

# Scottish Child Abuse Inquiry

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## **Factsheet – confidential sharing of applicants’ evidence, including allegations**

This factsheet applies to evidence provided by applicants.

It also applies to evidence provided by any persons who were not children in care but who have told the Inquiry about experiencing or witnessing abuse of children in a residential care setting when they themselves were children (referred to as “relevant witnesses”) e.g. a person who was a day pupil at a boarding school or was the child of parents who fostered other children or was a visitor to a residential establishment as a child.

It explains when the Inquiry might share evidence obtained from applicants and relevant witnesses with an organisation that provided residential care for children or with any person named by an applicant or relevant witness as an abuser.

If your application to give evidence was made before 1<sup>st</sup> October 2018, there is a different version of the factsheet which applies to you. If you are unsure about whether or not this factsheet applies to you, your witness support officer will let you know.

An “applicant” is a person who applies to give evidence to the Inquiry about having been abused (as defined in the Inquiry’s [Terms of Reference](#)) when they were in care as a child.

### **Fairness and evidence**

The Inquiry is committed to being fair.

Sometimes, being fair means that the Inquiry must share what an applicant or relevant witness has told us, including allegations, with the organisation who was responsible for their care when a child or with any person named by them as an abuser.

This happens (i) where an organisation and/or abuser has a legitimate interest in knowing that allegation(s) have been made and/or (ii) to allow us to carry out our investigations.

The Chair has a legal obligation to allow the public reasonable access to evidence given to the Inquiry. She does so in a way which protects the identities of applicants and relevant witnesses where appropriate; this is why statements published on the Inquiry website have been redacted.

When what an applicant or relevant witness has told us is shared with an organisation and/or with a named abuser, it’s shared in confidence and can’t be made public.

## When we may share what an applicant has told us

If you are an applicant or a relevant witness we will not always share what you have told us. There is no “blanket rule”. We will assess each case carefully to decide whether we need, for fairness, or to progress our investigations, to share your redacted statement. If we share it, we will also need to share your name but anyone we share your name with cannot make your identity public.

We may need to share what you have told us:

- in order to be fair when investigating allegations of abuse at an establishment run by an organisation that had responsibility for your care;
- in order to be fair when investigating allegations that a person named by you abused children .

## Advance notice of sharing what an applicant has told us

We realise that some applicants and relevant witnesses will be anxious at the prospect of what they have told us being shared with the organisation that was responsible for their care or with a person they have named as an abuser.

If we are intending to share what you have told us we will try to get in touch with you to let you know, before we share anything. We will normally tell you at least 14 days before the date we are intending to share the information. Please note, however, that notice will **not** be given where we are only sharing your name, and not what you have told us e.g. where we need to recover records in order to progress our investigations. Further information about sharing names is provided later in this factsheet.

If, at that stage, or at any time before then, you do **not** want your evidence to be shared by us, you need to apply to us for a restriction order, explaining why you do not want that to happen, **as soon as possible**.

More information on restriction orders, including the application form, are in our [protocol on restriction orders](#). Our witness support team can post or email you a copy if you prefer. Please explain in your application form the reasons why you are asking us not to share your evidence and/or any information you have provided to us, and who your concerns relate to i.e. the organisation that was responsible for your care and/or any person you have named as having been an abuser. Please note that you **do not need to apply for a restriction order to be anonymous** as that is already provided for by the Chair’s General Restriction Order.

The Chair will consider your application and make a decision. If you apply for an order, no sharing will take place until your application has been decided.

## The effect of a restriction order

A restriction order must be obeyed by everyone, including the Inquiry team.

Breaching a restriction order is a very serious matter. The Chair may decide that an organisation which or person who has breached such an order should take no further part in the Inquiry, or be prevented from attending public hearings. She may also refer the breach to the Court of Session.

### **Sharing on confidential basis**

If we **do** share what you have told us with an organisation or person, we require that organisation or person to keep the information confidential. They can't make it public or tell anyone else about it. They will have to sign a confidentiality undertaking before we share the information. If they refuse to sign an undertaking we will not share any information with them.

