

Assistant Solicitor to the Inquiry

[REDACTED]

E: legal@shekubayohinquiry.scot

T: [REDACTED]



Mr Graham Shields
Crown Office and Procurator Fiscal Service

By email only: [REDACTED]

11 August 2023

Dear Mr Shields

RULE 8 REQUEST

I am writing on behalf of the Chair to the Sheku Bayoh Public Inquiry (“the Inquiry”).

The Crown Office and Procurator Fiscal Service (“COPFS”) have written to us to confirm your preference for your statement to be prepared under Rule 8 procedure.

Under Section 21(2)(a) of the Inquiries Act 2005 the Chair may, by notice, require a person to provide evidence in the form of a written statement. Rule 8 of The Inquiries (Scotland) Rules 2007, provides that the Inquiry may send a written request to any person for a written statement of evidence. I hereby request you provide a written statement to the Inquiry by **5pm on 8 September 2023**.

It is a criminal offence to fail to comply with this request without reasonable excuse. I refer you to Section 35(1) of the Inquiries Act 2005.

The Annex to this letter sets out the areas to be covered in your written statement. The documents for you to read referred to in the Annex will be available on our online database “Objective Connect”. A link for you to access this system will be emailed to you separately.

Please provide your written statement by email to legal@shekubayohinquiry.scot.

Section 22(1)(a) of the Inquiries Act 2005 states that a person may not be required, under section 21, to give, produce or provide any evidence or document if you could

not be required to do so if the proceedings of the Inquiry were civil proceedings in a court. If you are of the view that Section 22 applies to your evidence please advise the Inquiry of this and the reasons why you believe Section 22 applies.

Your statement may be disclosed to the Core Participants in the Inquiry and may be published on the Inquiry's website. Any personal information not relevant to your evidence will be redacted prior to disclosure.

The Inquiry may issue a further Rule 8 request or Section 21 notice to you at a later date if further evidence is required.

The written statement will form part of the evidence of the Inquiry. For that reason it is important that it is in your own words. In addition, you may be asked to attend a hearing to give oral evidence to the Inquiry. The Inquiry will contact you in future to confirm.

If you have any questions regarding this letter or the content of your written statement please contact the legal team by email at legal@shekubayohinquiry.scot.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

ANNEX

COPFS PIM

AREAS FOR WITNESS STATEMENT

MR GRAHAM SHIELDS

Please provide your **full name, date of birth, personal or business address**.

Please provide as much detail as you can in relation to each of the following questions and mark on your statement the number of which paragraph of questions you are answering.

If you refer to any document in preparing your statement, please provide a brief description of the document and which page you have referred to.

Role

1. What was your position in COPFS during your involvement in COPFS' post incident management and investigation into the death of Mr Sheku Bayoh ("the Investigation")? How long had you been in this position prior to the date you became involved?
2. What were your duties and responsibilities in this position? What were the circumstances of you being involved in the Investigation?
3. Were you involved in any discussions relating to the Scottish Police Federation or their representatives' media engagement, for example press releases? Were you aware of what COPFS' position was on this media engagement by the SPF or their representatives?

Family liaison

4. What involvement, if any, did you have in dealing directly with Mr Bayoh's family and their solicitor during the course of your involvement in the Investigation?
5. What involvement did you have in advising others in COPFS who liaised with Mr Bayoh's family and their solicitor?
6. What was your strategy or approach in liaising with Mr Bayoh's family and their solicitor or advising your colleagues of how to liaise with Mr Bayoh's family?
7. What was your understanding of the tenor of the relationship between Mr Bayoh's family and COPFS? Did this relationship change at all over the course of your involvement in the Investigation?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mail on Sunday article dated 23 September 2018

9. What involvement did you have in media management following the publication of the decision not to prosecute any of the officers as reported in the Mail on Sunday on 23 September 2018?¹

10. When did you first become aware that the decision not to prosecute had been leaked?

¹ PS18106

11. What was your involvement in investigating whether a source within COPFS leaked the decision not to prosecute to the Mail on Sunday?

