



Government Legal Department

BY E-MAIL: 02ModuleSolicitors@covid19.public.uk

Laura Taylor
Module 2 Solicitor
Covid 19 Public Inquiry

1 June 2023

Dear Sirs,

Module 2 of the UK Covid-19 Public Inquiry

We write in relation to the ruling on the section 21(4) application and in response to your letter of 29 May. In this letter we will set out what actions we are taking to meet your requirements and for what reason. We also try to address in a constructive way certain points raised by the ruling.

The Cabinet Office fully supports the important and necessary work of the Inquiry as it seeks to establish the facts and learnings to be had from the UK's experience of Covid. As you know we have submitted over 55,000 documents to support the Inquiry's work, in response to the Inquiry's Rule 9 requests. Given the central coordinating role played by the Cabinet Office, we will be assisting the Inquiry across all of the various modules set out by the Inquiry earlier this week, and contributing fully to the three years of hearings scheduled by the Inquiry. We take this opportunity to assure you of our full cooperation, and respect for your work as an independent statutory inquiry.

To recap. The inquiry issued a Section 21 notice to the Cabinet Office on 28 April. The Cabinet Office made a section 21(4) application on 15 May. The Inquiry gave a ruling on this, dismissing the application, on 22 May. In a letter of 29 May the Inquiry required the Cabinet Office by 4pm today either to comply with the Section 21 Notice or otherwise seek a judicial review.

The Cabinet Office has today sought leave to bring a judicial review. We do so with regret and with an assurance that we will continue to cooperate fully with the inquiry before, during and after the jurisdictional issue in question is determined by the courts, specifically whether the Inquiry has the power to compel production of documents and messages which are unambiguously irrelevant to the Inquiry's work, including personal communications and matters unconnected to the government's handling of Covid. We consider there to be

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important issues of principle at stake here, affecting both the rights of individuals and the proper conduct of government. The request for unambiguously irrelevant material goes beyond the powers of the Inquiry. Individuals, junior officials, current and former Ministers and departments should not be required to provide material that is irrelevant to the Inquiry's work. It represents an unwarranted intrusion into other aspects of the work of government. It also represents an intrusion into their legitimate expectations of privacy and protection of their personal information.

The reasoning is set out more fully in the Statement of Facts and Grounds filed today.

As you know we have exchanged views with the Inquiry and explored a number of possible avenues for resolving this difference of opinion, including by demonstrating how our legal counsel have applied redactions of irrelevant material, and taking a more focused or sequential approach to the direction of the information requirements. We appreciate the patience and goodwill shown by the Inquiry as we have sought to identify a mutually acceptable solution, and we remain hopeful and willing to agree together the best way forward.

The Inquiry has given us the choice of providing all the stipulated documents or seeking a judicial review. While choosing the second of these options, we also want to provide as much relevant information as possible, and as quickly as possible, to assist the work of the Inquiry. Accordingly we have provided to the Inquiry today as much information as possible in all of the specified categories. Where there is a limitation on this information, we give a summary explanation below of what it is, how it arises, and with what consequence. The key facts and timeline are set out in a sworn witness statement from a senior Cabinet Office official, as required by the Inquiry in its letter of 29 May, and this is attached.

Specified WhatsApp communications involving Henry Cook

These have been provided by Henry Cook and are now being provided to the Inquiry, subject to redaction by counsel for unambiguously irrelevant material and national security. (Note: the Inquiry has already been able to see precisely how this has been done).

Specified WhatsApp communications involving Boris Johnson

The Cabinet Office required Boris Johnson to share all of the communications specified by the Inquiry. Following the change in his legal representation, Boris Johnson gave specified legal counsel permission to access an electronic record of certain WhatsApps on 30 May, adding two further counsel to the confidentiality ring on 31 May. By public statement on the evening of 31 May he invited Cabinet Office to share this information with the Inquiry. By working through the night, lawyers acting for Cabinet Office have now completed our review for national security and unambiguously irrelevant material and are in a separate communication providing the relevant material to the Inquiry today. The Inquiry will wish to note that while covering all of the information in the Cabinet Office's possession, we have not been able to verify the completeness of this material, and it does not cover the whole of the specified time period, but only the period from May 2021 when the former Prime Minister acquired a new phone. We have asked Boris Johnson if he will provide to us any further messages caught by the Section 21 notice.

Specified Prime Ministerial diaries of Boris Johnson

These constitute official records and have always been in the control of the Cabinet Office. All of the specified records are provided, subject only to redaction for national security and unambiguously irrelevant material.

Specified Notebooks of Boris Johnson

The Section 21 Notice stipulated that these should be 'provided in clean unredacted form, save only for any redactions applied for reasons of national security sensitivity'. The Cabinet Office was given permission by Boris Johnson on the morning of 31 May to take possession of these notebooks, and did so immediately. Despite working through all of the day and most of the night it has not been possible to conclude in full the required specialised review for national security purposes. We will share in batches the appropriately redacted copies of notebooks as they are completed, with the balance due in 2 working days.

The ruling on the Section 21(4) application indicates (in paragraphs 19 and 22) three lines of inquiry of especial interest to the Inquiry:

On the question of how much attention was given to the emergence of Covid-19 in early 2020 by the then Prime Minister, we consider the diaries and notebooks now provided will be of real assistance, as will the agendas, papers and minutes from all of the Covid-related meetings over this time, all of which have already been provided to the Inquiry.

On the subject of how WhatsApp messages should be used in policy formation, we will be happy to provide a statement for the Inquiry, drawing on our guidance and practice, which the government upheld in litigation last year.

On the subject of relations between the UK and Scottish governments, we are working at pace with DLUHC, the lead department on intergovernmental relations, to provide a substantial number of documents which will assist the Inquiry in this regard, and expect to have these with the Inquiry early next week.

The ruling also notes the possibility of Cabinet Office seeking a ruling on relevancy. We welcome this offer and will discuss with the Inquiry how best to make use of this to help us identify all material relevant to the work of the inquiry.

Cabinet Office is strongly committed to transparency and to assisting the work of the Inquiry. While needing to seek a ruling from the court on the correct interpretation of the relevant statute, we will continue to work closely with the Inquiry, providing all relevant information and offering discussions on possible solutions which are proportionate, pragmatic, and consistent with the Terms of Reference and the 2005 Inquiries Act.

We look forward to the commencement of the Module 1 hearings which begin on Tuesday 13 June and at which Cabinet Office witnesses are ready to give evidence.

Given the high level of public interest in this matter the Cabinet Office will be placing a copy of this letter into the public domain.

Yours sincerely

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For the Treasury Solicitor

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