Breaching a confidentiality undertaking is a very serious matter. In the event of such a breach, the Chair may decide that the organisation or person should take no further part in the Inquiry, or be prevented from attending public hearings. She may also refer the breach of a confidentiality undertaking to the Court of Session.

### **Sharing applicants'/relevant witnesses' names**

We may also need to share the name of an applicant or relevant witness with a person or organisation where we believe that they hold information that we need in order to progress our investigations.

If we share your name with an organisation or person in these circumstances, we require that organisation or person to keep the information confidential. They can't make it public or tell anyone else about it. We will require them to sign a confidentiality undertaking before we share the information. If they refuse to sign an undertaking we will not share any information with them.

### **Sharing information with the police**

The arrangements set out in this factsheet do not apply to our sharing of information, including the names of applicants or relevant witnesses, with Police Scotland. We share information with the police to allow them to assess whether there is a current risk of harm to children and vulnerable adults. For more information about how and when we share information with the police see our [protocol on restriction orders](#).

The Inquiry's privacy notice is attached to this factsheet for information.

[Appendix – for information](#)

### **Privacy Notice**

This notice explains our approach to collecting and handling your personal data.

We are an independent public inquiry and we exercise statutory functions under the Inquiries Act 2005, in the public interest. We investigate the nature and extent of abuse of children whilst in care in Scotland. We publish various documents relating to our investigations and findings, and sometimes this may include some personal data. We need to process personal data to enable us to carry out our work.

We explain in this notice in general terms how we collect and handle personal data.

### **Why we process your personal data**

We process your personal data for a number of reasons, all of which help us to fulfil our Terms of Reference.

### **How we collect personal data**

When a person visits our website we collect information to measure the use of the website. We do not collect information that identifies anyone but we do track how many individuals have viewed different pages so we know what information appears to be of most interest. Further information is provided on our website:

<https://www.childabuseinquiry.scot/terms-and-conditions/>

If you contact us by telephone, email or letter, or if you use the contact form on our website, we will retain any personal data you provide to us in doing so, and we may use it to contact you about the work of the Inquiry. We may also use it to help us with our investigations and to help us decide which institutions or organisations need to be investigated.

We may approach you to ask you to give evidence to the Inquiry, in which case we will retain any additional personal data you provide to us and we may use it to contact you about the work of the Inquiry.

If you provide us with evidence, whether by giving a statement, or in response to a statutory notice under section 21 of the Inquiries Act 2005 requiring you to submit written evidence, or by attending the Inquiry to give evidence in person, or in any other way, we will retain any personal data you provide in doing so. Also we will retain any personal data which you provide in any communications we have with you in relation to your evidence. We will use any such personal data to help us with our investigations and/or otherwise fulfil our Terms of Reference.

We also recover records from a range of sources, including providers of residential care for children, local authorities, Police Scotland, the Crown and Procurator Fiscal Service, and the Scottish Government.

### **What sort of data we collect**

We collect data about children in care, data about the abuse of children in care and data about the impact of such abuse. We collect and retain contact details, data known as special category data and information about criminal convictions.

The records we recover might include personal data including sensitive personal data such as data relating to a person's criminal convictions, offences, private life or sexual orientation.

### **How personal data is held**

We keep your personal data secure and only share it with those who need to see it.

Personal data is held in secure encrypted electronic storage systems that are only accessible by individuals working for or on behalf of the Inquiry. Any hard copy information is held in secure conditions within premises to which members of the public do not have access.

All personal data we receive is handled fairly and lawfully in line with data protection legislation.

### **Who will personal data be shared with**

We may have to disclose personal data, on a strictly confidential basis, to organisations which provide(d) or arranged residential care for children, to people who are alleged to have abused children in care, to organisations which hold records which could assist the Inquiry with its investigations, to experts or to the police.

In some cases, we may publicise your data to allow us to fulfil our Terms of Reference. However, we are extremely careful about what data is made public and only publish it where we are satisfied, having had regard to data protection and inquiries legislation and any restriction orders issued by the Chair, that it is appropriate to do so.

Some people are entitled to be anonymous and, unless they have expressly waived their anonymity, their identities will be protected by appropriate redaction before publication. Details of those who are entitled to anonymity are set out in the Chair's General Restriction Order, which you can see here: <https://www.childabuseinquiry.scot/procedures/general-restriction-order/>

If you are concerned or unsure about whether your personal information may be made public, you can ask our witness support team about whether you are entitled to anonymity.

