

## **The Independent Jersey Care Inquiry (the “Inquiry”)**

### **Inquiry Protocol: Data Protection, Freedom of Information and Redaction**

1. The Inquiry is committed to ensuring any personal data will be dealt with in accordance with the Data Protection (Jersey) Law 2005.
2. The Inquiry will collate and generate a large amount of information during its work. This information will include personal data and sensitive personal data. There will understandably be concerns about how this information is to be used. This protocol therefore sets out:
  - 2.1 How the Inquiry will treat information disclosed to it;
  - 2.2 The extent to which this information will be published;
  - 2.3 The limited circumstances under which information may be passed on to third parties; and
  - 2.4 The procedures that the Inquiry will follow in obscuring information from documents, known as the ‘redaction’ process.

#### **How the Inquiry will treat information received**

3. All documents received by the Inquiry will only be accessed by members of the Inquiry Panel and Inquiry Legal Team (which consists of Solicitors to the Inquiry and Counsel to the Inquiry) until material is released in accordance with paragraph 6.
4. In broad terms the evidence the Inquiry expects to receive during the course of its work will fall into one of the following categories:
  - 4.1 Documents provided to the Inquiry by any individual, institution, organisation or body;
  - 4.2 Witness statements;
  - 4.3 Evidence given by witnesses at oral hearings; and
  - 4.4 Evidence that the Inquiry obtains through its own research or efforts, and from whatever source it considers necessary.

5. The Inquiry team may also process other personal information received by the Inquiry, for example personal contact details. The Inquiry team consists of:
  - 5.1 The Inquiry Panel;
  - 5.2 Counsel to the Inquiry; and
  - 5.3 The Solicitors to the Inquiry, to include the whole legal team and support staff.
6. The Inquiry will categorise the information that it receives into the following categories:
  - 6.1 Category 1 – evidence given and referred to during oral hearings. This will include witness statements of those witnesses giving oral evidence and those that are taken as read in to the Inquiry's record. This information will be uploaded onto the Inquiry's website;
  - 6.2 Category 2 – information that is relevant and material to the Inquiry's Terms of Reference and is probative of them; and
  - 6.3 Category 3 – information that is irrelevant or immaterial to the Inquiry's Terms of Reference or not probative of them. This information will not be disclosed to Interested Parties or published as part of the Inquiry's work.
7. All Category 1 and Category 2 information will be considered and the documents referred to within the hearing room will be redacted in accordance with the Inquiry's policy on redacting personal information (which is set out in detail below), prior to release to Interested Parties and/or publication on the Inquiry's website.
8. Following the conclusion of the Inquiry's work, all Category 1 material will be transferred to the States of Jersey Archive in redacted form. All other information will be logged and then destroyed by the Inquiry or originals returned to the provider. A copy of the document log will be provided to the States of Jersey Archive, again redacted in accordance with the Inquiry's redaction policy.

### **Providing information to third parties**

9. If in the interests of justice, the Inquiry believes that information should be transmitted to a third party against whom allegations or criticisms are made, in order to allow that third party to respond to such allegations or criticisms, the Inquiry may reveal the information upon receipt of suitable confidentiality undertakings from the third party recipient. The individual concerned will be informed that the information has been provided in this way.

10. Other than as described above, the Inquiry will not disclose information to third parties. However, if an individual or witness requests to use the independent support service set up by the Inquiry, the Inquiry may need to disclose personal details to the independent support service. The Inquiry will inform that individual if personal details are to be disclosed in such a way. The provider of the support service will be required to give the Inquiry an undertaking that any information about an individual that the Inquiry passes on will be held securely by that third party, in accordance with the Data Protection (Jersey) Law 2005, and used only to provide the services or information that individual has requested.
11. An individual has a right to request a copy of their personal details at any time to check the accuracy of the information held. If an individual would like to ask whether the Inquiry holds any personal data relating to them, they should contact the Inquiry by email at [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org).

### **Freedom of Information**

12. The Inquiry will be a scheduled public authority as defined by Schedule 1 of the Freedom of Information (Jersey) Law 2011. The Inquiry invokes the absolute exemption contained at Article 24 of the Freedom of Information (Jersey) Act 2011.

