

Annex 4

BTAS Draft Guidance on access to tribunal documents by non-parties

Introduction

1. This document sets out BTAS' Guidance on access by non-parties to documents that relate to Disciplinary Tribunal proceedings. It applies to requests to access documents made by non-parties, including members of the public and the press.

Principles of Open Justice

2. Open justice is a common law principle that requires justice to be administered in public. It involves the following key elements:
 - Proceedings must be held in public;
 - Evidence must be communicated publicly; and
 - Fair, accurate and contemporaneous media reporting of proceedings should not be restricted, unless strictly necessary.
3. BTAS aims to act within the spirit of open justice, particularly having regard to the regulatory objectives in section 1 of the Legal Services Act 2007 (including protecting and promoting the public interest and improving access to justice), as well as the need for regulatory activities to be transparent under s28 Legal Services Act 2007.
4. Access to documents is a key part of open justice as it ensures that the information communicated to the tribunal is available to the public. Providing access enables members of the public and the press, who are not party to the proceedings, to understand the issues in a case and the conclusions reached. In many cases, this understanding cannot be achieved without access to some of the written material placed before the tribunal. This enhances public confidence and understanding of the justice system, which supports better quality of decision-making and the proper administration of justice.
5. However, the principle of open justice is not absolute. Limitations may be required where unrestricted transparency would risk undermining the interests of justice or cause harm or prejudice individuals. Such limitations may arise, for example, where it is necessary to protect vulnerable individuals, preserve confidentiality or safeguard other legitimate interests.

Open justice and BTAS disciplinary tribunal proceedings

6. While this policy establishes a framework for the application of the principle of open justice, the Disciplinary Tribunal retains the discretion to determine how that principle should be applied, having regard to the circumstances of any particular case.

7. In applying this policy, the Disciplinary Tribunal will routinely consider the interests of the public and the press, including the importance of freedom of expression. This includes, for example, decisions concerning anonymity, restrictions on reporting or applications for a substantive hearing to be in private. In all cases, the Tribunal will also have regard to the rights of individuals including the individual right to privacy under Article 8 of the European Convention on Human Rights. Any departure from open justice must be justified and proportionate in the circumstances.
8. The Disciplinary Tribunal will also consider what steps, if any, are necessary to enable the public and the press to follow, understand and report proceedings effectively. This consideration applies irrespective of whether a member of the public or the press is observing the case, either in person or remotely, or at all. Remote observers need to be able to access the same documents that would be available if attending the hearing in-person.
9. Certain documents will therefore be routinely published and made available to non-parties (see '*Publication of Public Domain Documents*' below). Non-parties may also request access to other documents, which are not subject to automatic publication. However, before making a request, non-parties should consider whether the document is already available through the process for publishing certain documents.
10. Where a request for access to documents is made, the requesting non-party must explain the basis of the request, including why the requested documents are needed and how access would advance open justice. The Disciplinary Tribunal will determine the request by carrying out a fact-specific balancing exercise, balancing the principle of open justice against any risk of prejudice or harm to the administration of justice or to the legitimate interests of others (including the parties). For further information see '*Applications for disclosure of documents*' below.

Costs of accessing documents

11. BTAS aims to minimise barriers to access and promote public engagement so access to documents is generally free of charge when shared electronically.

Fees

12. For physical copies of documents, BTAS may charge a small fee to cover copying and printing costs.

Fee Waivers

13. Physical copies of documents may be supplied free of charge to individuals who cannot access them electronically or afford to pay the copying and printing fees.
14. Requests for fee waivers should be submitted when making a request for a document under this policy. Where possible, any fee waiver request should include information and evidence to address financial hardship and why electronic access is not practicable.

Publication of Public Domain Documents

15. Unless the Disciplinary Tribunal orders otherwise, for the purposes of this Policy the documents referred to in paragraph 21 below are Public Domain Documents.
16. During the course of Disciplinary Tribunal proceedings, certain categories of documents will normally be routinely published, subject to any objections and unless the Disciplinary Tribunal decides otherwise.
17. The purpose of publishing these documents is to ensure that the public and the press are able to follow proceedings as they take place and understand the nature of the case and the key issues of fact and law.
18. Under this process, publication will occur without the need for a non-party (including the press) to make a request to access Public Domain Documents, unless the Disciplinary Tribunal decides otherwise.
19. The requirement to publish applies only to Public Domain Documents (see paragraph 21 below) and is subject to the limitations set out in this policy.
20. It applies to all new cases or hearings which take place before the Disciplinary Tribunal after 1 February 2027.

