

## Disclosure Protocol

### Introduction

1. This Disclosure Protocol (“Protocol”) sets out the approach that will be taken by the Andrew Malkinson Inquiry (“the Inquiry”) to (i) the provision of material to the Inquiry, and (ii) the onward disclosure of material which the Inquiry has received to date in Phase 1, during the next stage of its work (“Phase 2”, as described below paragraph 4).
2. Material Providers (“MPs”) should note that during “Phase 1” of the Inquiry’s work (as defined below paragraph 3), the Inquiry’s approach to the receipt and disclosure of documents was governed by its Phase 1 Disclosure Protocol.<sup>1</sup> The Inquiry is now moving to Phase 2: the Inquiry will continue to undertake the tasks as set out in Phase 1 except that it will additionally undertake appropriate onward disclosure, (which is now governed by this Phase 2 Disclosure Protocol).

### Definitions

3. In this Protocol:

“**Disclosure**” is the process of making available relevant material to persons from whom the Inquiry proposes to take witness statements. Such relevant material is disclosed subject to a strict undertaking to the Inquiry of confidentiality by the recipient of the disclosure (and their recognised legal representative, if any), not to reveal the whole or any part of that material (or any information contained within it) to others.

“**Document**” means anything in which information of any description is recorded, whether in paper or in electronic form. It will include but is not limited to, contractual documents, governing/constitutional documents, guides/codes of conduct, design plans, technical drawings, blueprints, reports, reviews, committee/board minutes, meeting/attendance notes, manuscript notes, memoranda, letters (including fax), leaflets, circulars, emails (internal and external), legislation, policy documents/statements, notebooks, witness statements, photographs, video and audio recordings and physical evidence.

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<sup>1</sup> First published on 9 November 2023, and updated on 12 November 2023 and 12 December 2023.

**“Material Provider” or “MP”** means any person, institution, or organisation who has been asked to provide documents to the Inquiry or who has provided documents voluntarily to the Inquiry. For the avoidance of doubt, it includes His Majesty’s Government and any Department of State or Minister of the Crown.

**“Potentially relevant documents”** means those which, having regard to the Inquiry’s Terms of Reference (“ToR”), it is likely that the Chair (if aware of their existence) would wish to be provided.

**“Publication”** is the process of making information available as part of any interim or final report (which will be published) to members of the public via the Inquiry website.

**“Phase 1”** refers to the first phase of the Inquiry’s work as set out in the Phase 1 Privacy Notice. During Phase 1 the Chair and Inquiry Team will conduct a provisional assessment of material disclosed to the Inquiry by MPs, in order to:

- (a) Identify the issues (“Issues”) to be investigated to meet the ToR;
- (b) Determine the number and scope of future Phases of its work in order to investigate the Issues and discharge the ToR;
- (c) Determine the approach which the Inquiry will take during such future Phases of work; and
- (d) Identify what further evidence may be required to assist it in investigating the Issues.

**“Witness”** refers to a person from whom the Chair intends to take/request a written statement, and, in Phase 2, the Inquiry may also hold evidence gathering meetings with selected witnesses.

4. The work of Phase 1 continues but the Inquiry has also initiated Phase 2. In **Phase 2** additionally, (which is intended to commence after 19 February) the Chair and Inquiry team intend to:

- (a) Continue to seek and receive disclosure from MPs;
- (b) Approach selected witnesses for written witness statements;
- (c) Instruct an independent expert/s to assist the Inquiry;
- (d) Disclose relevant material to those witnesses and expert/s to enable their witness statements / report/s to be completed;
- (e) Consider whether it is necessary, and if so, to meet selected witnesses for the purposes of the evidence gathering process; and
- (f) Continue to determine the approach which the Inquiry should take during such future Phases of work.

