

In the matter of section 19(2)(b) of the Inquiries Act 2005

Application for a restriction order by the Scottish Ministers

Ruling on redaction of documents

Introduction

1. The Scottish Ministers have made an application dated 13 July 2026 for a restriction order restricting the publication of the identities of junior civil servants, insofar as they are referred to in documents published by the Inquiry.

2. By “junior civil servants” the Scottish Ministers mean employees or officials of the United Kingdom and/or Scottish Government, with the exception of the following:

“Elected officials, including Scottish Ministers, Members of the Scottish Parliament, UK Ministers and Members of Parliament, Ministers and Members of other governments (including devolved administrations), the Chief Medical Officer, National Clinical Director, The Scottish Law Officers, the Head of State, Chief Executives, Director and Senior Civil Servants.

Scottish Government Senior Civil Servants are considered to be Deputy Director (SCS1 and SCS1a), Director, Director General and Permanent Secretary”.

3. Although the application is not perhaps as clear as it might be on the matter, I proceed on the basis that the order sought is intended to achieve restriction (by way of redaction) of the names of junior civil servants from documentation (a) when it is disclosed to core participants (b) when it might be spoken to in oral evidence and (c) when it is published on the Inquiry’s website, as these stages of the Inquiry’s procedures are defined in its Protocols.

Background

4. By way of background to this restriction order application, the Scottish Ministers have disclosed to the Inquiry, in reference to section 1 of its evidential hearings, a large body of documentation in response to the Inquiry's request for evidence under rule 8 of the Inquiries (Scotland) Rules 2007. The scope of the rule 8 request for evidence was framed in order to cover a number of specific areas, including (i) the roles and responsibilities of the Scottish Government in relation to the practice of neurosurgeons such as Mr Eljamel; (ii) the involvement of the Scottish Government with the professional practice of Mr Eljamel; (iii) the Scottish Government's knowledge of, or involvement in, previous investigations into the professional practice of Mr Eljamel, and (iv) the Scottish Government's involvement (if any) in various roles held by Mr Eljamel over the period with which the Inquiry is concerned. The response by the Scottish Government includes a substantial body of internal correspondence between Scottish Government civil servants. The documents have been provided to the Inquiry unredacted, as is required by the Inquiry's procedures.

5. The process by which an application for a restriction order may be made is addressed in the Inquiry's Restriction Order Application Protocol .

6. Paragraph 17 of the Restriction Order Application Protocol, so far as relevant for present purposes, provides as follows:

"17. Upon receipt of an Application, the Inquiry will follow the general process set out below:

(a) The Open Section of the Application will normally be disclosed to Core Participants and the media and other persons or organisations identified by the Chair as having a proper interest in the Application, subject to the Inquiry's First Order. It may also be published on the Inquiry's website, if the Chair considers wider publication of it is necessary. The Chair may issue a note of his provisional views in relation to the Application (a "Provisional Decision") when disclosing the Open Section...

(b) [...]

(c) The Chair will normally invite Core Participants, members of the media and other persons or organisations identified by the Chair as having a proper interest in the Application, to provide the Inquiry with written submissions in response to the Application (and any Provisional Decision that was issued). Such submissions may be published on the Inquiry's website.

(d) The Chair may thereafter: (i) invite Counsel to the Inquiry to provide him with written submissions in response to the Application (and any Provisional Decision that was issued): and (ii) hear oral submissions on the Application at a hearing, attendance at which may be restricted by the Chair in accordance with section 19 of the [2005 Act].

(e) The Chair will determine the Application and give a written ruling, which will be published in the Inquiry's website...

18. Any Restriction Orders made by the Chair will be published in the Inquiry's website.

19. The Chair may vary the procedure set out above as set out in individual Applications..."

7. From the foregoing it will be apparent that, for many applications for a restriction order, the Chair will invite written submissions from Core Participants and other interested parties and organisations with an identifiable interest in the subject matter of a given application. In the instant case, however, I have exercised my discretion under paragraph 19 of the Restriction Order Application Protocol to determine the application without doing so. I have taken this approach because the nature of the application, which seeks what is in the nature of a blanket restriction, does not raise any important matter of principle that cannot be resolved summarily. That being so, I did not consider that I would be assisted by further submissions on the matter.