### **Data controller**

The Chief Executive of the Inquiry is our "data controller". As data controller, she is obliged by law to determine the purposes for and means by which we process all and any data including how it is held, how it is used, and when and/or how it is destroyed.

Each year the Inquiry registers with the Information Commissioner – who supervises compliance with Data Protection legislation in the UK. A copy of our current

registration certificate is available here: <https://www.childabuseinquiry.scot/key-documents/ico-registration/>

## **Data retention**

If you contact us by telephone, email or letter during the Inquiry, or if we contact you, we will retain any personal data which, in doing so, you provide to us. We will do so solely to enable us to carry out our work. We will generally retain the data for the duration of the Inquiry.

Under our Terms of Reference we are required to create a national public record, and the Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007 require the Chair to keep a comprehensive record of the Inquiry. That means we must, at the end of the Inquiry, transmit certain records we hold, including personal and sensitive personal data, to the Keeper of the Records of Scotland.

## **The legal basis for processing personal data**

We process personal data lawfully in compliance with the General Data Protection Regulation ('GDPR') and all other UK data protection legislation.

Our 'lawful basis', as defined by the GDPR, is usually the need to comply with a legal obligation; the obligation relied on will usually be that we are carrying out a task we require, in the public interest, to perform and/or that we are pursuing our legitimate interest in fulfilling our Terms of Reference.

Complying with our legal obligation means we process your personal data because it is necessary for us to comply with the law that applies to us. In our case our legal obligations as a public inquiry are set out in the Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007. The Inquiries Act empowers a government minister to set up a public inquiry; it sets out what we, as a public inquiry, must do and what we have the power to do. The Inquiries Rules set out certain procedures we must follow.

Under data protection laws, the processing we carry out must be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Chair of the Inquiry. In our case, all we do is for the benefit of the public, the Inquiry having been established because the Scottish Ministers were satisfied it was appropriate to do so, given the extent to which there was public concern about the abuse of children in care dating back over many years, the need to understand what happened in the past and the need to seek recommendations for the protection of children in care in the future.

We also use personal data in pursuit of our legitimate interests, meaning that we carry out necessary processing for the purpose of our interests in fully carrying out our investigations, in creating a clear public record of the nature and extent of abuse of children in care, in making findings, in issuing reports and in deciding on and drafting appropriate recommendations.

We rely on these bases for processing only when we believe our interests are not overridden by your fundamental rights and freedoms.

## **Your rights in respect of your personal data**

Sometimes the processing we carry out allows us to rely on one or more of the exemptions set down in the Data Protection Act 2018. If it does we then have to decide whether or not it is appropriate to provide information in response to any request you make to assert your rights under the GDPR. Sometimes we will do so even if there is an exemption that we can rely upon. Sometimes we will conclude that it is not appropriate for us to provide you with the information you have requested - this will, for example, be the case if complying with your request would make it more difficult for us to fulfil our Terms of Reference or if it puts another person's personal data at risk of being revealed.

You have the right to request:

- access to the personal data we hold about you
- that incorrect information we hold about you be corrected
- that we stop or limit the processing of data we hold about you
- that we erase the information we hold about you

In all cases we will consider your request very carefully. In some cases, if we consider that your information falls within one of the exemptions set down in the Data Protection Act 2018 and that agreeing to your request could hinder our ability to fulfil our Terms of Reference, we may have to decline your request.

## **Contact and complaints**

If you wish to contact us about the terms of this privacy notice, please write to [SCAIdataprotection@childabuseinquiry.scot](mailto:SCAIdataprotection@childabuseinquiry.scot)

If you wish to make a complaint about how the Inquiry has handled your personal data, in the first instance please contact [SCAIdataprotection@childabuseinquiry.scot](mailto:SCAIdataprotection@childabuseinquiry.scot)

If you are unhappy with the outcome of discussions with us you are entitled to contact the Information Commissioner's Office online at: [Your personal information concerns | ICO](#), by calling their helpline on 0303 123 1113 or by writing to them:

UK Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire