

INQUIRY LEGAL TEAM NOTE

(INTERIM RESTRICTION ORDER: OPERATIONALLY SENSITIVE MATERIAL)

Introduction

1. The Inquiry holds material on its disclosure database (Relativity) that is relevant to its Terms of Reference and which therefore falls to be disclosed to all Core Participants ('CPs'), but which is not or not necessarily capable of being made public without redaction of information within it that is operationally sensitive ('OS').
2. OS material contains information which, if published, would alone be capable of assisting those who would wish to carry out future terrorist attacks or other criminal activity and/or would, in combination with other information already in the public domain or contained within other disclosure, be capable of assisting those who would wish to carry out future terrorist attacks or other criminal activity, i.e. through "the mosaic effect".
3. Examples of OS material include:
 - a. information that sets out details on how to build an improvised explosive device ('IED');
 - b. information that explains how to maximise the effectiveness of an IED; and
 - c. information that explains techniques or methods available to law enforcement agencies to disrupt the activities of those engaged in terrorist or other criminal activity.
4. This Note does **not** address any matters relating to materials that are said to be closed because those materials engage matters of national security and/or other matters protected by the public interest (i.e. material typically caught by a public interest immunity application in legal proceedings). The Inquiry is not yet in a position to invite submissions on such material and, as per the Chapter List circulated last year, the hearings will be sequenced so that the initial oral evidence hearings from March 2026 onwards will not consider or directly engage with any closed material. A separate note will be circulated in due course on the proposed approach to the handling of closed material and the process for seeking Restriction Orders in respect of such material.
5. The Inquiry is committed to ensuring that, as far as possible, OS material is made available to all CPs with minimal redactions applied to the OS content. However, there is a need for caution to ensure that such material is handled with care so as to avoid the risks identified in paragraph 2 above. This Note therefore sets out the approach that the Inquiry intends to adopt by way of the making of a Restriction Order (an Operationally

Sensitive Restriction Order – an “OSRO”) to manage OS materials whilst at the same time maximising disclosure to CPs in a safe and secure way.

6. The Restriction Order governing this process will be made on an **interim** basis (‘the interim OSRO’). The purpose of doing so is to provide CPs with the earliest possible access to materials containing OS information to ensure that they are best placed to effectively participate ahead of a hearing in November (see below) to determine whether the final Restriction Order should be made.
7. The timetable designed to lead to that hearing is set out at paragraph 37 below. The final Restriction Order will, if made, include arrangements for any oral evidence hearing at which OS materials can be used. For this reason, the media will be invited to make submissions in relation to the final OSRO. To assist CPs and the media in making submissions in relation to the arrangements for oral evidence hearings, the Inquiry Legal Team (‘ILT’)’s provisional view of how those hearings should be conducted is set out below in paragraphs 31 to 36.
8. The process for the redaction of OS content is set out in detail below. The central point to make clear is that the information obscured by the redactions applied under this interim Restriction Order will **always** be visible to CPs and their legal representatives in a designated ‘OS area’ of the Relativity disclosure system. In other words, the interim Restriction Order will not prevent CPs accessing **any** of the OS material.
9. The ILT’s current view, subject to submissions received, is that the final OSRO should be materially in the same terms as the interim OSRO. However, the ILT welcomes the views of all CPs, in particular in relation to whether any further categories of OS material are required to be included.
10. The balance of this Note is arranged as follows:
 - a. The Inquiry’s commitment to openness;
 - b. The law in relation to Restriction Orders;
 - c. A step-by-step guide to the approach to disclosure under the interim OSRO, with the provisional view of the ILT as to how OS material should be handled at hearings; and
 - d. The timetable for the final OSRO.

a) The Inquiry’s commitment to openness

11. Openness is at the heart of our system of justice and vital to the rule of law (*R (Guardian News and Media Ltd.) v City of Westminster Magistrates Court* [2013] QB 618; *Cape Intermediate Holdings Ltd v Dring* [2020] AC 629 and *A v BBC* [2015] AC 588.). The

principle of open justice applies equally to those conducting quasi-judicial inquiries (*Kennedy v Charity Commission* [2014] UKSC 20). Openness, so far as possible, is embedded in section 18 of the Inquiries Act 2005 ('the Act') and is a core component of the requirement in section 17 for the Chairman to act fairly.