## **Provision of Documents to the Inquiry**

5. The Inquiry requests anyone who holds potentially relevant documents to supply those documents to the Inquiry. Any person who is in possession of documents directly relevant to the ToR of the Inquiry and who is not approached by the Inquiry should contact the Inquiry Secretariat so that the necessary arrangements can be made for receipt of those documents.
6. Wherever possible the Chair intends to rely on voluntary co-operation for production to the Inquiry of the documents she considers necessary to fulfil her ToR.
7. The Chair 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. The Chair expects that all parties to whom a request of this kind is addressed will co-operate with the Inquiry and will provide all potentially relevant material.
8. MPs, including legal representatives, should provide documents requested by the Chair, together with any other documents they consider to be potentially relevant to the Inquiry's ToR, without delay and within the time limits specified by the Inquiry in any relevant request.
9. MPs are expected to undertake comprehensive, thorough, and rigorous searches for all potentially relevant documents they control in response to any request for documents. MPs should keep a detailed written record at the time of the search that will enable them to complete a Disclosure Statement (see paragraph 12 below). For the avoidance of doubt, a document is in an MP's control if the MP has:
  - (a) physical possession of it; or
  - (b) a right to possession of it; or
  - (c) a right to inspect or take copies of it.
10. Persons who hold potentially relevant documents are reminded about the duty to preserve documents and evidence which appear to be relevant to the Inquiry's ToR. Steps should be taken to ensure any such evidence and documentation is not destroyed, distorted, or otherwise altered.
11. Annex A sets out the standards MPs should follow in submitting evidence to the Inquiry.

## **Disclosure statement from MPs**

12. The Inquiry will in due course request MPs to provide a signed disclosure statement if it deems the same to be necessary. The purpose of such a statement will be, inter alia: to confirm an MP's search methodology, to provide clear assurance that the Inquiry's request for disclosure has been met and to explain, so far as can be ascertained, what has become of any information which cannot be produced (including, where possible, identification of the last person known to have had access to documents that are no longer held).

## **Disclosure of documents during Phase 2**

13. Phase 2 is intended to commence after 19 February 2024.

14. During Phase 1, personal data was not shared beyond the Chair and the Inquiry Team except where necessary to make further requests for disclosure of potentially relevant material from that same MP (believed to be in possession or control of such materials).

15. In Phase 2, with regards to disclosure, the Inquiry will:

- (a) Request written statements from witnesses which may involve disclosing relevant documents from their own/former organisation/MP;
- (b) Request written statements from witnesses which may involve disclosing relevant documents shared from a different organisation/MP;
- (c) Instruct independent expert/s which will involve disclosing relevant documents provided by MPs;
- (d) Share emerging issues that have been identified by the Inquiry's review of the material with Mr Malkinson;
- (e) Share the written statements generated for the Inquiry from witnesses with instructed expert/s and potentially with other witnesses;
- (f) Make (further) requests for disclosure of potentially relevant material from MPs (believed to be in possession or control of such materials), which may involve disclosing selected documents shared by a different organisation/MP;
- (g) In due course, the Chair will wish to draw on documents provided, and material generated in Phase 1 and Phase 2 when producing her final report; and
- (h) The Chair will, in due course, also wish refer to relevant documentation in order to explain her conclusions/recommendations by referencing and publishing the source documentation.

## **Personal data**

16. This Protocol should be read alongside the [Inquiry's Privacy Notice](#). The Privacy Notice explains what personal data is processed by the Inquiry, for what purpose, and how it is processed. The Privacy Notice must be adhered to by all persons who access, use, process, or otherwise deal with personal information on the Inquiry's behalf.

## **Redaction of information for onward disclosure**

17. The Inquiry will review all documents and material generated for the Inquiry prior to sharing with any witnesses/expert(s)/publication and will apply redactions as necessary so that such disclosure complies with relevant data protection laws.

18. The Inquiry's approach to the redaction of personal data is governed by the relevance of that data to the Inquiry, having regard to the lawful basis for processing that data and the necessity of its disclosure for the Inquiry to fulfil its Terms of Reference.

