

Inquiry Procedure Direction No 2 - Production of documents to the Inquiry

Change of status of the Inquiry

The Edinburgh Tram Inquiry (“the Inquiry”) was established in June 2014 as a non-statutory inquiry into the Edinburgh trams project, with the Right Honourable The Lord Hardie as its chairman. On 7 November 2014 the Scottish Ministers converted the Inquiry to a statutory inquiry and issued a [Notice of Conversion to Statutory Inquiry](#).

Production of documents to the Inquiry

In terms of section 17(1) of the [Inquiries Act 2005 \(“the Act”\)](#) which enables Lord Hardie (“the Chairman”) to decide on the procedure and conduct of the Inquiry, he has directed as follows:

1. The Inquiry Procedure Direction No. 1 – Production of Documents to the Inquiry dated 26 August 2014 shall not apply to any request for production of documents made after the date of this Inquiry Procedure Direction (“this Direction”).

2. This Direction applies to any request for production of documents made after the date of this Direction and sets out the procedures of the Inquiry to be followed in relation to:

- (a) requests to produce documents to the Inquiry (paragraph 4);
- (b) notices requiring the production of documents to the Inquiry (paragraphs 5 & 6);
- (c) applications for the revocation or variation of such notices (paragraphs 7 to 9);
- (d) the form in which documents should be produced to the Inquiry (paragraphs 10 & 11);
- (e) requests for restriction orders and for the review of such orders (paragraphs 12 to 15);
- (f) restriction notices (paragraph 16);
- (g) confidentiality of personal information, redaction and anonymity (paragraphs 17 to 19);
- (h) privileged information (paragraph 20); and
- (i) legal representation in relation to the production of documents (paragraph 21).

For the avoidance of doubt this Direction applies only to the production of documents and not to other forms of evidence.

3. The procedures set out in this Direction are subject to the provisions of the Act and of the [Inquiries \(Scotland\) Rules 2007 \("the Rules"\)](#). While this Direction is intended to cover most situations it may require to be supplemented or varied by the Chairman in particular circumstances.

Requests for voluntary production of documents

4. Wherever possible the Chairman intends to rely on voluntary co-operation for production to the Inquiry of the documents he considers necessary to fulfil his Terms of Reference. The Chairman will normally make a request for voluntary production of documents by means of a letter from the Solicitor to the Inquiry to the person believed to have custody or control of them.

Notices under section 21 of the Act requiring production of documents

5. Where an individual or an organisation is unable or unwilling to produce documents to the Inquiry voluntarily the Chairman may use his powers under section 21 of the Act to require the production of documents.

6. Where the Chairman decides to require the production of documents, the Solicitor to the Inquiry will send a notice under [section 21 of the Act](#) to the person believed to have custody or control of them. The notice will require the person to provide the documents specified in the notice within such period as may be specified by the Chairman.

Claims under section 21(4) that the notice should be revoked or varied

7. A claim by any person to whom a notice requiring production of documents under section 21 has been sent:

- (a) that he or she is unable to comply with the notice, or
- (b) that it is not reasonable in all the circumstances to require him or her to comply with it,
- (c) and that it should be revoked or varied,

must be made in writing to the Chairman no later than by the end of the period within which production is specified.

8. Any person making such a claim should:

- (a) identify in so far as possible any particular document in relation to which the claim is being made;

(b) state whether he or she seeks revocation or variation of the notice and in the latter case specify the variation sought; and

(c) give reasons for the claim; and

(d) where it is claimed that it is not reasonable in all the circumstances to require compliance with the notice the reasons for the claim should address the public interest test in [section 21\(5\) of the Act](#).

9. On receipt of such a claim the Chairman will, as soon as may be practicable and after such procedure as he considers appropriate, determine whether to revoke or vary the notice.

Production of documents

10. Unless otherwise agreed with the Solicitor to the Inquiry, documents produced to the Inquiry should be provided:

- (a) intact and without any redactions or other modifications in electronic format where available; and
- (b) with the metadata associated with all electronic documents maintained in its original format.