12. In your email to Ms Miller dated 27 September 2018 at 16:03² you state:

“Following FMQs today I gave the LA further reassurance that we should not be drawn in to any dialogue, on or off the record, with anyone about the speculative media coverage aka ‘the leak’.” What is meant by “speculative media coverage”? Does this mean there was no “well-placed source within the justice system”³ as the Mail on Sunday had reported? Are you familiar with any other instances where there has been speculative media coverage? Please confirm if your position is that the Mail on Sunday were fabricating the source and the quote in the following line in their article: *“The source said: ‘The decision has not yet been formalised, but the Lord Advocate is now confident there will be no criminal proceedings against the police officers involved’”*.⁴

Were you certain by 27 September 2018 that there was not a leak from within COPFS of the decision not to prosecute? If so, on what basis?

13. In Ms Miller’s email to the Lord Advocate dated 2 October 2018⁵ she advises:

“In terms of the focus on the “leak”, I think that we should push back quite hard on that. I think that there has to be a recognition in the meeting that we have had discussion with other parts of government for the purpose of paving the way for planning for every eventuality, including the holding of a public inquiry, and that while you have asked for certain work to be carried out internally for reassurance in terms of the potential for inappropriate information sharing, we should be careful not to characterise it as a leak or an investigation and if there is the opportunity then we should confirm that the feedback from the media is that they are aware that the information did not come from Crown office or Crown officials.”

Is this an accurate account of the position at that time? Did you discuss the feedback from the media with Ms Miller? Was any consideration given to explaining this position to the family? Do you know which “other parts of government” knew about the decision not to prosecute prior to the outcome being leaked/the family being advised?

14. In your emails to the Press Association⁶ and the National⁷ dated 3 October 2018 you include the following media line:

“The Crown has conducted this investigation with professionalism, integrity and respect. It is committed to ensuring that the facts and circumstances surrounding the death of Sheku Bayoh are fully aired in an appropriate legal

² COPFS-00678

³ PS18106 at page 1

⁴ PS18106 at page 2

⁵ COPFS-04140

⁶ COPFS-00737

⁷ COPFS-00736

forum and, to that end, it has discussed possible next steps with a small number of colleagues in the justice system.”

What is the purpose of mentioning discussions with colleagues in the justice system?

15. Was an apology to the family considered in any of your discussions following the publication of the Mail on Sunday article?

Race

16. Insofar as not already covered, to what extent, if any, was Mr Bayoh's race a factor in any of your decisions and actions in the Investigation?
17. Prior to your involvement in the Investigation, in your experience, did COPFS routinely consider race in any way when managing the media following a death in custody or death during or following police contact? Has that position changed between the time you were involved in the Investigation and now?

Training

18. At the time of your involvement in the Investigation, what training had you completed that was relevant for your role in the Investigation? Please provide details of the type of training and explain what you can recall from the session.
19. Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?
20. What guidance or reference materials in relation to race were you aware of being available to you in the time you were involved in the Investigation? Over the course of your involvement in the Investigation, did you make use of any of these materials?
21. What, if any, training do you consider would have assisted you in your involvement in the Investigation? This may be training you have carried out since the Investigation, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

Records

22. Is there a requirement for you to take contemporaneous notes or any other record of your involvement in an investigation? Is there a requirement to retain them? Are there any forms that you must complete in the course of the Investigation for internal record-keeping?
23. What records did you keep in relation to the Investigation? Were these retained and archived? To what extent was your record-keeping consistent with normal practice? Please confirm the basis for any departures from normal practice.

Miscellaneous

24. At what stage in the Investigation, if at all, were you aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation? Was anything done or not done in light of this?
25. Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation consistent with normal practice? If there were any deviations from normal practice, please explain your reasoning. In your view was race a factor in any departures from normal practice you have identified?
26. Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation? Would any changes to practice or procedure would have assisted you in overcoming these difficulties or challenges? To what extent were these difficulties or challenges normal or expected in your role? To what extent was race a factor in these difficulties or challenges?
27. Please state the following in the final paragraph of your statement:-

"I believe the facts stated in this witness statement are true. I understand that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website."
28. Please sign and date your statement.