

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

Protocol for the Provision of Documents to the BVI Commission of Inquiry

Introduction

1. This Protocol is made under section 9 of the Commissions of Inquiry Act 1880 (Cap 237).
2. This Protocol addresses the production of documents to the BVI Commission of Inquiry (“the COI”) by members of the public and by Providers of Documents (“PoDs”). It is intended to facilitate the prompt delivery of documents to the COI and ensure that the public and PoDs understand the procedures that the COI will adopt in relation to documents sent by the public and in seeking from PoDs the provision of documents and ensuring their prompt and efficient delivery to the COI.
3. This Protocol should be read in conjunction with the COI’s Protocol on Redactions of Documents (“Redaction Protocol”).
4. The procedures set out in this Protocol are not intended to cover every eventuality or every procedural issue that may arise. Where the Commissioner needs to make a decision as to the procedure or conduct of the COI which is not covered by this Protocol then he will do so in accordance with his obligations under the Commissions of Inquiry Act 1880 and with regard to the need to ensure procedural fairness and to avoid unnecessary delay. Further, in order to fulfil its Terms of Reference within the designated timescale, the COI needs to maintain an element of flexibility.
5. The Commissioner recognises that experience or particular circumstances may require the amendment of or departure from this Protocol in order to fulfil the COI Terms of Reference within the designated timescale. Any amendment to this Protocol will be published on the COI’s website.

Definitions

6. In this Protocol:

“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, governing/constitutional documents, guides/codes of conduct, design plans, technical drawings, blueprints, reports (internal and external), reviews, committee/board minutes, meeting/attendance notes, manuscript notes, memoranda, letters (including fax), leaflets, circulars, emails (internal and external) legislation, policy documents/statements, witness statements, photographs, video and audio recordings and physical evidence.

“Member of the public” means an individual who has not been the subject of a letter of request but has voluntarily provided documents to the COI through the COI’s website or by other means.

“Provider of documents” (“PoD”) means any person, institution or organisation which has been asked to provide documents to the COI. For the avoidance of doubt, it includes, but is not limited to, the Government of the BVI, individual ministries, departments, statutory boards and associated agencies. It also includes, but is not limited to, a public officer exercising an official function, a person elected to public office, a member of any board, committee or any similar body established by any law in force in the BVI. A PoD does not include a member of the public who has voluntarily provided information or documents to the COI through its website or by other means.

“Relevant documents” are those with which, having regard to the COI’s Terms of Reference, the Commissioner (if aware of their existence) would likely wish to be provided.

Provision of documents to the Commission

Members of the Public

7. The Commissioner requests that anyone who holds relevant documents supply those documents to the COI. Any person who is in possession of relevant documents should contact the Secretary to the COI as soon as possible so that the necessary arrangements can be made for receipt of those documents.
8. Members of the public (including public officers acting in a personal capacity) can voluntarily provide information and documents to the COI through the Inquiry's website (www.bvi.public-inquiry.uk). On providing information through the website, members of the public are able to confirm whether they wish to remain anonymous in the sense that they do not wish anything to be used in evidence or published which, directly or indirectly, will lead to their identification as the source of the information; and whether they wish the information they submit to remain confidential and not to be used in evidence or in the Commissioner's report.
9. The COI website also gives details of the other means by which members of the public can contact the COI so as to provide information and documents. Members of the public who consider that they may have relevant documents or information are encouraged to contact the Secretary to the COI, through the website or any other means identified there, if they have any queries or concerns about sending material to the COI. Any approach will be treated as strictly confidential.

Providers of Documents

10. Wherever possible the Commissioner intends to rely on voluntary co-operation for production to the COI of the documents he considers necessary to fulfil his Terms of Reference.