19. While names will not usually be redacted where relevant and necessary to the Inquiry's work (unless the name is protected under another lawful exemption), the Inquiry anticipates that the following personal data will normally be redacted (this is not intended to be an exhaustive list):

- Day and month of birth;
- Personal telephone numbers;
- Personal email addresses;
- Personal social media identifiers;
- Identification numbers;
- Home addresses, unless the address is itself relevant;
- Personal signatures; and
- Irrelevant information.

20. The Inquiry will decide whether any other information needs to be redacted on a case-by-case basis. There may for example be some material which attracts Legal Professional Privilege (LPP) or public interest immunity (PII), or which the Chair considers should be redacted on grounds of confidentiality or special sensitivity.

## **Process for reviewing extent of redactions.**

21. Where the Inquiry identifies a document which it intends to disclose to witnesses/MPs, it will inform the MP/witness who provided the document. The MPs/witnesses may indicate which part or parts of the document (if any) they seek to have further redacted on the grounds that its disclosure is not relevant

and necessary for the purposes of the Inquiry. Reasons must be given for each proposed redaction.

22. The Inquiry will consider all requests for redaction. The MP/witness who provided the document in question will be notified before it is disclosed.
23. The Inquiry expects MPs and witnesses to adopt a measured approach when seeking redactions and will redact documents only where there is a good reason to do so.
24. Where a document or part of a document attracts LPP or PII, the Inquiry will only disclose that material with the express written consent of the providing organisation which supplied the document in question.

### **Determinations**

25. The Chair may make a Determination when this is necessary to keep information private. Determinations restrict disclosure or publication of information.
26. A Determination made by the Chair will only specify such restrictions as:
  - are required by law; or
  - the Chair considers to be necessary to the Inquiry fulfilling its ToR; or
  - the Chair considers to be necessary in the public interest.
27. Determinations made by the Chair normally continue in force unless and until they are changed or cancelled. They will usually remain in force at least until the Inquiry has ended and often beyond that. A witness or MP can ask the Chair to change or cancel an existing determination which affects you. The Chair can decide to change or cancel a determination without an application having been made if she considers it necessary to do so.
28. Everyone must obey a Determination by the Chair. That includes the media, members of the public, witnesses, legal representatives, and all members of the Inquiry team.

### **Representations on extent of redactions / procedure for applying for a Determination by the Chair**

29. There may be cases where the MP or witness disagrees with the extent of redactions proposed by the Inquiry and wishes to make a representation to that effect. Any representation should be made in writing and sent by email to the Solicitor of the Inquiry ([Solicitor@AndrewMalkinsonInquiry.uk](mailto:Solicitor@AndrewMalkinsonInquiry.uk)) as soon as possible.
30. When a MP or witness makes a representation:
  - (a) The Inquiry Legal Team will carefully consider the representation and explain whether it considers the representation justified, wholly or in

part. It will seek further information if required in order to make full consideration.

- (b) The Inquiry Legal Team will take a reasonable approach when considering any representations and will carefully consider representations from MPs and witnesses with regards to the protection of sensitive or confidential information.
- (c) In its deliberations, the Inquiry Legal Team will consider each representation on a case-by-case basis, considering what is necessary and proportionate for the Inquiry to meet its ToR; that all personal data is processed under the lawful basis; and that disclosure complies with relevant data protection laws and any other relevant lawful order.
- (d) It will communicate its decision to the MP or witness in writing (by email).
- (e) If a witness or MP continues to be dissatisfied with the extent of redactions proposed by the Inquiry Legal Team, they may request that the Chair should make a Determination (as defined above paragraph 25) on the issue. The MP or witness should write to the Chair within seven working days of receiving the Inquiry Legal Team's decision, setting out the arguments to which it wishes the Chair to have regard.
- (f) The Chair will communicate her decision to the witness or MP and her decision will be final. At all times the Chair will act with fairness and consider what is:
  - Required by law;
  - Considered by the Chair to be necessary to the Inquiry fulfilling its ToR; and
  - Considered by the Chair to be necessary in the public interest.

