

Re The Undercover Policing Inquiry

APPLICATION FOR RESTRICTION ORDER (ANONYMITY) MPS ANONYMITY NO. 1

Restriction order sought: granting anonymity to witness "Cairo", to last indefinitely.

Terms of Restriction Order sought at this stage:

- No direct or indirect disclosure of the Cairo's true identity (including any description or image capable of identifying Cairo) beyond Chairman and Inquiry team.
- The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Statutory basis for application: s17(3), s19(3)(a) and s19(3)(b) Inquiries Act 2005 ("the Act").

Grounds for application:

- S17(3) (fairness)
- s19(3)(a) Art2, Art3 (real and immediate risk), and Art8 (disproportionate interference with private and family life).
- s19(3)(b) (conducive to inquiry fulfilling terms of reference and necessary in public interest) having regard to s19(4)(b) (risk of harm or damage), s19(4)(c) (conditions of confidentiality subject to which information acquired), s19(4)(d) (delay, impairment to efficiency or effectiveness, additional cost).

Legal principles:

Restriction Orders Legal Principles and Approach Ruling dated 3 May 2016 (the "Principles Ruling")

Evidence in support (not for circulation wider than Chairman and Inquiry team unless otherwise stated):

- Unredacted statement of Cairo dated 12 February 2016 as amended 28 June 2016;
- Cairo Risk Assessment dated 16 February 2016;
- Cairo 2nd Statement (19 February 2016) on "impact";
- Cairo 3rd Statement (30th June 2016) "expectations of confidentiality";
- Schedule of some work experience "work schedule" (for inspection only).

Outline reasons:

Section 19(3)(a): Art2, Art3, and Art8

1. A restriction order protecting Cairo's identity is required in order for the Inquiry to meet its duty under the s6 Human Rights Act 1998 not to act in a way which is incompatible with Convention right. The Convention rights in issue are Arts 2, 3 and 8.
2. Disclosure of Cairo's true identity would expose him/her to a real (objectively verified) and immediate risk of serious physical harm including a risk of death (Principles Ruling at §176). The nature and gravity of the risk are detailed in the evidence [evidence: Risk Assessment §6.1-6.34, §6.38; "impact" statement; "work schedule"]. There is a sound basis to infer that details of identity, if not protected, will be proliferated (Risk Assessment §6.36-6.37(i)).
3. Necessary protective measures in the event of disclosure of Cairo's true identity would cause great interference to the family and private life rights of Cairo and those of his/her family (Principles Ruling at §180), and there is no guarantee that even significant interference could mitigate the risk [evidence: Risk Assessment §8.2-8.4; "impact" statement, closed Cairo witness statement as amended 30th June 2016 §§25-45].
4. There is a related risk to other persons if Cairo were to be identified, this risk is of harm of equal severity, and is detailed in the evidence [Risk Assessment §6.1, §6.35, §7.1-7.4; "impact" statement §8; and "work schedule"].

Section 19(3)(b) and s19(4)

5. A restriction order protecting Cairo's identity is conducive to the Inquiry fulfilling its ToRs or is necessary in the public interest having regard in particular to the factors set out at s 19(4) of the Act. The Inquiry Chairman has indicated the approach he will take, as follows (§152 of the Principles Ruling):
... when considering whether to make an order restricting disclosure of any relevant particular piece of information on public interest grounds I will be required to:
 - (1) identify the public interest in non-disclosure;
 - (2) assess the risk and level of harm to the public interest that would follow disclosure of that information;
 - (3) identify the public interest in disclosure;
 - (4) assess the risk and level of harm to the public interest that would follow non-disclosure of that information.
 - (5) make in respect of that information a fact sensitive assessment of the position at which the public interest balance should rest.