The law

The Inquiries Act 2005 (the “2005 Act”)

9. Section 18(1) of the 2005 Act provides as follows:

“(1) Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able –

(a) to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;

(b) to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.”

11. Section 19 of the 2005 Act makes provision for restrictions that may be imposed on the public access provided for in section 18. So far as relevant, it provides as follows:

“(1) Restrictions may, in accordance with this section, be imposed on –

(a) attendance at an inquiry, or any particular part of an inquiry;

(b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.

(2) Restrictions may be imposed in either or both of the following ways –

(a) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;

(b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.

(3) A restriction notice or restriction order must specify only such restrictions –

(a) as are required by any statutory provision, retained enforceable EU obligation or rule of law, or

(b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters specified in subsection (4).

(4) Those matters are –

(a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;

(b) any risk of harm or damage that could be avoided or reduced by any such restriction;

(c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the Inquiry;

(d) the extent to which imposing any particular restriction would be likely –

(i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or

(ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

(5) In subsection (4)(b) “harm or damage” includes in particular –

(a) death or injury;

(b) damage to national security or international relations;

(c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

(d) damage caused by disclosure of commercially sensitive information.”

The basis for the application

10. The Scottish Ministers contend that the identities of civil servants who are the subject of the application are not relevant for the purposes of the Inquiry's functions. Disclosure of their identities goes further than is necessary to pursue the Inquiry's objectives. The public will not materially benefit, nor be more informed, about the issues in controversy, by the publication of the identities of junior civil servants. The public will continue to have a full understanding of (i) the decisions made by Scottish Ministers, and (ii) the identities of those who were in a decision-making role. The application accords with the Inquiry's approach to redaction of sensitive or irrelevant information, as set out in paragraph 20 of the Protocol on Disclosure, Publication, Restriction and Anonymity. Moreover, expressed in terms of the potential risk of harm, junior civil servants have an expectation of privacy in respect of the work that they do. Absent authority to take the decisions that are the subject of controversy, it is unfair to attach them to those decisions and invite potential public criticism. Publication of such information may be a matter of distress and anxiety for those who are subject to such publication. In any event, the approach contended for by the Scottish Ministers is consistent with that taken by other public inquiries, reference being made to the relevant Protocols of both the UK and Scottish Covid Inquiries which provide for the redaction of the names of those who worked in junior positions in recognition of the reasonable expectation of privacy held by them.

Discussion and Ruling

11. Section 18 of the 2005 Act imposes on the Inquiry Chair a statutory obligation to secure that members of the public can obtain or view a record of the evidence, and

documents given, produced or provided to the Inquiry. There is, under that statutory provision, an expectation of publication. It is consistent with the Inquiry's general approach of openness and transparency, while recognising the requirement to protect, where it is appropriate to do so, the identities of people and other information.

12. When determining an application for a restriction order under section 19 of the 2005 Act the Chair must conduct a balancing exercise between, on the one hand, the public interest in publication of documents provided to the Inquiry and, on the other hand, the public interest in restricting publication where conducive to fulfilment of the Terms of Reference or necessary in the public interest. It is for the applicant for a restriction order to satisfy the Chair as to those matters.

13. It is worth recording at the outset that the Scottish Ministers accept that disclosure of the identities of junior civil servants covered by the application would not breach any statutory provision, assimilated enforceable obligation or rule of law. Rather, the contentions are (i) that the identities of those in a subordinate position, charged only with carrying out the decisions reached by elected officials and senior civil servants, are irrelevant for the purposes of the Inquiry's functions, and (ii) that, in any event, junior civil servants have a reasonable expectation of privacy in the work they do, and publication may be a matter of distress and anxiety for those who are subject to such publication. It is also important, in a consideration of these matters, to observe that the application is not case- or fact-specific. It seeks in effect a class restriction without consideration of the circumstances of particular civil servants. I take each of the contentions in turn.

