

# **Scottish COVID-19 Inquiry**

## **General Restriction Order**

**Version 3 in force from January 2025**

### **Introduction**

1. The Chair of the Scottish COVID-19 Inquiry may impose restrictions on the publication or disclosure of any evidence or documents given, produced or provided to the Inquiry. The Chair may do so where:
  - (a) restrictions are required by any statutory provision, enforceable Community obligation or rule of law, or
  - (b) he considers it to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard to:
    - (i) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
    - (ii) any risk of harm or damage that could be avoided or reduced by any such restriction;
    - (iii) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry; and
    - (iv) the extent to which not imposing any particular restriction would be likely to cause delay or to impair the efficiency or effectiveness of the inquiry, or otherwise to result in additional cost (whether to public funds or to witnesses or others).

## **Restrictions**

2. The Inquiry may redact information from any documents published by the Inquiry and from Protected Material to such an extent as is required by statutory provision, enforceable community obligation or rule of law.
3. Subject to the other provisions of this Restriction Order, a Recipient shall not disclose, publish or communicate the existence, source, content or substance of Protected Material to any person, nor in any way directly or indirectly permit or suffer the publication, disclosure or communication of the existence, source, content or substance of Protected Material. Annex A contains the interpretative provisions of this Order.
4. To ensure that full effect is given to the restrictions specified in paragraph 3, a Recipient shall ensure that Protected Material is kept securely and shall exercise all due care and attention to ensure that Protected Material is not left unattended (including being available on an unattended computer) or left in such a manner as it may be seen by an unauthorised person.
5. A Recognised Legal Representative or Authorised Staff may copy Protected Material from the Inquiry's document management or storage system, or from any email from the Inquiry to which is attached Protected Material, to the document management system used by the Recognised Legal Representative, provided that access to the Protected Material on that system is restricted to the Recognised Legal Representative and Authorised Staff.
6. A Recognised Legal Representative or Authorised Staff may make available a copy of Protected Material to:
  - 6.1. the Core Participant, or where the Core Participant is a corporate or unincorporated body, appropriate office holders or employees of the Core Participant, represented by the Recognised Legal Representative; and
  - 6.2. Counsel,

having in both cases first drawn their attention to the terms of this Restriction Order and the possible consequences of non-compliance with its terms.

7. Paragraph 5 applies to:

7.1. a Core Participant that is a corporate or unincorporated body; and

7.2. A Recipient that is not a Core Participant, Recognised Legal Representative or Counsel but is a corporate or unincorporated body,

as if the references in that paragraph to a Recognised Legal Representative were references to that body.

8. Otherwise than as permitted by paragraphs 5 and 6, a Recipient shall not:

8.1. make any electronic copies of Protected Material; or

8.2. print any Protected Material.

9. When:

9.1. a Recognised Legal Representative or Authorised Staff make available Protected Material in accordance with paragraph 6;

9.2. a Recognised Legal Representative, or those referred to in paragraph 6, are granting access to Protected Material stored on their document management or storage systems to their employees or office holders,

they shall at all times have due regard to the requirement that it should not be made available more widely than is strictly required for the purpose for which the Protected Material was made available by the Inquiry.

Accordingly, Protected Material should be distributed on a on a need-to-know basis and only to those who can reasonably be expected to assist in the fulfilment of that purpose.

10. A Recipient shall not make use of Protected Material for any purpose whatsoever other than for the purposes of Inquiry proceedings.