The public interests in non-disclosure

6. The public interests in non-disclosure of Cairo's identity are to avoid or reduce a risk of significant harm, to facilitate allaying public concern by increasing the extent to which Cairo's evidence can be heard in public, and thereby to assist the Inquiry in meeting the ToRs. There is also a public interest in maintaining the confidentiality that Cairo had a strong expectation would endure throughout his/her lifetime.
7. Cairo is a senior manager within the MPS, with more than 20 years' police experience. During his/her career, Cairo has held a number of positions that will allow him/her to assist the Inquiry in respect of several of the Terms of Reference (ToRs) (closed Cairo witness statement 12 February 2016 as amended 28 June 2016 §§1-11; "confidentiality" statement §12). Cairo is likely to be able to present useful evidence to the Inquiry in respect of:
 - a. The role and contribution made by undercover policing towards the prevention and detection of crime;
 - b. The motivation for and scope of undercover police operations in practice and their effect upon individuals in particular and the public in general;
 - c. The adequacy of the justification, authorization, operational governance and oversight of undercover policing;
 - d. The selection, training, management and care of undercover police officers;
 - e. The undercover operations of the Special Demonstration Squad and other parts of the police;
 - f. Appropriate recommendations for the future deployment of undercover police officers.
8. As a result of sensitive roles Cairo has held, and in light of the fact that the full extent of his/her involvement in the Inquiry cannot be ascertained at this stage, it is necessary to protect his/her identity in order to avoid a risk of serious harm to him/her.
9. At this juncture it may also be that by restricting his/her identity, he/she will be able to give a greater proportion of evidence openly, and thereby offer the greatest assistance to the Inquiry in meeting its ToRs without offence to the presumption of openness (Principles Ruling §§82-89). It is therefore possible that the grant of anonymity will help to increase the volume of *information* which can be dealt with publically, thereby minimizing the amount of "*unpublished and untested evidence*" identified by the Chairman as a factor capable of inhibiting the allaying of public concern (Principles Ruling §93, §104). Without the protection of anonymity, Cairo will not be able to provide in public, even in a limited fashion, the factual basis for his/her views, decisions and actions. Those aspects of his/her evidence would need to be considered in a closed forum. A further consequence of this could be delay, impairment to the efficiency of the Inquiry and (potentially) increased cost as matters move between open and closed session to facilitate hearing all relevant evidence. At this early stage in the Inquiry, and on a precautionary basis, granting anonymity to Cairo may well give rise to greater openness in the scrutiny of undercover policing.

10. As has been indicated above [1]-[3], the risk of harm or damage which can be avoided or reduced by granting anonymity is significant, as is evidenced in the supporting material. The sources of possible harm and its extent are detailed in the evidence (Risk Assessment §6; “work schedule”; “impact” statement §29, §§38-39, §45, §47, §49). It would be the fact of disclosure of Cairo’s identity which crystallizes pre-existing but managed risk (evidence “impact” statement §5, §14; Risk Assessment §8; “confidentiality” statement §§12-13).
11. Cairo has not ‘self disclosed’ or been exposed; in the “impact” and “confidentiality” supporting evidence, Cairo explains the personal, professional and organizational support for discretion and confidentiality which is in place, and any deviations from this, with explanations (see: Risk Assessment at §5.2-5.7; §8.1; “impact” statement §§15-18; §§33-36; “confidentiality” statement §§9-11).
12. Further, Cairo has a reasonable expectation of confidentiality arising from the nature of work he/she has carried out. Cairo’s expectations, and their limits, are explained in the supporting evidence (evidence: closed Cairo witness statement as amended 30th June 2016 §§13-24; Cairo 2nd Statement (19th February 2016) §§9-14, Cairo 3rd Statement (30th June 2016) §§2-9). This expectation should be given weight in the context of an Inquiry which was not in contemplation at any point when the expectation of confidentiality was generated, which may, in identifying a person, expose aspects of that person’s life to attention never contemplated when the expectation of confidentiality arose (evidence: “impact” statement §4; “confidentiality” statement §7).
13. The protections which would be necessary in the event of disclosure are disproportionate. Cairo has taken all appropriate steps to maintain the necessary protection of his/her true identity (“impact” statement §§15-32, §41-42).

Section 17: statutory and common law fairness

14. A restriction order protecting Cairo’s identity is also required in the application of statutory and common law principles of fairness. In addition to avoiding or reducing the risk of harm, Cairo has identified in his/her “impact” witness statement some of his/her fears in the event of disclosure of his/her identity, and the ways in which fears of identification impact in Cairo’s, and Cairo’s family’s lives (“impact” statement §§38-46).

Where does the public interest balance lie?

15. The MPS has considered the Chairman’s Restriction Order rulings dated 3 May 2016. The MPS has had particular regard to the presumption of openness in the Public Inquiry. This is not a case in which it is possible to say from earlier rulings that a restriction order application ought not to be granted.
16. In these circumstances, the MPS makes this application for a restriction order for the consideration of the Chairman and invites the Chairman to conclude that the public

interest favours non-disclosure. In short:

- a. Anonymity is necessary to avoid the creation of a real and immediate risk of death or serious harm; which could only be avoided (if indeed it can be avoided) by significant and undue interference with Cairo's family and private life. It may not be possible to avoid or mitigate risks to others.
- b. The significant public interest reasons for non-disclosure outweigh the interests of openness.
- c. Further, the interests of fairness demand non-disclosure of Cairo's identity. In addition to the reasons cited in the other grounds of the application, Cairo has set out reasons he/she fears disclosure of his/her name. These fears are genuine, clearly articulated and should be accorded weight.

30 June 2016
MPS, Department of Legal Services