31. The Inquiry recognises that circumstances can change. Therefore, MPs and witnesses may make further representations to the Inquiry Legal Team if a material change in the context or circumstances may require reconsideration of the extent of redactions.

32. The procedures outlined above are not intended to cover every eventuality or every procedural issue that may arise. It follows that, where necessary in the interests of fairness and in order to the fulfil ToR, the Inquiry may depart from this process.

### **Other information**

33. The Inquiry operates independently from the Ministry of Justice and the Secretary of State for Justice, and they have no right of access to evidence

collected by the Inquiry, including any documents (including statements) collected under this Protocol.

34. The Chair and Inquiry are not public authorities for the purposes of the Freedom of Information Act 2000.
35. MPs who are responsible for public records are reminded of their duties under the Public Records Act 1958 and that they remain responsible for complying with those duties, including (so far as relevant) in respect of any documents provided to the Inquiry under either the Phase 1 Protocol or this Protocol.

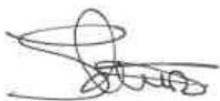
### **Future protocols**

36. Future protocols will set out the procedures applicable in future phases of the Inquiry's work. The Inquiry's procedures and phases will be governed by the necessity of fulfilling the ToR and at all times, the Inquiry will comply with all necessary data protection legislation, including the lawful basis for the Inquiry to process data and any other relevant circumstances.

### **Conclusion of the Inquiry's work**

37. Following the conclusion of the Inquiry's work, any documentation that is to be retained as part of the historic record will be transferred to the National Archives. In so doing, the Inquiry will ensure classified and sensitive material is duly protected. All other data that it is not necessary to retain (digital or otherwise) will then be destroyed. Any material subject to preservation by Inquiry will be outlined in future Protocols.

**Issued under the authority of the Chair on 19 February 2024**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

## **ANNEX A – Guidance on provision of documents**

Material Providers should note the following standards for submitting evidence to the Inquiry:

- a. all documents should be provided with an accompanying index listing them, along with their locations in any systems or folders;
- b. all documents should be provided electronically where possible, with their original filenames and, where scanned, they should be named appropriately;
- c. digital documents should be provided in their native format (e.g. Microsoft Word, Microsoft Excel, email files (e.g. msg, eml) with their attachments), together with any underlying metadata;
- d. documents should be submitted at document level, i.e. multiple documents should not be grouped into one large PDF. Similarly, a document should not be scanned as individual pages, but as a single PDF;
- e. hard copy documents should be digitised to multipage PDF format;
- f. scanning of paper documents should be undertaken at a standard of 300dpi;
- g. scanned (PDF) images of paper should show all information on the paper, including all corners and both sides of the paper (where information is contained on two sides) and any annotations. No data should be cut off during the scanning process. If the paper that is being scanned has any attachment (e.g. a sticky paper note) or cover sheet, it should be scanned twice, both with and without the attached note; and
- h. all documents should be provided in unredacted format, unless agreed with the Inquiry beforehand.

The Inquiry will be using Egress (cloud-sharing platform) to send and/or receive electronic material securely from various Material Providers. In advance of any material intended to be supplied to the Inquiry, yourself or your representatives should identify the individuals/organisations that will require access to your designated secured Egress folder.

Upon the Inquiry receiving these email addresses, the Inquiry will share a link of your secured folder and issue instructions on how to upload material. All material should be uploaded in .zip/compressed files and each .zip/compressed folder should not exceed 2GB.

In so far as is possible, when compressing material for upload, please do keep any original folder/file structure/categorisation you have applied to the material as part of your records management. It will be helpful to the Inquiry if any work on categorisation of the material has already been applied.

As outlined in (a) above, each disclosure should also be made with an accompanying index (.csv/excel file). The following index should include any unique identification number that a Material Provider wishes to be applied to any documents

supplied upon ingestion of such material onto the Inquiry’s document management system (“DMS”). The Inquiry will refer to the following unique reference as the ‘Control Number’. Please ensure you provide a .csv file/excel/index file that aligns exactly with the names of the files (including their formats), along with the Control Number, to those files which you have uploaded to Egress (please see example below).

