

# Protocol for Receipt and Handling of Information



## 1. Introduction

1.1 The Scottish Hospitals Inquiry requires to have access to all relevant information to enable it to carry out investigations, address its Terms of Reference<sup>1</sup> and fulfil its remit. The Inquiry will gather material from core participants, witnesses, interested parties, members of the public, and any other person or organisation who possesses information or knowledge relevant to the Inquiry.

1.2 This Protocol describes how the Inquiry will obtain the information it receives.

1.3 For information regarding the Inquiry's data protection practices, please see the Inquiry's [Data Protection Policy](#).

1.4 In this protocol, "information" means anything that is given to the Inquiry at any time and in any form. This includes hard or electronic copies of material, information given orally to the Inquiry over the telephone or at hearings, photographs, and video or audio recordings.

## 2. Why is supplying information important?

2.1 Information from a variety of sources is necessary for the Inquiry to fairly establish factual circumstances or opinions related to its Terms of Reference. Should information not be supplied in full to the Inquiry, or should there be a delay in supplying it, the Inquiry's findings will not be fully informed and its overall progress will be delayed.

2.2 Supplying information is an important way for interested parties (whether individuals or organisations) to communicate their version of events, views, and position relevant to the Terms of Reference.

2.3 As an inquiry established under the Inquiries Act 2005 (hereinafter referred to as "the 2005 Act"), the Inquiry does have power to formally request that information be submitted to it. A refusal or delay in supplying information, having been formally required to do so, is a criminal offence and may result in prosecution (see section 5 below).

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<sup>1</sup> [Remit & Terms of Reference | Hospitals Inquiry](#)

### **3. How will the Inquiry gather information?**

#### **Voluntary provision**

3.1 Should any individual or organisation believe they have information which the Inquiry might be interested in, contact should be made in the first instance by email to [public@hospitalsinquiry.scot](mailto:public@hospitalsinquiry.scot) with a brief explanation of what information it is you can offer. A member of our team will contact you to discuss what information you may be able to provide to the Inquiry. Please **do not** send the Inquiry any documents before we have contacted you – documents should only be submitted to the Inquiry following a request from the Inquiry for them.

#### **Call for Evidence**

3.2 While there are no immediate plans to do so, at any point during the course of the Inquiry, the Chair may issue a call for evidence on its website and via other mediums when he wishes to appeal to the public for information regarding a particular matter. Should a call for evidence be published, it will detail the nature of the information sought.

3.3 In the event of a call for evidence, responses should initially be emailed to [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot). The Inquiry team will then supply such further instructions about the provision of information as may be necessary.

#### **Rule 8 requests by Inquiry team**

3.4 The Inquiry team may make direct contact with relevant parties or their legal representatives to request information.

3.5 Such requests are made pursuant to rule 8 of the Inquiries (Scotland) Rules 2007 (“Rule 8 requests”). The written request will include a description of the information and documents to be supplied. Rule 8 requests will specify the time within which the information should be provided. Requests will also detail specified instructions for the format and provision of documents and these must be complied with.

3.6 Where a party has a recognised legal representative, the request will be sent to that legal representative.

3.7 Rule 8 requests should be acknowledged within 5 working days of receipt by email to [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot). Should a party not be able to comply with the Rule 8 request by the date stipulated, they should inform the Inquiry team at the earliest opportunity and no later than 5 working days after receipt of the request.

#### **Section 21 Notices**

3.8 In terms of section 21 of the 2005 Act, the Chair has powers to serve a formal notice on any party to attend at a time and place stated in the notice to:

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- 3.8.1 Give evidence;
- 3.8.2 Produce any documents in their custody or under their control; or
- 3.8.3 Produce any other thing in their custody or under their control for inspection, examination, or testing.

3.9 The Chair also has powers under section 21 of the 2005 Act to serve a formal notice on any party to:

- 3.9.1 Provide evidence to the Inquiry in the form of a written statement (see the [Protocol on Witness Statements](#));
- 3.9.2 Provide any documents in their custody or under their control; or
- 3.9.3 Produce any other thing in their custody or under their control for inspection, examination, or testing.

3.10 Whilst the Chair's preference is to proceed co-operatively and by Rule 8 requests, should a party refuse or delay to supply information in response to a Rule 8 request, the Chair may serve on them a notice in terms of section 21 of the 2005 Act. It should be noted that whilst there is a preference to proceed by Rule 8 requests, it is not necessary that a Rule 8 request be issued prior to service of a section 21 notice. The Chair reserves the right to issue a section 21 notice without any preceding Rule 8 request.

