

# Statement of Intent: Redaction Of Personal Data



## 1. Introduction

1.1 Section 18 of the Inquiries Act 2005 (the “2005 Act”) imposes an obligation on the Scottish Hospitals Inquiry (“the Inquiry”) to take such steps as the Chair considers reasonable to allow members of the public to access the evidence it considers in the course of its investigations. In line with this obligation, the Inquiry aims to be as transparent as possible. Part of this duty means that the Inquiry must ensure that the evidence it considers, whether documentary or oral, is made available to members of the public, core participants, and reporters in as complete and unedited a form as possible.

1.2 This Statement of Intent sets out the limited circumstances in which the Inquiry may restrict the information it makes available to members of the public, core participants, and media reporters by applying redactions in respect of personal data. The information outlined below is not intended to cover every eventuality or every issue that may arise. Neither is this Statement of Intent intended to offer any undertakings on the part of the Inquiry. It follows that, where required, the Inquiry may need to depart from this Statement of Intent.

1.3 This Statement of Intent should be read in conjunction with the [Inquiry’s Data Protection Policy](#), [Protocol on the Receipt and Handling of Information](#), and [Protocol on Public Access to Information and Evidence](#).

## 2. What is redaction?

2.1 Redaction involves obscuring certain parts of text or images from a document. Redactions are applied by blanking out, or covering, the words, lines, phrases or images in question. This means that persons outside the Inquiry team can have access to a document but not be able to read certain text or see certain images contained within. Redactions may be applied to witness statements, transcripts of hearings, and documentary evidence (which will be published on the Inquiry website and circulated amongst core participants as part of bundles for hearings).

2.2 When the Inquiry decides to redact a document, generally only the redacted version will be released to members of the public, core participants, and reporters. The Inquiry itself will continue to hold and access the un-redacted version.

### 3. When will the Inquiry redact documents?

#### When a party makes a successful application

3.1 Any individual or organisation who has supplied evidence to the Inquiry, either as a document or in the form of a witness statement, can apply to the Chair for redactions, either as a request for redactions or as part of an application for a restriction order (for further information on restriction orders and the process for application, see the Inquiry's [Protocol on Public Access to Information and Evidence](#)).

3.2 Should an application for redaction, or a restriction order requiring redaction, be granted, the relevant information will be redacted from documentary evidence and witness statements.

3.3 Applications for redaction should be made to [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot). Proposed redactions should be identified and marked on the document by the party applying. Applications will be considered by the Chair, who may or may not grant the application.

3.4 The onus is on those providing information to consider whether they wish any part of it to be redacted and, accordingly, whether they should make an application for redaction or for a restriction order. **Parties should not assume that any documentation they have supplied will be redacted by the Inquiry simply because it falls within the scope of paragraphs 3.5.1 to 3.5.3 or section 4 of this Statement of Intent.**

#### When the Inquiry deems redaction appropriate

3.5 In some very limited situations, the Inquiry will redact documents even where there has been no application for redaction or restriction made by a party. This may be for a variety of reasons, including, but not limited to:

3.5.1 **Data protection:** The Inquiry is registered as a Data Controller with the Information Commissioner's Office. The Inquiry is subject to obligations, set out in the UK GDPR<sup>1</sup> and Data Protection Act 2018, in respect of the personal data of living individuals (known as Data Subjects). If disclosure of information would go against the principles of the UK GDPR and Data Protection Act 2018, the Inquiry will redact it.

3.5.2 **Relevancy:** The scope of the Inquiry's work is set out in its Terms of Reference.<sup>2</sup> Should any information referred to in documentary evidence be

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<sup>1</sup> UK GDPR is defined in [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019](#) as "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018." UK GDPR, and the Data Protection Act 2018, were amended by those Regulations.

<sup>2</sup> [https://www.hospitalsinquiry.scot/sites/default/files/2020-10/Scottish Hospitals Inquiry - Remit and Terms of Reference.pdf](https://www.hospitalsinquiry.scot/sites/default/files/2020-10/Scottish%20Hospitals%20Inquiry%20-%20Remit%20and%20Terms%20of%20Reference.pdf)

irrelevant to the Inquiry's Terms of Reference and, to the knowledge of the Inquiry, be likely to be damaging to an individual/s if released, the Inquiry may redact such information.

- 3.5.3 **Risk of harm:** Should it appear to the Inquiry that the release of any information would be likely to cause substantial harm to a person and would not be in the public interest, it may choose to redact any such information. Such harm may include physical harm, or emotional, or psychological distress.