<b>Control Number</b>	<b>File Name</b>
MSTR0000001	Letter from x to y - Dec 2013.doc
MSTR0000002	2005 - Spreadsheet Audit.xls
...	...
MSTR0006345	2015 Internal Guidance.xls

The Inquiry will also supply all ingested files on our DMS with a Unique Reference Number (“URN”) for all internal Inquiry purposes (including any reference within a final and/or interim report). If no Control Number is provided by the Material Provider, the Inquiry will apply the same reference as the URN.

In line with the request at (c) above, if a Material Provider stores material on a DMS, we request that material is supplied by way of formal production at the point of export from your system. Your document management system vendor supplier will be able to assist you in the following regard.

Finally, for all hard-copy material, the Inquiry will engage with you and/or your representative in the meeting scheduled. The Inquiry will set out separate hereto an approach for providing hard-copy material to the Inquiry.

## ANNEX B – Phase 1: Disclosure Protocol

### Introduction

1. This Phase 1 Disclosure Protocol (“Phase 1 Protocol”) sets out the initial approach that will be taken by the Andrew Malkinson Inquiry (“Inquiry”) to the disclosure of material made to the Inquiry by Material Providers (MPs) in relation to its Terms of Reference (“ToR”). It is intended to govern the Inquiry’s approach to disclosure during Phase 1 of the Inquiry’s work (as defined below), and its scope may be extended, or it may be amended, added to, or replaced, in due course.

### Definitions

2. In this Phase 1 Protocol:

“**document**” means anything in which information of any description is recorded, whether in paper or in electronic form. It will include but is not limited to, contract documents, governing/constitutional documents, guides/codes of conduct, design plans, technical drawings, blueprints, reports, reviews, committee/board minutes, meeting/attendance notes, manuscript notes, memoranda, letters (including fax), leaflets, circulars, emails (internal and external), legislation, policy documents/statements, witness statements, photographs, video and audio recordings and physical evidence.

“**Material Provider**” or “**MP**” means any person, institution, or organisation, which has been asked to provide documents to the Inquiry or which has provided documents voluntarily to the Inquiry. For the avoidance of doubt, it includes His Majesty’s Government and any Department of State or Minister of the Crown.

“**Potentially relevant documents**” means those which, having regard to the Inquiry’s ToR, it is likely that the Chair (if aware of their existence) would wish to be provided with.

“**Phase 1**” means the first phase of the Inquiry’s work, during which the Chair and Inquiry Team intend to conduct a provisional assessment of material disclosed to the Inquiry by MPs, with a view to (a) developing the issues to be investigated (“Issues”) in furtherance of its ToR, (b) determining the number and scope of future Phases of its work in order to investigate the Issues and discharge the ToR, (c) determining the approach which the Inquiry will take during such future Phases of work, and (d) identifying further evidence that may be required to assist it in investigating the Issues.

## **Objectives**

3. The purpose of this Phase 1 Protocol is to ensure that MPs understand the Inquiry's initial procedures for (a) the provision of documents by MPs to the Inquiry and the handling of such documents by the Inquiry, and (b) the delivery of documents to the Inquiry in the correct form and format, during Phase 1. Annex A [above] sets out the standards MPs should follow in submitting evidence to the Inquiry.
4. In addition to the other objectives of Phase 1 set out herein, and as set out above, the Chair and the Inquiry Team intend, after a provisional assessment of material, to formulate a further or amended protocol (or protocols) governing disclosure as the Inquiry moves into future Phases of its work ("future Protocol"). It is anticipated that such future Protocols will deal with onward disclosure by the Inquiry, as well as applications for redactions and anonymity.
5. The Inquiry will publish any future Protocol on its webpage and will notify MPs who have provided documents when such future Protocols are published. Similarly, if this Phase 1 Protocol is amended from time to time, the amended version will be published on the Inquiry webpage.