3.11 The Chair may vary or revoke a notice under section 21 on the basis of a successful application by the party served with same. In making such an application, the relevant party must demonstrate, in writing, why:

- 3.11.1 They are unable to comply with the notice; or
- 3.11.2 It is not reasonable in all the circumstances for the notice to be complied with.

3.12 In determining whether to revoke or vary a notice under section 21, the Chair will consider the public interest in the information in question being obtained by the Inquiry, having regard to the likely importance of the information.

3.13 Applications to vary or revoke a notice under section 21 should be sent to [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot) no later than 7 days after service of the said notice.

3.14 A failure to comply with a notice under section 21 of the 2005 Act is a criminal offence which may result in prosecution (see section 5 below).

3.15 Should a party fail to comply with a notice under section 21 of the 2005 Act, or threaten to do so, the Chair may certify the matter to the Court of Session pursuant to section 36 of the 2005 Act. An enforcement order may be granted by the Court of Session to recover the information in question.

## 4. How should information be supplied to the Inquiry?

4.1 All material supplied to the Inquiry should be in electronic format. The Inquiry has an electronic document management system which parties must use to upload

documents as necessary. Instructions will be supplied for the uploading of documents on to the Inquiry's document management system when the Inquiry requests documents. The instructions will set out the criteria that documents require to meet prior to uploading.

4.2 If any party wishes to submit material in hard copy or by any means other than the Inquiry's document management system, they must first contact the Inquiry at [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot) with an explanation of why the material cannot be provided via the Inquiry's document management system. Should the Inquiry authorise the supply of information by alternative means, the Inquiry will supply further instructions as to how any hard copy information or email can be sent.

4.3 Documents should not be emailed to the Inquiry without prior authorisation. The Inquiry will accept documents by email only where it has agreed to do so with a party in advance in accordance with section 4.2 above.

4.4 Documents should be supplied to the Inquiry un-redacted, un-edited, and in their original form.

## **5. Is there a legal requirement to supply information to the Inquiry?**

5.1 The Inquiry is a statutory inquiry established under the 2005 Act. As a result, it has statutory powers to request and receive information relevant to its functions and investigations.

5.2 In terms of section 35 of the 2005 Act, the following are criminal offences punishable by a fine or up to 6 months imprisonment:

- 5.2.1 Failure to comply with a notice under section 21 without a reasonable excuse.
- 5.2.2 Doing anything that intends to have the effect, or is likely to have the effect, of:
  - (a) Distorting or altering any evidence, document, or other thing given or produced to the Inquiry or
  - (b) Preventing any evidence, document, or other thing from being given or produced to the Inquiry;
- 5.2.3 Intentionally suppressing or concealing a document which it is likely the Inquiry (if aware of its existence) would wish to be provided with; or
- 5.2.4 Intentionally altering or destroying a document which it is likely the Inquiry (if aware of its existence) would wish to be provided with.

## **6. Will any information I supply be made public?**

6.1 The Inquiry aims to be as transparent as possible. Information supplied to the Inquiry may be made available to core participants, witnesses, attendees at hearings, and the wider public pursuant to section 18 of the 2005 Act. This is essential to enable the work of the Inquiry to be carried out.

6.2 If the Inquiry has been made aware of the fact that information provided to it is sensitive or legally privileged, it will deal with it in accordance with the Protocol on Public Access to Information and Evidence, which will be published shortly on the Inquiry's website. The provision of information to the Inquiry cannot be delayed on the grounds that a party will seek redaction or restriction of same. The Inquiry will ensure that an application for redaction or restriction is considered before the relevant information is made publicly available.

6.3 At its conclusion, all of the Inquiry's records (including evidence held by it) will be passed to the Keeper of the Records of Scotland in accordance with rule 16(3) of the Inquiries (Scotland) Rules 2007 and, therefore, will be accessible by the public in accordance with the rules and procedures of the National Records of Scotland.

## **7. Further information**

7.1 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).

## **8. Version control**

8.1 This version of the Protocol for Receipt and Handling of Information is dated 3 June 2021 and is issued under the authority of the Chair of the Scottish Hospitals Inquiry. It is the second version of this Protocol.

8.2 The only substantive changes between the first and second versions are:

8.2.1 the text at paragraph 3.1 has been updated to make clear that detailed information and documentation should not be provided when initial contact is made with the Inquiry, but should be provided only in response to a request from the Inquiry; and

8.2.2 a consequential change to paragraph 4.1.