Relevance

14. The first contention advanced is to the effect that, as a class, the identity of junior civil servants named in any of the material disclosed to the Inquiry is irrelevant to the matters subject to inquiry because they were involved only in the execution of decisions which may in due course be interrogated by the Inquiry. By contrast, the Scottish Ministers do not seek to restrict the identities of those who were involved in making those decisions. I pause to observe that it is not correct to state, as the application implies, that the Inquiry is only concerned with decision-making. It is not.

An examination of the Terms of Reference and List of Issues demonstrates that, while decision-making may be an important facet of the Inquiry's investigations, its interest and reach are broader than that. That said, the scope of Term of Reference 12, in which the Scottish Ministers feature, clearly contemplates that decision-making within the Scottish Government will be examined.

15. The principles involved in considering the proposed redaction of documents provided by government departments were considered in the case of *R. (IAB and others) v SSHD and another* [2024] 1 WLR 1916. Although a case involving judicial review it is an important one for present purposes in as much as it too involved the contention that the names of all junior civil servants should be redacted from documentation disclosed to the court. The contention was decisively rejected both at first instance and on appeal, the court confirming that the principles of open justice, and the particular duty of candour incumbent on public bodies in judicial review proceedings, required that the names of junior civil servants should not ordinarily be routinely redacted when providing disclosure to the court. The way the matter was expressed in the first instance decision of Swift J is instructive. At paragraph 22 of the judgment he said this:

“...redaction on grounds of relevance alone ought not to be confined to clear situations where the information redacted does not concern the decision under challenge. The names the Secretaries of State seek to protect are not in this class. Names of civil servants should not routinely be redacted from disclosable documents; redaction should take place only when it is necessary for good and sufficient reason. This conclusion is consistent with the obligation of candour and with the general principle of cooperation between public authorities and the court that is one foundation for judicial scrutiny.”

While the context is the decision-making process in judicial review proceedings, there is in my view no reason why the guidance cannot be read across to the situation of Public Inquiries where, as the application appears to accept, there will be an obligation to explain decision-making processes within the Scottish Government in the context of this Inquiry and its Terms of Reference.

16. It is worth recalling that, although the application asserts that the identities of junior civil servants are not relevant for the purposes of the Inquiry's functions, they appear within documentation which has been provided to the Inquiry and deemed by the Scottish Ministers to be relevant to the Inquiry's Terms of Reference. That being so, it is in my view artificial to assert in the generality that the identity of all junior civil servants associated with that documentation is irrelevant for the purposes of the Inquiry's functions.

17. Moreover, the proposed redaction of the names of all junior civil servants as a class carries with it practical ramifications. These are eloquently expressed by Swift J in the *IAB* litigation and are worthy of repetition:

“Redaction leads to significant practical difficulties. The present case is an example of a common situation where e-mail exchanges and other contemporaneous documents are disclosed to explain a decision-making process. Most decisions made within central government now involve significantly sized groups of civil servants. On any occasion one civil servant within the group might be the sender of the message, might be the recipient of the message or might (usually, will probably) be copied in. Sometimes (as in this case), civil servants within the group are spread across different government departments. At the least, redacting names makes the decision-making process and the significance of each document disclosed more difficult to understand. In some instances, it may obscure the significance of a document completely. When correspondence and other documents are disclosed for the purpose of evidencing a decision-making process it will rarely be the case that it will not assist the court's understanding of that process and the decision itself to know by whom or to whom documents were sent, forwarded or copied. In most cases, when this information is redacted, any outsider's understanding of the documents (and for this purpose the court is an outsider) is significantly hampered. Misunderstanding and misinterpretation become commonplace. When documents are disclosed, and parties then rely on them by including them in the hearings bundle, the court is under a practical obligation to consider those documents with a view to making sense of how the information in the documents bears upon the legality of the decision under

challenge. All of this is made much more difficult and much more time-consuming when (for example) successive strings of e-mail correspondence, each pages long, are entirely anonymised. The same point applies to names redacted in the body of correspondence or other documents. All such redactions only detract from the intelligibility of the document and impair achievement of the purpose for which the document was disclosed in the litigation.”