12. The Chairman and the ILT are committed to holding as much of the Inquiry as possible in public. This commitment has been a guiding principle of the Inquiry since it began and was expressed in the Chairman's 21 February 2024 statement on the Terms of Reference:

"My starting principle is that hearings will be held in public and broadcast live on the Inquiry's website unless it is necessary in the public interest and for reasons of national security that they be held in private.

The nature of the issues we are investigating will inevitably require us to look at sensitive information. Some of this work may need to be done in private and I may need to hold what are known as closed hearings, where the public and others engaged in the Inquiry may not be able to attend. I will only do this where I am satisfied it is absolutely necessary to get to the truth.

I will scrutinise every request and, if closed hearings are necessary, I will work to ensure that as much information as possible about the closed hearings is made public. There will be legal issues I need to consider but I intend to bring as many details as I can about the intelligence issues around the Omagh bombing that are within the Terms of Reference into the light."

13. This commitment to openness is and must be more than just words: it is and will be central to every decision the Inquiry makes. The Inquiry recognises that providing CPs with as much information as possible, involving the media, conducting public hearings and acting with transparency are essential to achieving this goal. The commitment to openness is especially important for this Inquiry as it is recognised that the issues under its investigation have generated significant public concern, both in the United Kingdom and internationally.

b) Restriction Orders: the Law

14. Section 17 of the Act provides:

(1) *Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*

...

- (3) *In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."*

15. Section 18 of the Act provides that:

- (1) *Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able—*
- (a) *to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;*
- (b) *to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel."*

16. Section 19(1) makes provision for restrictions upon (1) the attendance of the public at the Inquiry and (2) the disclosure or publication of any evidence or documents provided to the Inquiry. By section 19(2) those restrictions may be imposed either by (a) the Minister in a restriction notice or (b) the chairman of the inquiry in a restriction order. Section 19 states:

- (3) *A restriction notice or restriction order must specify only such restrictions—*
- (a) *as are required by any statutory provision, retained enforceable EU obligation or rule of law, or*
- (b) *as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).*

17. As required by section 19(3)(b), Chairman should have particular regard to a number of matters. Section 19 states:

- (4) *Those matters are:*
- (a) *the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern*
- (b) *any risk of harm or damage that could be avoided or reduced by any such restriction;*
- (c) *any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;*

- (d) *the extent to which not imposing any particular restriction would be likely–*
 - (i) *to cause delay or to impair the efficiency or effectiveness of the inquiry, or*
 - (ii) *otherwise to result in additional cost (whether to public funds or to witnesses or others).*

18. For the purpose of section 19(4)(b), section 19 states:

- (5) *In subsection (4)(b) “harm or damage”*
 - (a) *death or injury;*
 - (b) *damage to national security or international relations;*
 - (c) *damage to the economic interests of the United Kingdom or of any part of the United Kingdom;*
 - (d) *damage caused by disclosure of commercially sensitive information.”*

19. By section 20(4) of the Act, a Restriction Order once imposed may be varied or revoked at any time during the course of the inquiry. Section 20(5) provides that the restrictions, once imposed under section 19, remain in force indefinitely, unless the order specifies a time limit or the order is varied or revoked.

20. The ILT observes that the effect of these statutory provisions can be summarised as follows:

- a. The Chairman determines the conduct and procedure of an inquiry, and must act with fairness and also with regard to the need to avoid unnecessary cost whether to public funds or to witnesses or otherwise (section 17).
- b. There is a presumption that a statutory inquiry will be held in public (section 18).
- c. The Chairman has the power to restrict public access to hearings or evidence but only where required by any statutory provision or rule of law, or where conducive to the Inquiry fulfilling its terms of reference, or necessary in the public interest (section 19(3)).
- d. In determining whether a Restriction Order should be made, the Chairman is required to consider a number of factors set out in sections 19(4) and 19(5) including, so far as relevant in the Omagh Bombing Inquiry: (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 (including death or injury, damage to national security, damage to international relations); (iii) the extent to which not imposing any particular restriction would be likely to cause delay or impair the efficiency or effectiveness of an inquiry, or otherwise result in additional cost. (sections 19(4) and 19(5)).

