the rule 8 request or section 21 notice;
 - (c) an account of whether they ever previously held documents falling within the terms of the rule 8 request or section 21 notice and an explanation of why they no longer hold them;

- (d) an explanation of the identity of any individual or organisation whom or which the Material Provider reasonably suspects holds documents falling within the terms of the rule 8 request or section 21 notice; and
- (e) an account that satisfies the conditions of section 22 of the Act for any documents falling within the scope of the rule 8 request or the section 21 notice which are being withheld and the reasons for not producing them.

23. The Inquiry will monitor the extent to which the documents produced appear to contain everything likely to be held by the Material Provider, in a timely fashion and a manner which assists the Inquiry.

Form in which documents are to be provided to the Inquiry

24. All documents produced to the Inquiry must be in their original form. They should not have been edited or redacted or in any way altered. If originals are not available, documents should be provided in the best available copies.

25. Material Providers should not themselves make any Redaction to the documents before providing them to the Inquiry. The Inquiry will filter the documents produced for relevancy and to determine what documents are appropriate for Disclosure and/or Publication. The Inquiry will then apply Redaction to the documents in accordance with the requirements of the law, its Orders and Protocols.

26. All documents should be provided electronically. The Inquiry will be using an online document management review system and 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.

27. Where hard copy documentation is available this should be digitised beforehand to multipage PDF format. All digital images should be legible and at least as readable as

the original image from which they are derived. As a guide, scanning settings should be set to, at least, 300 PPI (pixels per inch) for both black and white and colour documents. This should be increased to 600 PPI for photographs.

28. If any party is only able to submit material in hard copy (i.e. to send original physical documentation) by any means other than the Inquiry's document management system, they must first contact the Inquiry legal team on legal@eljamelinquiry.scot with an explanation of why the material cannot be provided using the Inquiry's document management system before production. If the Inquiry authorises the production of documents by alternative means, the Inquiry will supply further instructions as to how any hard copy documents should be submitted to the Inquiry.

C) Management of documents produced to the Inquiry

29. Documents produced to the Inquiry will in the first instance be subject to a relevancy assessment to remove wholly irrelevant documents and any duplicates (where appropriate). Wholly irrelevant or duplicate material (in appropriate circumstances) will be deleted from the Inquiry's systems or will be returned to the Material Provider who/ which provided it if provided by alternative means (see above).
30. Documents that are deemed to be relevant will be subject to a process of Redaction prior to Disclosure. The process and principles by which the Inquiry will seek to agree what Redaction it will apply to documents prior to their Disclosure and/ or Publication are set out in its Orders other Protocols, as referred to above.
31. If a Material Provider or other interested party considers there are reasons why a document should not be disclosed or published, they may apply to the Chair for a Restriction order preventing such Disclosure and/ or Publication in accordance with section 19 of the Act. The process by which a Material Provider or other interested party can seek to have Redactions applied to documents prior to their Disclosure or Publication are or will be set out in the Inquiry's Orders and other Protocols, as referred to above.

D) Retention of documents

32. At its conclusion, material from the Inquiry's records (including evidence held by it) will be passed to the Keeper of the Records of Scotland in accordance with rule 16(3) of Rules and, therefore, will be accessible by the public in accordance with the rules and procedures of the National Records of Scotland.

E) Enquiries

33. Please contact the Inquiry legal team with any enquiries about the content of this Protocol by emailing legal@eljamelinquiry.scot

Issued under the authority of the Chair on 8 May 2025