The passage quoted shines a light on the importance of being able to make a connection between individuals and documents in order to be properly informed of their meaning and significance, and the roles and responsibilities of those involved in the underlying matters. Beyond that, there is nothing I can usefully add to this commentary other than to adopt it.

18. Finally, I note that the Court in the *IAB* litigation quoted with approval the conclusions of Fordham J in *R. v (Sneddon) v Secretary of State for Justice* [2024] 1 WLR 1894, another case concerning the non-disclosure of the real names of individuals, to the effect that:

“...[N]aming people who are part of the story is benign. Open justice is promoted. There is no special treatment. Judges should not write a judgment asking: “is there a necessity for giving this name?” The question has to be whether there is a necessity for protecting someone’s identity...”

19. No such necessity has been made out in the instant application. More specifically, I am not satisfied that the public interest is served by the wholesale redaction of the identities of junior civil servants contended for by the Scottish Ministers.

Privacy and harm

20. I turn more briefly to the broad argument advanced in the application to the effect that junior civil servants have a reasonable expectation of privacy in respect of the work they do. This too is presented as a general proposition. The existence of such an expectation was also considered and again rejected in the *IAB* litigation. Swift J,

held that no general expectation of confidentiality could be reasonable and would not attach to any person as a matter of general employment law. Significantly, at paragraph [25] of the judgment, he said this:

“Moreover, when at work civil servants are not involved in anything that can be described as a private activity, they are exercising public functions as part of the public service of the country”.

I would only add that for present purposes they are also doing so in connection with the work of the Scottish Ministers who are covered by the section 1 rule 8 request served on them, or in the provision of a response to that request. As previously mentioned, the case under consideration involved judicial review proceedings. However, the passage quoted, read in context, can be read as having more general application. It stands at odds with the general contention advanced which, taken to its logical conclusion, would mean that the powers of the Inquiry could be circumvented by essentially private arrangements between an organisation involved in its work and its employees. I decline to give effect to it.

21. For completeness, I am not persuaded that any different view should be taken simply because of an apparently different approach to junior civil servants' identities taken by other current Inquiries. The Inquiry requires to consider the question of restriction of material from disclosure or publication in terms of the requirements of its own investigations as determined by the ambit of its own Terms of Reference and under the statutory framework that governs the way in which the Inquiry is conducted. Nor, I might add, does the approach taken to the redaction of the names of junior civil servants in the protocols of the Inquiries mentioned in the application necessarily reflect a common approach to the issue by contemporary Inquires (see eg. *Post Office Inquiry Final Decision, Sir Wyn Williams, on restriction order made by BEIS, 7 July 2022*; *Omagh Bombing Inquiry, Ruling on Redaction of Documents, Lord Turnbull, 2 June 2025*; *Nottingham Inquiry, Decision of HH Deborah Taylor regarding request by CPS to amend redaction procedures (17 September 2025)*).

Risk of harm

22. I can also deal with this aspect of the application briefly. The material supporting averments in the application state this:

“[Junior civil servants] do not exercise decision-making functions that ought to involve them in public controversy. Absent the authority to take the decisions that are the subject of controversy, it is unfair to attach them to those decisions and, as a result, invite potential public criticism. Publication of such information may be a matter of distress and anxiety for those who are subject to such publication...”

With respect, as the vague and general wording itself makes clear, this is simply an exercise in speculation. Even assuming for the moment that the Inquiry was only interested in decision-making (which it isn't) there is no specification as to the nature of any particular decision, or decisions, of “controversy” from which the risk of harm to an entire class of individuals, as opposed to a particular civil servant, could be inferred. I do not consider that I can give effect to the Scottish Ministers' application on this generalised basis.

Ruling

23. For the foregoing reasons the application under section 19(2)(b) of the 2005 Act is refused. The material most nearly concerned may now be disclosed to core participants without redaction of the names of junior civil servants as defined in the application and, in due course, published on the Inquiry's website, as is deemed necessary in accordance with the provisions of the 2005 Act and the Inquiry's approach to publication of documents.

The Hon. Lord Weir
23 July 2026