c) Summary of approach to OS material under the interim OSRO

21. In the following paragraphs of this Note, the ILT sets out the process for managing the disclosure and use of OS material by CPs in two stages: Stage 1 and Stage 2. As already explained, this is an interim process to allow the disclosure of OS materials to CPs to commence as soon as possible. Also included is the ILT’s provisional view on how OS material will be handled at the oral evidence hearings: Stage 3. This is included to enable CPs and the media to understand how the interim approach to disclosure would lead into oral evidence hearings and to provide CPs and the media with an insight into the ILT’s current thinking about this process overall.

Stage 1: Identification of OS material

22. Once a document is received by the Inquiry and has been determined to be relevant, the ILT will assess, on a provisional basis, whether any content within it is, or may be, OS.
23. Presently, the ILT has identified a number of categories of material that it considers will, or are likely to be, OS. These categories are set out in the table below. They are not intended to be exhaustive but instead are intended to give a general indication of the types of information that may be considered to be OS. For the avoidance of doubt, these categories are only those that do not need to be the subject of a closed section 19 restriction order.

Category	Description
A	Official Sensitive tactics and capabilities used by UK state authorities and others in the investigation and/or disruption of suspected terrorist or other criminal activities.
B	Methods and strategies used by individuals in the preparation and /or commission of suspected terrorist or other criminal activities.
C	Information relating to techniques or methods used in the investigation of terrorist activity or other criminal offences, that is not currently in the public domain.

24. Information that is identified by the ILT as OS (but not closed) will be provisionally redacted. The provisional redaction of such material will be overwritten with the text ‘OS’ to make clear the reason for the redaction.

25. Material Providers will be invited to indicate in their review of materials whether they agree with the identification of the OS material and whether any other information within a document is considered to be OS, such that it requires **provisional** redaction. Material Providers are expected to indicate which OS category or categories the information is said to fall within if they make such a submission. The same applies to HMG as part of its sensitivity review of materials.
26. The ILT refers to these OS redactions as provisional because they will be kept under review throughout the Inquiry and may fall to be removed, or amended, if further information is identified about the need or absence of need for the redaction.
27. If any CP wishes to indicate any further general category or categories of information for inclusion under the interim OSRO that they consider may be OS, they are encouraged to notify that view and the reasons for it to the ILT as soon as possible. The list of OS categories will be updated if necessary (and in any event will be kept under review) and this will be circulated to all CPs as and when necessary.

Stage 2: Disclosure of OS material

28. Once a document, in whole or part, is identified as containing OS material the provisionally redacted version of the document will be made available to CPs in the normal area of the Relativity disclosure system and would be treated like any other open disclosure. This version of the material will be referred to as the ‘open document’.
29. CPs will also have access to an OS database within the Relativity disclosure system, which will contain documents with the relevant OS content visible. This version will be known as the ‘OS document’. The OS document will be marked with the words “*Operationally Sensitive*” at the top each page. The redactions on the OS document will be marked by a box containing the watermark “OS”. The text of the original document within the OS box will be slightly faded to further emphasise that it is OS material. All INQ reference numbers will be identical as between the open and OS databases, save that the OS documents will have the suffix “_OS” added.
30. The OS document will not be capable of being downloaded or printed from the Relativity platform. No screenshots or images of the OS version of the document will be permitted by the interim OSRO. The restrictions on the disclosure of the OS version are set out in the interim OSRO appended to this note. The interim OSRO envisages restrictions on the accessing and use of the OS documents. This is to ensure that the OS material is only disclosed to specified individuals, including CPs and their legal representatives.

Stage 3: Use of OS material at hearings

31. The Inquiry’s process under Rule 10 of the Inquiry Rules 2006 (‘the Rules’) will, among other requirements, require all CPs to identify well ahead of each witness giving evidence whether there is any document they wish that witness to see which contains

OS material. This part of the Rule 10 process will be of a high degree of importance because, only if it is complied with, will it be possible for the Inquiry to assess: (a) whether the witness needs to be given access to OS material ahead of giving evidence (which would need to be done in controlled circumstances); (b) whether the OS material truly needs to be referred to in the hearing and (c) if, so, whether it needs to be displayed on screen.