#### **4. What kind of information might the Inquiry redact (either of its own volition or on application)?**

4.1 Prior to applying redactions, the Inquiry will consider whether the release of the information that may be redacted is in the public interest, relevant to the Inquiry's Terms of Reference and lawful and reasonable under and in terms of Section 19 of the 2005 Act, the UK GDPR, and the Data Protection Act 2018. The Inquiry will also consider whether applying redactions is proportionate and reasonable.

##### **Personal Data**

4.2 The Inquiry will not itself routinely redact Personal Data or Sensitive Personal Data except where references to the following are made:

- 4.2.1 Information which identifies those under the age of 16 years. This approach takes into account the likelihood of such persons being less aware of the consequences and long-term implications of being named and identified publicly in the context of the Inquiry's investigations together with their inability to make applications for redaction or restriction on their own behalf. Those with parental responsibility of core participants or witnesses under the age of 13 years will be consulted on their views and wishes regarding the redaction of their children's identities and such views and wishes will be taken into account before redactions are applied. Where documents identify those between the ages of 13 and 16 years, the person so identified may also be consulted on their own views regarding the redaction of their identities and such views will be taken into account before any redactions are applied.
- 4.2.2 Residential addresses.
- 4.2.3 Dates of birth. Ages, where referred to, may remain un-redacted in order to provide relevant context.
- 4.2.4 Personal contact details, including telephone numbers and email addresses unless they have significance for the Inquiry's investigations (in, for example, establishing who sent an email to whom). Contact details of individuals acting in a professional capacity may remain un-redacted given the limited risk to individuals in question (see also paragraph 4.4.2 below).

4.2.5 Copy signatures.

4.2.6 Information which identifies individuals where medical information, or other information that may be considered to be sensitive, is supplied to the Inquiry and such individuals are not core participants or witnesses.

4.3 Any applications for redaction or for a restriction order on the basis that the information sought to be redacted is personal data that does not fall into one of the above categories will require a full explanation to be given of the reasons why redaction is sought.

### **Irrelevant information**

4.4 There may be instances where information is contained in an evidentiary document which is not relevant to the Inquiry's Terms of Reference and, if released, may compromise a reasonable expectation of privacy. Some examples are:

4.4.1 Medical information of individuals which is not directly related to the work of the Inquiry. There will be some medical information that the Inquiry will consider necessary to release because, for example, it relates directly to experiences of receiving care at the QEUH, Glasgow or delays at the RHCYP/DCN, Edinburgh. Where, however, it is clear that medical information is historical or unrelated to care received or to be received at either hospital subject of the Inquiry's Terms of Reference, redactions may be applied.

4.4.2 Names and contact details of individuals acting in a professional capacity where the release of same is not necessary for the work of the Inquiry. For example, it is likely that the names and identities of junior members of staff who were only copy recipients of correspondence (where they can be identified as such) will be deemed irrelevant and that only identities of senior staff and/or direct senders and recipients of correspondence will remain un-redacted.

### **Risk of harm**

4.5 In situations where the risk of harm, including physical, emotional, or psychological harm, would outweigh the public interest in disclosure, the Inquiry will apply redactions to the compromising information. It will be difficult for the Inquiry to assess the risk of harm in the absence of an application for redaction that explains exactly what that risk is, although it may occasionally have other information that may enable it to reach a view. Where a party considers that they may suffer harm as a result of disclosure of information, they are therefore strongly encouraged to apply for redaction with an explanation of what that harm may be.

4.6 In addition to the risk of physical, emotional, or psychological harm, the Inquiry will consider making redactions to protect other interests that may be harmed. For example, where an individual has reasonable grounds for believing that an employer may take action against them for being involved with, or sharing information with, the

Inquiry, information identifying that individual may be redacted or they may be advised to apply for a restriction order.

4.7 In all cases, where the Chair is satisfied that there is a risk of harm to the applicant, he will balance the risk and effect of any harm with the general duty contained in section 18 of the 2005 Act regarding securing public access to inquiry proceedings and information.

## **5. Further information**

5.1 If you have any questions about any of the above, or any other matter related to the provision of information, please email the Solicitor to the Inquiry at [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot).

## **6. Version control**

6.1 This version of the Inquiry's Statement of Intent on Redactions is dated 18 August 2021 and is issued under the authority of the Chair of the Scottish Hospitals Inquiry. It is the first version of this Statement of Intent.