Categories of Public Domain Documents to be published

21. The following documents are Public Domain Documents and will normally be published, subject to any objections and unless the Disciplinary Tribunal decides otherwise, in accordance with the timing specified below.

Public Domain Document	Timing of publication
Charge sheet	Within one week following the setting of the case management hearing.
Skeleton arguments and written submissions	Within one day of the start of the hearing or hearing day at which the skeleton argument or written submission is relied upon.

22. If a Public Domain Document refers to another document, that other document does not need to be published, unless it also falls within the categories of documents specified above.

23. The Public Domain Documents that are subject to the publication process may be reviewed and amended from time to time.

Method of publication

24. The documents subject to this process will be published on the BTAS website.

25. Non-parties attending the disciplinary hearing in person may want hard copies of the skeleton arguments and written submissions to facilitate immediate access to published documents. Parties should therefore consider bringing additional copies to the hearing.

26. Subject to any exceptions or other limitations, any person (including a non-party) may obtain copies of these Public Domain Documents.

Exceptions to the publication of documents

27. Save for the Charge Sheet, publication only applies to documents that enter the public domain via a public hearing. It does not apply where a hearing is conducted in private.

28. Where the Disciplinary Tribunal has directed or ordered that publication should be restricted or the identity of a person should not be disclosed or anonymisation is otherwise required under the regulations or by law, any document released under this policy must comply with such directions, orders or restrictions.

29. The publication of documents does not override any anonymity orders or impact the Disciplinary Tribunal's power to make such orders in a case.

30. The publication of documents may also be restricted where disclosure would reveal:

- confidential information;
- legally privileged information;
- sensitive personal information;
- other private or prejudicial information; or
- the identity of persons otherwise protected by law, including by operation of section 1 of the [Sexual Offences \(Amendment\) Act 1992](#), the [Children and Young Persons Act 1933](#) and the [Youth Justice and Criminal Evidence Act 1999](#).

31. In appropriate cases, such concerns may be addressed through redaction (see '*Redacted Disclosure*' below).
32. In addition to restrictions on publication, the Disciplinary Tribunal may make any other order in relation to a document that it would otherwise be able to make and any obligation, right or permission in this policy is subject to any such order.

Objections to publication

33. Any party may object to the publication of a document covered by this policy.
34. An objection may be made at any time but should be made as soon as reasonably practicable.
35. Although a formal application is not required, an objection should be made by a written request and on notice to the other parties. Requests made by other methods may also be considered, as appropriate and in accordance with the Equality Act 2010.
36. The written request should refer to the following:
- the document(s) to which the objection relates;
 - the reasons why publication should not occur (in part or full) or should be delayed;
 - any evidence in support; and
 - any harm that would be caused by publication.
37. The party making the objection must bear in mind (and, where necessary, address) the tests set out in the authorities on derogations from open justice.

Determination of objections to the publication of documents

38. Any objection to the publication of Public Domain Documents will be determined by the Chair or a Directions Judge,¹ as appropriate, which may be on the papers or at a hearing.
39. The default starting position will be that the public should be allowed access to certain documents, as specified in this policy, and referred to during a public hearing.
40. When determining objections to publication, the Chair must balance the open justice principle against the potential risk of harm or prejudice to individuals or the administration of justice, based on the circumstances of the case.

¹ For ease, we will refer to the Chair in this Guidance but these decisions can also be taken Directions Judge, where the Chair is not available or as appropriate.

41. In deciding such an application, the Chair may:
- a. Grant the application in full and direct that the document(s) should not be published;
 - b. Permit publication of the document(s) subject to conditions, including redaction or anonymisation;
 - c. Refuse the application so that publication of the documents takes place; or
 - d. Make such other orders as they see fit.

42. Any restrictions on the publication of documents made by the Chair will be published on BTAS' website.

Redacted publication

43. When determining objections, the Chair may decide that any risk of harm or prejudice may be addressed by appropriate redactions.

44. However, redactions in themselves are likely to amount to a derogation from the principle of open justice. Therefore, only redactions that are strictly necessary should be applied to the documents.

45. Examples of redactions may include removing references to:

- matters relating to Legal Professional Privilege;
- individual's personal or identifiable details, such as home addresses;
- commercially sensitive and irrelevant financial matters;
- health information;
- information identifying bystanders or third parties; and
- other confidential matters which do not touch directly upon the substantive issues to be decided.