## **Application**

6. This Phase 1 Protocol will apply to all documents received by the Inquiry from MPs prior to the publication on the Inquiry's webpage of any future Protocols.

## **Provision of Documents to the Inquiry**

7. The Inquiry requests anyone who holds potentially relevant documents to supply those documents to the Inquiry. Any person who is in possession of potentially relevant documents and who is not approached by the Inquiry should contact the Inquiry Secretariat so that the necessary arrangements can be made for receipt of those documents.
8. Wherever possible the Chair intends to rely on voluntary co-operation for production to the Inquiry of the documents she considers necessary to fulfil her ToR.
9. The Chair 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. The Chair expects that all parties to whom a request of this kind is addressed will co-operate with the Inquiry and will provide all potentially relevant material.
10. MPs, including legal representatives, should provide documents requested by the Chair, together with any other documents they consider to be potentially relevant to the Inquiry's ToR, without delay and within the time limits specified by the Inquiry in any relevant request.

11. MPs are expected to undertake comprehensive, thorough and rigorous searches for all potentially relevant documents they control in response to any request for documents. MPs should keep a detailed written record at the time of the search that will enable them to complete a Disclosure Statement (see paragraph 17 below). For the avoidance of doubt, a document is in an MP's control if the MP has:
- a) physical possession of it; or
  - b) a right to possession of it; or
  - c) a right to inspect or take copies of it.
12. Persons who hold potentially relevant documents are reminded about the duty to preserve documents and evidence which appear to be relevant to the Inquiry's ToR. Steps should be taken to ensure any such evidence and documentation is not destroyed, distorted, or otherwise altered.

### **Disclosure of Documents by the Inquiry**

13. In Phase 1, personal data will not be shared beyond the Chair and the Inquiry Team except where necessary to make further requests for disclosure of potentially relevant material from that same material provider (believed to be in possession or control of such materials)<sup>2</sup>. Future Protocols will deal with onward disclosure and the Inquiry's approach to applications for redactions and anonymity.
14. The Inquiry operates independently from the Ministry of Justice and the Secretary of State for Justice, and they have no right of access to evidence collected by the Inquiry, including any documents collected under this Phase 1 Protocol. The Chair and Inquiry are not public authorities for the purposes of the Freedom of Information Act 2000.
15. The Inquiry processes personal data in accordance with its obligations under the Data Protection Act 2018 and UK General Data Protection Regulation 2018. Requests made under those provisions will be dealt with on a case-by-case basis by the Inquiry.

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<sup>2</sup> Save for any information, including Personal Data, provided to the Inquiry, may be transferred to third-party contractors providing services to it, such as the operation of IT systems used, or to allow the secure storage of information, as well as allowing the Inquiry to review and analyse information. The contractors will act as Processors acting on behalf, and under the control, of the Inquiry. Where this is the case, these Processors are subject to stringent contractual obligations in relation to ensuring the security and confidentiality of the information, including Personal Data, they hold on behalf of the Inquiry. This means that they cannot do anything with that Personal Data unless instructed to do so. These Processors cannot share any Personal Data with any organisation apart from the Inquiry and/or unless instructed to do so, except where required to do so by law or Court order.

16. MPs who are responsible for public records are reminded of their duties under the Public Records Act 1958 and that they remain responsible for complying with those duties, including (so far as relevant) in respect of any documents provided to the Inquiry under this Phase 1 Protocol. Any material subject to preservation by Inquiry will be outlined in future Protocols.

### **Disclosure Statement**

17. The Inquiry will in due course request MPs to provide a signed disclosure statement if it deems the same to be necessary. The purpose of such a statement will be, inter alia: to confirm an MP's search methodology, to provide clear assurance that the Inquiry's request for disclosure has been met and to explain, so far as can be ascertained, what has become of any information which cannot be produced (including, where possible, identification of the last person known to have had access to documents that are no longer held).

**Updated on 12 December 2023<sup>i</sup>**

**Issued under the authority of the Chair on 12 December 2023**

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<sup>i</sup> Previous version: 9 November 2023