

Note in respect of Disclosure of Deceased Children's Identities: Ruling on 14 July 2016

This note has been provided to assist in understanding the Chairman's Ruling on the disclosure of deceased children's identities, issued on 14 July 2016. It does not form part of the reasons for the Ruling. The full Ruling is the only authoritative document. The Ruling is a public document and is available on the Inquiry's website, [here](#).

Introduction

1. This Ruling addresses an issue arising from how the Inquiry will fulfil its terms of reference in respect of investigating the use of names of deceased children by undercover police officers to help create undercover identities. The Ruling states that the Inquiry will investigate how wide the practice was, whether it is still used and, if not, when it ceased. The Inquiry will also need to investigate and understand the reasons why this practice was adopted, whether and to what level of seniority it was approved, and, if it is the case, the reasons why and at whose direction it was discontinued.
2. The Ruling re-states the Inquiry's view that there is a strong public interest in openness in the Inquiry's proceedings, particularly where it is necessary to ensure that interested persons can participate fairly and effectively.
3. The issue is whether there is a duty to disclose to the parents or close relatives of a deceased child that the identity of that child was (or was not) used for covert police purposes; and if there is a public interest test to be applied, what does it comprise and how it is to be measured?

A Duty to Disclose?

4. The Ruling summarises the competing submissions that the Inquiry received as to whether the state has a positive obligation to make disclosure to a deceased child's parent or close relative that the identity of the child was used by the police for covert purposes. The conclusions are as follows:
 - i. There is no general common law duty upon the state to disclose information held by it. However, the Chairman of the Inquiry is a public authority for the purposes of section 6 of the Human Rights Act 1998, and as such is required not to act in a manner that is incompatible with the rights of a 'victim' under the European Convention on Human Rights. This includes the right to respect for private and family life under Article 8, and the requirement applies to both the positive as well as negative obligations created where Article 8 is engaged.
 - ii. The state's use of the details of deceased children for covert purposes is likely to engage the Article 8 rights of those child's parents or nearest relatives. The practice is also likely to engage the same right for those who fear or suspect that their child's

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identity has been used for these purposes, but where they cannot be told that it has not been. As the Secretary of State has directed the Inquiry to investigate this practice, the Inquiry has a duty to meet the positive Article 8 obligation arising in this context.

- iii. Relatives falling into the categories outlined above are 'victims' for the purpose of Article 34 of the European Convention on Human Rights. Victims are entitled to have access to a fair procedure to decide applications for disclosure of whether their deceased child's identity has been used.
 - iv. It may not be possible for the Inquiry to confirm whether or not a deceased child's identity was in fact used, where this would breach or undermine a restriction order. However, all of the factors relevant to an assessment of Article 8 rights would also be taken into account by the Inquiry when considering the public interest test for those seeking a restriction order under section 19 of the Inquiries Act 2005.
5. In reaching a decision on the disclosure of deceased children's identities, the Inquiry Chairman must fairly resolve the balance between the interests of an individual seeking disclosure with any countervailing public interest in non-disclosure (as detailed by sections 18 and 19 of the Inquiries Act 2005 (*Public access to Inquiry proceedings and information/ Restrictions on public access*)).
 6. The Ruling states that the Inquiry will seek out and notify those parents or close relatives of a deceased child whose identity has been used by a police officer for covert purposes in cases where a provisional decision has been made not to impose a restriction order preventing publication of that information. This will enable the close relative to know that their deceased's child's identity was used and to raise any objection to publication.
 7. In cases where a deceased child's identity was used by a police officer for covert purposes and a restriction order preventing publication of that information has been made it will not be possible to inform the deceased child's close family. This would apply, for example, in a case where a risk of harm to the undercover officer would arise from publishing the name and the severity of that risk outweighs the competing public interest in openness.
 8. A complication arises in relation to cases in which the Inquiry finds no evidence that a deceased child's name was used. If the Inquiry adopts a policy of making public to relatives who inquire that their deceased's child's name was not used and it is following the policy, described at paragraph 6 above, of making public the use of names where no restriction order has been made, then there is a risk that an inference could be drawn in cases where the Inquiry cannot give an answer that it is because there is a restriction order in place. That could undermine a restriction order and endanger the public interest which the restriction order was made to protect (e.g. an undercover officer's safety). In these circumstances, the Chairman has concluded that caution is essential, and that decisions on disclosure of negative results can only be made when investigation is complete and he has all of the information he needs to balance the competing interests for and against disclosure.

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9. In connection with this issue the ruling states that the Inquiry will, in due course, invite the families of deceased children to contact the Inquiry to register an interest. In order that families should not be misled as to the practical effects of such an expression of interest, the Inquiry's public notice will explain that an expression of interest may result in a response that is delayed or in no response at all (for the reasons summarised at paragraph 8 above). The Inquiry intends to consult the interested participants both upon the terms and the timing of the public notice.
10. In due course, where the Inquiry needs to contact a relative prior to the public release of information, it will engage the assistance of specialist support services to ensure that any such interaction is conducted in such a way so as to minimise distress to the relative.

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Questions and Answers

Q: How will the Inquiry find out that the names of deceased children have been used?

A: The Inquiry is collecting evidence from a number of bodies. In particular, the Inquiry expects the evidence from police bodies to identify where the name of a deceased child has been used to create a covert identity for the purposes of undercover policing.

Q: Do parents of a deceased child need to come forward in order for the Inquiry to get at the truth?

A: The Inquiry welcomes engagement from all those with an interest in helping it get to the truth; however the Inquiry will be investigating the issue whether or not families come forward. The ruling gives a commitment that the Inquiry will do its best to seek out the parents of deceased children when and where it is in a position to let them know that the name of their child has been used. Coming forward does mean that the Inquiry will be able to take into account the interest of the family. If their child's name was used, and that fact can be disclosed, then it will make establishing contact much easier.

Q: When will the Inquiry be in a position to notify parents?

A: In cases where the Inquiry discovers that a deceased child's name was used, and decides provisionally that it can publish that fact, the Inquiry will seek to find and inform next of kin as soon as it can.

There may be instances where the Inquiry will not be able to let parents know because it is necessary to restrict publication of the name for good reason (e.g. where it would put the undercover police officer who used it at such risk of harm that it outweighs the interest in publishing it).

For reasons which are explained in the Ruling, the Chairman will decide once investigations have been completed what can be said to families who have expressed an interest but whose deceased child's identity was not used by an undercover police officer.

Q: When will the Inquiry circulate a public notice to parents of deceased children?

A: The Chairman has said in his ruling that the Inquiry will consult interested participants over the terms and timing of any public notice. We estimate that this consultation process is likely to take between 3-4 weeks. The public notice will be issued as soon as possible after the consultation process has concluded.