### **Redaction**

13. The Inquiry has formulated procedures which it will follow in obscuring information from documents, known as the 'redaction' process.
14. In relation to the procedures for redaction, a "Document" means anything in which information of any description is recorded and includes, but is not limited to, reports, reviews, board/committee minutes, governing/constitutional documents, legislation, letters and emails (internal and external), records and registers, information from websites, guides/codes of conduct, policy documents, articles and audio tapes of interviews, statements, notes and calendar entries.
15. Reference to an 'evidence provider' means any individual, institution, organisation or body who provides evidence to the Inquiry.
16. The Inquiry's procedures for the redaction of documents are intended to ensure that:
  - 16.1 Interested Parties, Accredited Lawyers and the public are aware of the Inquiry's procedures in relation to the redaction of documents;
  - 16.2 The Inquiry promptly receives documents from evidence providers, without delay being caused by applications being made for redactions or protective rulings before those documents are disclosed to the Inquiry; and

- 16.3 Where Interested Parties and Accredited Lawyers have concerns they can draw them to the attention of the Inquiry.

### The Inquiry's General Protective Ruling

17. In order to restrict the disclosure or publication of the identity of certain persons and information that is not in the public domain (i.e. information that is realistically accessible to the general public, information that has been published in regulated media - newspapers (printed or online), radio and television broadcast), the Inquiry has implemented a General Protective Ruling, being a general ruling to protect information provided to the Inquiry. The General Protective Ruling means that the following information will be redacted from all material before it is disclosed by the Inquiry to Interested Parties and/or published on the Inquiry's website:
- 17.1 The names and identifying details of:
- 17.1.1 individuals identified as having claimed to have been abused, or as having been a witness to any abuse alleged;
  - 17.1.2 any individuals accused of abuse, except for those who have criminal convictions for abuse, or those accused of abuse whose details are in the public domain as defined above and those whom the Inquiry reasonably believes to be deceased;
  - 17.1.3 individuals not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
  - 17.1.4 any applicants who have successfully applied to the Inquiry to not have their identities revealed and who do not fall into any of the above categories.
- 17.2 Other personal information. This does not extend to individuals' names (save for those individuals specified at paragraph 17.1 above), but would include telephone numbers, dates of birth and home addresses, unless there are particular circumstances that make such personal information relevant to the Inquiry's Terms of Reference.
18. In order to ensure compliance with the Inquiry's General Protective Ruling, evidence providers are required to follow the procedures below in relation to the redaction of documents.

### Providing documents to the Inquiry

19. All relevant documents should be disclosed to the Inquiry in an unredacted form on a confidential basis. No documents will be released to Interested Parties or referred to in the hearing room unless redactions are agreed with the evidence provider.
20. If, and to the extent that, an evidence provider wishes to rely on legal professional privilege as a reason for not producing a document (or part of a document) to the Inquiry, it must notify the Inquiry in writing of the nature of the material which it seeks to withhold and must summarise why it believes that the document attracts legal professional privilege. Evidence providers are reminded that they may choose to waive legal professional privilege and should therefore consider carefully whether the public interest, in ensuring that the Inquiry is effective, would justify waiving legal professional privilege.
21. Evidence providers should retain original versions of all documents provided to the Inquiry, as the Inquiry may request originals.

### The Inquiry's consideration of evidence provider's redactions

22. Where an evidence provider seeks redactions to a document which are outside the terms of the Inquiry's General Protective Ruling, the Inquiry will treat the document as being the subject of an application for a further protective ruling. The Inquiry will not publish the provisionally redacted parts of the document to Interested Parties unless:
  - 22.1 An individual witness or Interested Party was the author or recipient of the unredacted document and is therefore entitled to see it in its unredacted form; or
  - 22.2 The evidence provider has subsequently agreed in writing to the removal or amendment of the provisional redactions; or
  - 22.3 The Inquiry has refused the evidence provider's application for a protective ruling and has given the evidence provider five working days' notice of that decision so that it can be challenged by the evidence provider, either by way of application to the Inquiry, or through due process and for the Inquiry to be notified of such a challenge.

### Additional redactions which may be justified

23. Where an evidence provider seeks redactions which are outside the terms of the Inquiry's General Protective Ruling, there will be cases in which additional redaction appears to the Inquiry to be, on its face, justified. For example, additional redactions may be:

- 23.1 Information that is irrelevant to the Inquiry's Terms of Reference; or
  - 23.2 Relevant, but where there is an apparent clear and strong public interest in, and/or a positive duty to ensure, that the document or the redacted passages are not made available to Interested Parties.
24. In such cases, the Inquiry will usually make a protective ruling without requiring any further written application from the evidence provider.
25. Where a protective ruling has been made by the Inquiry without a written application having been made by the evidence provider, and an Interested Party is dissatisfied with the extent of the redaction specified in the protective ruling, they may apply to the Inquiry seeking a variation of the protective ruling.