

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

Protocol for the Redaction of Documents

Introduction

1. This Protocol is made under section 9 of the Commissions of Inquiry Act 1880 (Cap 237).
2. For the BVI Commission of Inquiry (“COI”) to fulfil its Terms of Reference, it will need to see all documents provided to it in complete (i.e. unredacted) form. Documents provided to the COI by members of the public or Providers of Documents (“PoDs”) will go through a two-stage process. The first stage is the provision of documents to the Commission alone (“first stage disclosure”). The second stage (which, for the reasons set out in this Protocol, will not apply to all documents) is the provision of documents that the COI considers necessary to use in evidence (“second stage disclosure”).
3. All documents provided to the COI will be held on a secure Data Management System until such time as it is necessary to make second stage disclosure. Not every document provided to the COI will need to go through second stage disclosure. For those that do, there may be legitimate reasons for the COI to apply redactions to a document.
4. This Protocol sets out the COI’s approach to the redaction of documents that fall for second stage disclosure. Its purpose is to ensure that providers of documents (“PoDs”) and members of the public understand how the COI intends to deal with documents that fall within this category.
5. This Protocol should be read together with the Protocol for the Provision of Documents to the BVI Commission of Inquiry.
6. The procedures set out in this Protocol are not intended to cover every eventuality or every procedural issue that may arise. Where the interests of justice and fairness require it then the COI may need to depart from this

Protocol. That may be particularly so where a document has been provided by a member of the public. This Protocol may be amended from time-to-time, in which case the amended version will be published on the COI's website.

Definitions

7. In this Protocol:

“Redaction” is the removal of information from a document, usually by blacking out words. A need to redact information may arise for a number of reasons including to protect, where it is appropriate to do so, the identities of individuals or to remove information that is sensitive and irrelevant to the COI's work.

“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.

Redaction at the second stage process

8. Where a document is to be used in evidence, it will normally be the subject of the second stage process. However, this process may be rendered inappropriate and/or unnecessary if (for example) a document is only to be used in a private hearing (i.e. a hearing not held in public in respect of which no report of the hearing shall be published) or if it may be possible to use a document at a public hearing without referring to that part of it which requires redaction.
9. For the avoidance of doubt, where a member of the public has confirmed that 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 a source of information, or that they wish the information they submit to remain confidential and not to be used in evidence or in the Commissioner's report, any necessary redactions to documents provided by that member of the public will be made to respect those wishes. The paragraphs that follow therefore apply to those members of the public who have not sought such an assurance of confidentiality.
10. When the COI has decided that a document should go through the second stage process, then it will invite the member of the public or the PoD who provided the document to indicate, within a specified time, which part or parts of the document if any, should be redacted. Reasons must be given for each proposed redaction. The Commissioner expects those seeking redactions to take a proportionate approach to such requests.
11. The COI will ensure redaction of personal data in accordance with the applicable data law. The COI's approach to redaction of personal data is governed by the relevance of that data to the COI's work and the necessity of its disclosure, save where express consent for the disclosure or publication of the personal data has been provided by the data subject or their representative.

12. The COI will treat as personal data information such as private addresses, private telephone numbers and dates of birth. Such information will normally be redacted without the need to apply to the Commissioner. Members of the public or PoDs will be provided with a copy of the document concerned, marked with the COI's proposed redactions of personal data. Where the member of the public or PoD identifies any personal data which has not been redacted and wishes to apply for its redaction on the grounds that its disclosure is not relevant and necessary for the purposes of the COI, an application must be made in writing to the Commissioner within the deadline set for review of the document.
13. The deadline for a member of the public or PoD responding further to paragraphs 10 or 12 will usually be seven (7) days from receipt of the document but may be a shorter or longer period where the Commissioner considers such a period appropriate. Any application for an extension of that period should be made as soon as possible and certainly before the expiry of any deadline.
14. The COI may request a member of the public or PoD to identify their proposed redactions (including of personal data) in advance of the COI producing a marked copy pursuant to paragraph 12. In such circumstances, the member of the public or the PoD will usually be asked to provide two copies of the document or documents on which redactions are sought. The first copy should have any material which it is sought to redact shaded but visible; the second copy should have the same material marked out so that it is no longer visible.
15. The Commissioner will consider all requests for redaction. If he does not consider that grounds for redaction have been made out, the COI will notify the member of the public or PoD concerned before the information which is the subject of the request for redaction is disclosed further.
16. Anyone who contends that a document produced or provided to the Inquiry should be anonymised or redacted otherwise than in accordance with the preceding paragraphs of this Protocol may make a written application to the Commissioner. The application should be accompanied by a copy of the document marked up with the proposed redaction(s) and must contain a brief

statement of the grounds on which it is made.

17. Any application made under paragraphs 13 and 16 above should be submitted by email to the Secretary to the COI at steven.chandler@bvi.public-inquiry.uk.

The Rt Hon Sir Gary Hickinbottom

Commissioner

5 March 2021

Amended 1 June 2021