11. Where appropriate, the Commissioner will make a request for the voluntary production of documents by means of a letter from the COI to the person believed to have custody or control of them (“the letter of request”). The Commissioner expects that all parties to whom a letter of request is addressed will co-operate with the request and provide all relevant material without the need for the Commissioner to exercise his powers of compulsion of documents or evidence in section 10 of the Commissions of Inquiry Act 1880. That provision gives the Commissioner the powers of a Judge of the High Court to call for the production of documents, to examine witnesses by way of interrogatories, and to summons witnesses and examine them on oath. 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 required deadline.
12. Letters of request will normally be sent by email.
13. PoDs (including those acting through legal representatives) are expected to provide documents requested without delay and within the timescale specified in a letter of request. PoDs are required to undertake comprehensive, thorough and rigorous searches in response to a request for documents. The Commissioner will request a signed statement confirming the search methodology if he deems the same to be necessary. Any application for an extension of time to comply with a request should be sent by email to the author of the Letter of Request, copied to the Secretary to the COI at steven.chandler@bvi.public-inquiry.uk as soon as possible after receipt of the letter of request and certainly before the expiry of the date given in the letter of request for the provision of material. Any such application should set out the reasons for the need for further time. The Commissioner will take any such submissions into account in considering whether to exercise his powers of compulsion.
14. Where the Commissioner determines that it is necessary to use his powers of compulsion, then any witness summons will be served upon the recipient by the

most efficient means in the circumstances. Those include personal service and service by electronic means.

15. The COI expects every care to be taken to ensure that relevant documents (including, once documents have been requested, all such documents) are preserved in their original form.
16. All documents (whether supplied voluntarily in response to a letter of request or in compliance with a witness summons) must be provided in their original form or, if not available, in the best available copies, complete and unredacted. Production of documents to the COI should not be delayed on grounds that redactions are sought by a PoD.
17. Unless this would delay production, all documents provided should be accompanied by an inventory listing them and signed by or under the authority of the person providing them. Where the provision of such an inventory would delay production, the documents should be produced and the inventory follow within 7 days.
18. Documents should be provided to the COI electronically via email to the author of the Letter of Request. Where the file size of any document is too large to be provided by email, then the PoD should contact the author of the Letter of Request to discuss provision by alternative electronic means. A PoD should not use an alternative means (i.e. other than email) to provide electronic disclosure without first discussing the matter with the author of the Letter of Request.
19. The COI is using a secure Data Management System. 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.
20. Where hard copy documentation is provided these should be digitised beforehand to multipage PDF format where possible. If there are applicable technical requirements these will, upon request, be agreed with the PoD.

21. Where it is not possible to provide a document electronically, the PoD should contact the author of the Letter of Request to discuss the most appropriate form of production to the COI. The same applies to the provision of physical evidence.

Redaction of documents prior to provision to the COI

22. The Commissioner expects that PoDs will provide all documents in unredacted form.
23. PoDs may only redact or withhold documents on the basis of a recognised legal exception as applicable in the context of a COI such as this. Where such an exception is relied upon then the PoD must identify the legal basis for its objection by reference to the specific document or category of documents concerned and support it by legal submissions.
24. The Commissioner does not expect redactions of personal data in respect of documents provided to the COI to be made in light of the substantial public interest in the COI receiving relevant documents. The redaction of personal data in respect of onward disclosure by the COI is addressed in its Redaction Protocol.
25. That a document containing relevant information also contains irrelevant information is not a basis for the PoD to redact the document for the following reasons:
 - (a) The determination of relevance is a matter for the Commissioner.
 - (b) That information may be deemed as irrelevant because it falls outside the content of a letter of request, does not mean that it is not relevant to the COI's Terms of Reference.
 - (c) There is an additional safeguard in that the COI is operating a two-stage process in relation to the provision of documents. The first stage is disclosure to the COI alone. The second stage (which will not apply to all documents provided to the COI) is the disclosure to (for example) a witness or the public

insofar as this is necessary to fulfil the COI's Terms of Reference, at which stage the COI will afford a PoD an opportunity to seek redaction (including on the ground of public interest immunity).

26. The COI's Redaction Protocol deals with the procedure with regard to the redaction of documents prior to disclosure outside the COI.

The Rt Hon Sir Gary Hickinbottom
Commissioner
15 March 2021 (amended)