46. Where publication is subject to redactions, the parties will be expected to agree the appropriate redactions. Where agreement cannot be reached between, the Chair will determine the extent of the redactions necessary.

47. Redactions should not typically be permitted because they are sought or agreed by the parties or to avoid reputational risk or embarrassment, although consideration may be given to the impact that reputation may have on an individual's wellbeing and/or circumstances.

Deferral of disclosure

48. In certain circumstances, the Chair may defer publication of a document that would otherwise be published, in accordance with this policy.

49. When deciding whether publication should be deferred, the Chair may have regard to the following factors:

- whether it is appropriate to defer while an objection is under consideration;
- the potential risk of harm or prejudice caused to individuals or the proceedings if immediate publication was to occur.

50. Where disclosure is deferred, the Chair will determine when the document should be published.

51. In accordance with open justice, there is a need to ensure that information communicated to the Disciplinary Tribunal is publicly available. Publication improves access for the public and the press, which furthers the principles of transparency and fairness and also promotes accurate and contemporaneous reporting, in the interests of justice. Therefore, the disclosure of documents should not only be deferred to a later stage in the proceedings on the sole basis that it would be more convenient for the parties or the Tribunal.

Applications for disclosure of other documents

52. Consistent with open justice, BTAS aims to make as much information about its cases publicly available as possible. Open justice and disclosure of case documents is a means of ensuring the best quality of justice and securing the confidence of the public.

53. Case documents that do not fall within the scope of the Public Domain Documents set out in Paragraph 21 above may still be disclosed to non-parties upon request.

54. The disclosure of such documents to non-parties is not automatic and will be determined on a case-by-case basis.

Requests by non-parties

55. A non-party seeking access to documents may make a written request to BTAS.

56. While no formal application form is required, the request should include, where possible:

- details of the case that request relates to;
- the document or category of documents sought;
- the purpose and reasons for the request; and
- how the request advances the principle of open justice.

Determination of requests

57. Requests for disclosure under this section will be considered by the Chair. The request may be determined on the papers or following a hearing.

58. Before reaching a decision, the Chair will invite and consider the views of the parties in relation to the request.

59. The Chair may:

- a. Grant the request;
- b. Grant the request in part or subject to conditions, including redaction or anonymisation;
- c. Refuse the request;
- d. Make such others as they see fit.

60. When determining a request for disclosure made by non-parties, the Chair will need to exercise their discretion based on the facts of the case and an assessment of proportionality. Each application should be considered on its merits, balancing the principle of open justice, on the one hand, against any risk of harm or to the legitimate interests of arising that may arise from disclosure.

61. The decision-maker should take into account the following:

- the nature and reason for the request;
- the public interest in disclosure;
- the risk of harm or prejudice that disclosure may cause to the administration of justice or the legitimate interests of individuals; and
- any other relevant factor.

62. There is a presumption in favour of granting media requests for disclosure, unless there is a compelling reason against it. This presumption applies where the applicant is a bona fide journalist and the request is made for proper journalistic purposes.

63. However, the presumption in favour of granting media access to documents does not mean that disclosure should take place by default. Requests for disclosure made by the press will need to be considered in each case and may be refused where there are compelling and countervailing reasons.

64. Any determination made by the Chair in relation to the disclosure to non-parties will be published on the BTAS website.

65. Where a request is refused, reasons will be provided. It should be noted that reasons will only be provided to the extent that they do not undermine the refusal to disclose and reasons may be redacted, as necessary.

Limitations and restrictions on non-party access to documents

66. Confidential documents will generally not be disclosed to non-parties. Those documents that are not referred to in a public hearing are likely to be regarded as confidential.

67. However, where a document contains confidential or sensitive information, disclosure may still be permitted in redacted form. Any redactions should be limited to a test of necessity, in order to protect confidential or sensitive information. The '*Redacted Disclosure*' section above applies and provides further detail.

68. Where there is an order protecting the identity of a person (as directed by the Disciplinary Tribunal or by operation of the regulations or law), any documents released to non-parties under this policy must comply with the anonymisation order. As a result, additional redactions or anonymisation before disclosure may be required.

Review of the Guidance

69. The President may review this policy from time to time to ensure that it continues to operate effectively and appropriately balances the principles of open justice, transparency, accountability and fairness.