Any documents that are only available in hardcopy (paper) should be:

- (i) the originals or the best available copies of those documents; and
- (ii) accompanied by an inventory listing them and signed by the person providing them.

11. A person producing documents in response to a notice under [section 21 of the Act](#) should provide in writing either:

- (a) confirmation that the documents produced represent all the documents specified in the notice in their custody or under their control; or
- (b) a list of any documents withheld and the reasons for not producing them.

Request for restriction order

12. [Section 19 of the Act](#) enables the Chairman to impose restrictions on the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry. Any person applying to the Chairman to make a restriction order in relation to such a document must do so in writing setting out:

- (a) the terms of any restriction sought; and

- (b) with particular reference to the matters set out in [section 19\(4\) of the Act](#) the reasons why he or she considers that a restriction order should be made.

13. On receipt of such an application the Chairman will, as soon as may be practicable and after such procedure as he considers appropriate, determine whether and in what terms to make a restriction order.

Review of restriction order

14. In terms of [section 20\(4\) of the Act](#) the Chairman may vary or revoke a restriction order by making further orders during the course of the Inquiry. Any person applying to the Chairman for variation of a restriction order must do so in writing setting out:

- (a) the terms of the variation sought; and
- (b) the reasons for which it is considered that the restriction order should be varied.

15. On receipt of such an application the Chairman will, as soon as may be practicable and after such procedure as he considers appropriate, determine whether and in what terms to vary the restriction order.

Restriction notices

16. This Direction does not affect the rights of any person to apply to Scottish Ministers to issue a restriction notice in terms of [section 19\(2\)\(a\) of the Act](#) in relation to any documents or evidence produced or provided to the Inquiry. To enable the Inquiry to give effect to [rule 11 of the Rules](#) in terms of which a document which is the subject of such an application becomes potentially restricted evidence, a person making such an application to Scottish Ministers should intimate the terms of the application to the Solicitor to the Inquiry and should similarly intimate the withdrawal or determination of the application.

Confidentiality of personal information, redaction and anonymity

17. The Chairman will generally regard the names of persons appearing in documents produced to the Inquiry as relevant and they will not normally be anonymised or redacted from documents disclosed to participants or the public in the absence of a restriction order or other order for anonymity. However the Chairman will normally regard as irrelevant information contained in such documents comprising personal information of those individuals such as addresses, telephone numbers and dates of birth. Unless the Chairman considers that particular circumstances exist which make such information of relevance to the Inquiry, the Inquiry team will, without being specifically requested to do so, redact it from documents before their disclosure to participants or the public. Such redaction will not require the making of a restriction order or other order for anonymity.

18. If, in relation to a document produced or provided to the Inquiry any person, whether or not seeking a restriction order or notice, considers that the document should, before disclosure to participants or the public, be anonymised or redacted in some way other than as provided in the preceding paragraph he or she may apply in writing to the Chairman. Any such application should include the reasons for which the anonymisation or redaction is considered necessary and should include a copy of the document in question marked up with the redactions proposed.

19. On receipt of such a request the Chairman will, as soon as may be practicable and after such procedure as he considers appropriate, determine whether and in what terms the document should be anonymised or redacted.

Privileged information in terms of section 22 of the Act

20. Any person to whom a notice under [section 21 of the Act](#) requiring the production of documents has been sent and who claims that a document in their custody or control otherwise falling to be produced is, or contains, privileged information and withholds all or part of that document on that ground should provide in writing a list detailing any documents or parts of documents so withheld and the reasons for which the information is considered to be privileged. If the Chairman considers it necessary for the determination of the question of privilege, he may require the production of the document to him for that limited purpose.

Legal representation

21. In terms of [rule 5 of the Rules](#) where a person, required or permitted to produce documents during the course of the Inquiry, has appointed a qualified lawyer the Chairman must regard that lawyer as that person's recognised legal representative. In some circumstances the Chairman may award reasonable amounts in respect of the expense of such legal representation. Details of the circumstances in which such awards may be made and of the application procedure may be found in Inquiry Procedure Direction No 3.

Commencement and duration of this direction

22. This Direction is effective from the day after its date and will remain in force until such time as it is revoked or varied.

21 January 2015