### **Exceptions**

11. The terms of this Restriction Order do not apply to the extent that:
  - 11.1. any Protected Material is or becomes generally known or available to the public at large through no act or omission of a Recipient;
  - 11.2. any Protected Material was acquired by a Recipient independently of the Inquiry and not as a result of any breach of confidence or of this Restriction Order either on the part of the Recipient or a party from whom the Recipient obtained the Protected Material, whether the acquisition was before or after disclosure by the Inquiry to the relevant Recognised Legal Representative;
  - 11.3. the Inquiry or a Recipient is obliged to disclose any Protected Material by law; or
  - 11.4. the Chair agrees in writing that a Recipient may disclose any Protected Material.
12. Where a Recipient proposes to disclose, publish or communicate any Protected Material by virtue of any of the provisions of paragraph 11, they shall give the Solicitor to the Inquiry no less than 24 hours' advance notice of their intention to do so.
13. Nothing in this Restriction Order prevents or prohibits a Recipient from relying upon or referring to any Protected Material during any hearing of the Inquiry, or in any written or oral submissions or statements made to the Inquiry, provided that any submissions, statements or other material containing Protected Material are not sent to any third party, and are subject to any other applicable restrictions on disclosure.

## **General Provisions**

14. The Chair may vary or revoke this Order by making a further order at any point during the course of the Inquiry.
15. The Solicitor to the Inquiry may at any time request that any Protected Material be returned or destroyed by a Recognised Legal Representative or any other Recipient that has received Protected Material directly from the Inquiry. On receipt of such a request the Recognised Legal Representative or such a Recipient shall return or destroy the specified Protected Material that is in their possession or control, ensuring that all electronic copies of it are permanently erased.
16. On receipt of a request of the kind specified in paragraph 15, a Recognised Legal Representative shall further immediately notify any Core Participant (or office holder or employee of same) or Counsel to whom the Recognised Legal Representative has sent a copy of the specified Protected Material in accordance with paragraph 6 that the specified Protected Material should be returned or destroyed, including permanent erasure of any electronic copies. The Core Participant (or office holder or employee of same) and Counsel shall immediately comply with any such notification.
17. This Order has no force or effect with respect to any of the Protected Material that is at any time published on the Inquiry's website or which is introduced as evidence in Inquiry proceedings that are not subject to any other restrictions regarding disclosure.
18. Any person affected by this Order may apply for it to be varied or revoked on giving 3 working days' notice to the Solicitor by emailing [contact@covid19inquiry.scot](mailto:contact@covid19inquiry.scot).
19. Any breach of this Restriction Order, or threat to do so, should be notified to the Solicitor by emailing [contact@covid19inquiry.scot](mailto:contact@covid19inquiry.scot) immediately.

## **Interpretation**

20. Terms used in this Restriction Order are defined as follows:

- 20.1. “**Authorised Staff**” means any employee or professional colleague of a Recognised Legal Representative, working under the authority and ongoing supervision of that Recognised Legal Representative, and who has signed a confidentiality form.
- 20.2. “**Core Participant**” means an individual or organisation who is designated a core participant by the Chair of the Inquiry.
- 20.3. “**Counsel**”, in relation to a Core Participant, means any senior and junior counsel appointed to represent the interests of the Core Participant in relation to the Inquiry from time to time.
- 20.4. “**Inquiry**” means the public inquiry established by the Scottish Ministers under the Inquiries Act 2005 to establish the facts of, and learn lessons from, the strategic response to the COVID-19 pandemic in Scotland with Lord Brailsford as chair, commonly referred to as the Scottish COVID-19 Inquiry. References to the “Chair” should be construed accordingly.
- 20.5. “**Protected Material**” means any witness statements, documents and other evidence, information or material of whatsoever nature given, produced or provided to the Inquiry, or created or generated by the Inquiry, made available to Recognised Legal Representatives by the Inquiry (and by Recognised Legal Representatives to Core Participants, or Counsel, in accordance with the terms of this Restriction Order) from time to time.
- 20.6. “**Recipient**” means: (a) a Core Participant, (b) a Recognised Legal Representative, or (c) Counsel, (d) any other person who has received, been shown or otherwise had made available to them Protected Material, whether by the Inquiry, by a Recognised Legal Representative or otherwise.

- 20.7. “**Recognised Legal Representative**”, in relation to a Core Participant, means any qualified lawyer appointed to act on behalf of the Core Participant and recognised by the Chair as their recognised legal representative in accordance with Rule 5(2) of the Inquiries (Scotland) Rules 2007 from time to time.
- 20.8. This “**Restriction Order**” refers to this Order as varied to the date stated above.