32. What follows is the ILT's provisional view as to how OS material should be handled at public oral evidence hearings.
33. CPs/the ILT would be able to ask a witness about the open redacted document in a completely open hearing without any additional restrictions. The OSRO would provide that any questioning about the OS material would only occur during an Operationally Sensitive Hearing. The following individuals in addition to the Chairman would be permitted to attend an Operationally Sensitive Hearing: the ILT and Inquiry support staff; CPs and their legal representatives; relevant witnesses; accredited media; and anyone else the Chairman authorises in writing.
34. An Operationally Sensitive Hearing would only be necessary if, on cogent grounds, the Inquiry or a CP required questions to be asked of a witness about the OS material. The disclosure, sharing, or publishing of anything said in an Operationally Sensitive Hearing would be prohibited by the OSRO. However, accredited media, who would be entitled to be present at any Operationally Sensitive Hearing, would be able to apply to the Chairman for permission to report on the evidence heard during an Operationally Sensitive Hearing, once the hearing had concluded. The Chairman would then make a ruling on any such application, having heard from any other CP's legal representative with a direct interest in the issue.
35. An Operationally Sensitive Hearing may also be required should it be necessary to include reference to OS material as part of a submission. The same principles as above would apply in relation to the accredited media's involvement in such a hearing.
36. While it is anticipated that some Operationally Sensitive Hearings may be inevitable, the ILT believes that in many cases, steps can and should be taken to make them unnecessary. In particular, the ILT and CP legal representatives may be able to phrase questions so as to remove the need for the question and answer to refer directly to OS material. An Operationally Sensitive Hearing would only be necessary if these methods were likely to be insufficient to allow the relevant evidence to be presented or tested.

d) Timetable to final order

37. In setting the following timetable, the ILT has sought to balance the need to finalise this process as soon as possible with providing CPs with a period of time sufficient to become familiar with the interim OSRO process:
- a. OS documents to start to be disclosed to all CPs in the week commencing 22 September 2025;
 - b. Written submissions from state CPs in relation to Stages 1 to 3 under the final Restriction Order to be received by 4 pm on 6 October 2025;
 - c. Written submissions from non-state CPs in relation to Stages 1 to 3 under the final Restriction Order to be received by 4 pm on 17 October 2025;
 - d. Written submissions from the media in relation to Stage 3 under the final Restriction Order to be received by 4 pm on 17 October 2025;
 - e. Written submissions from the ILT in relation to Stages 1 to 3 under the final Restriction Order to be circulated to CPs and the media by 4 pm on 3 November 2025;
 - f. Oral submissions in relation to the terms of the final Restriction Order to be heard in the week commencing 10 November 2025.
38. CPs should only refer to Operationally Sensitive material in any oral submission made in relation to the making of the Final OSRO if it is **essential**. This should be treated as a very high threshold. The ILT hopes and expects that this will not be necessary, as the submissions should be directed at the process for the management of Operationally Sensitive material, not its application in any particular case.
- a. In relation to reference to the content of any Operationally Sensitive Material in written submissions, this is prohibited by paragraph 12e of the Interim OSRO. However, CPs are entitled to refer Operationally Sensitive Material by way of INQ/page/paragraph/line references if this is considered necessary for the purpose of the submission.
 - b. In the event any CP considers it **essential** to refer to Operationally Sensitive material in oral submissions, this must be the subject of a separate written application seeking a variation of paragraph 12e of the Interim OSRO and providing a cogent justification for the necessity of an Operationally Sensitive Hearing, which application must be submitted in accordance with the above timetable.

39. At the hearing in the week commencing 10 November 2025, along with any submissions about the final OSRO, an update in relation to Chapter 3 will be given by the Inquiry. This hearing will also be used to resolve any other outstanding matters, particularly in relation to Chapter 3. The venue and date for the hearing will be confirmed closer to the time.

Inquiry Legal Team

29 August 2025