

GUIDANCE – ON DOCUMENTS

Requests for documents

1. Wherever possible the Chairman intends to rely on voluntary co-operation for production to the Inquiry of documents he considers necessary to fulfil the Inquiry's Terms of Reference.
2. A request for documents will be made by letter, normally from the Solicitor to the Inquiry, to the person believed to hold the document. The request will include the date or time by which the document must be provided.
3. If the person advises the Inquiry, in response to a request, that a document has been destroyed or lost, the person may be asked to explain the circumstances of its destruction or loss including who authorised its destruction and whether its destruction or loss was in accordance with a document retention policy.

Notice requiring production of documents

4. The Chairman has power under the Inquiries Act 2005 to issue a notice requiring a person to produce a document. A notice will be issued by letter from the Chairman to the person believed to hold the document. The notice will include a reasonable time period within which it must be complied with.
5. A person who has received a notice for production of documents but who considers he or she is not able to comply with the notice, or that it is not reasonable to require him or her to comply, should contact the Inquiry as soon as possible, setting out in writing the reasons for this.
6. The Chairman will consider any such response and, having regard to the public interest in the information being obtained and the likely importance of the information to the Inquiry, may decide to revoke or amend the notice.
7. Where a person refuses to comply with a notice requiring production of documents or threatens to refuse to comply, the Chairman may apply to the Court of Session for an order for enforcement of the notice or otherwise. The Court of Session may hear evidence or representations about the application for an order before deciding whether to make such an order.
8. A person is not required to comply with a notice requiring production of documents (a) if the person could not be required to produce the document in civil court proceedings in Scotland or (b) if the document could be withheld on grounds of public interest immunity in civil court proceedings in Scotland.
9. It is an offence under the Inquiries Act 2005 for a person to fail without reasonable excuse to comply with a notice for production of documents.

Publication of documents

10. All witness statements and documents which are relevant to the terms of reference of the Inquiry will be disclosed to Core Participants and their legal representatives in advance of the oral hearings in the database of Inquiry material.
11. All witness statements and transcripts of oral hearings will be published on the Inquiry website. Other documents may be published on the Inquiry website, when the Chairman considers it appropriate to do so.
12. References to names of persons and their designations will normally be included in any statements or other documents which are disclosed or published. Other personal information, such as dates of birth, private addresses, telephone numbers, contact details or other information that might identify where a person resides, will not normally be disclosed or published and will be redacted (blacked out). The year of birth of certain persons (for example patients) may be disclosed if this information is relevant to the Inquiry.
13. Applications for anonymity by persons mentioned in documents will be considered on an individual basis. Applications must be submitted as soon as possible to the Chairman in writing and be supported by reasons.
14. The Chairman has power under the Inquiries Act 2005 to make a restriction order to restrict the disclosure or publication of documents. A person who wishes that a document or part of a document is not disclosed or published must make an application to that effect in writing to the Chairman as soon as possible. The application must be supported by reasons.
15. The Chairman will consider an application for a restriction order as soon as possible and, after such procedure as he considers appropriate, will determine whether and in what terms to make a restriction order.

Legal representation

16. Where a person who is required to produce a document has appointed a qualified lawyer to act on his or her behalf, the Chairman must recognise that lawyer as the recognised legal representative for the Inquiry of the person. To enable this to be done, the person should provide the Inquiry team with the name and contact details of his or her lawyer when responding to a notice requiring production of documents.
17. The Inquiries Act 2005 and the Inquiries Rules 2007 allow for the possibility of an award of funding for legal representation for persons required to produce documents. In order to obtain an award of funding, an applicant must meet certain qualifying criteria and any award will be subject to certain conditions. Please refer to the guidance on awards of funding for legal representation.
18. If a person required to produce a document wishes to seek an award for funding, he or she should contact the Inquiry team with an application for an award

as soon as possible. Any work done by the lawyer for the person in advance of the making of an award will not be paid by the Inquiry.