

In the matter of Section 19 of the Inquiries Act 2005
Applications for restriction orders in respect of 'Cairo', 'Jaipur', and 'Karachi'
Ruling and further directions

Introduction

1. The Metropolitan Police Service wishes to adduce, in support of applications for restriction orders made and to be made by serving and former police officers, the written evidence of three serving police officers, who are currently referred to by the ciphers 'Cairo', 'Jaipur' and 'Karachi'.
2. Cairo is the author of a witness statement dated 12 February 2016 that addresses:
 - (i) the expectation of confidentiality between undercover police officers and their employers,
 - (ii) the need to protect from disclosure the identity and operational methods of undercover police officers,
 - (iii) the pressures placed upon protection of identities by modern communications technology and groups intent on exposing the identities of undercover police officers,
 - (iv) the risks to undercover police officers and others upon exposure, and
 - (v) the impact of exposure of undercover police officers upon recruitment.

The statement produces a number of exhibits.

3. Jaipur is the author of a report entitled 'Risk Assessment Briefing Note' dated 8 December 2015. In that report Jaipur describes the management of risk of exposure of officers serving in the Special Demonstration Squad during the period of its existence (1968 – 2008), during the period 2008 – 2011, and from 2011 to date.
4. Jaipur and Karachi are joint authors of a report, dated 1 December 2015, entitled "The 'Mosaic Effect' and the potential risk to officers". The report seeks to demonstrate the means by which disclosure of snippets of information relating to undercover officers, their deployment and methodology may lead to the exposure of their true identity with consequential risks of harm to the officers and their families.

Directions 27 May 2016

5. The Metropolitan Police Service sought redaction of sensitive material from these documents before disclosure. The effect of redaction would have been, in part, to conceal the identity of the makers of the documents, Cairo, Jaipur and Karachi. Accordingly, in 'Further directions' given on 27 May 2016 I directed that, by 4 pm on 30 June 2016 the Metropolitan Police Service should submit fully reasoned applications for anonymity supported by evidence. I have now received the applications that I describe below.

The applications

Cairo

6. An application dated 30 June 2016 is made by the Metropolitan Police Service on behalf of Cairo for an order that:

"[There should be] No direct or indirect disclosure of Cairo's true identity (including any description or image capable of identifying Cairo) beyond [the] Chairman and Inquiry team.

The Commissioner reserves the right to make further submissions as to the effective operation of this Restriction Order during the course of the Inquiry."

7. The application is made on the following grounds:
- (i) Fairness towards the witness as required by section 17(3) of the Inquiries Act 2005;¹
 - (ii) So as to avoid acting in contravention of the applicant's right to protection from death or serious injury under Article 2 and Article 3 of the European Convention on Human Rights, under section 6 of the Human Rights Act 1998 and section 19 (3)(a) of the Inquiries Act 2005;² and
 - (iii) So as to be conducive to the Inquiry fulfilling its terms of reference and/or necessary in the public interest under section 19 (3)(b) of the Inquiries Act 2005.³

¹ For an analysis of the duty of fairness to witnesses see Restriction Orders: Legal Principles and Approach Ruling, 3 May 2016, at paragraphs 210 and 211, page 77

² For an analysis of the duty of compliance with Articles 2 and 3 of the European Convention on Human Rights see Restriction Orders: Legal Principles and Approach Ruling, dated 3 May 2016, paragraphs 172 – 176, pages 64 - 65

³ For an analysis of the requirements of section 19 (3)(b) of the Inquiries Act 2005 see Restriction Orders: Legal principles and Approach Ruling, dated 3 May 2016, paragraph 21 and following, pages 9 - 16, and paragraph 81 and following, pages 32 - 62

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8. In support of the application I have received three unredacted witness statements from Cairo dated 12 February 2016 (amended 28 June 2016), 19 February 2016 and 30 June 2016. I have also received a Cairo risk assessment dated 16 February 2016, prepared by Jaipur. Lastly, I have been provided with a 'closed' schedule of Cairo's work experience.

Jaipur

9. An application dated 30 June 2016 is made by the Metropolitan Police Service on behalf of Jaipur for an order that:

"[There should be] No direct or indirect disclosure of Jaipur's true identity (including any description or image) beyond [the] Chairman and Inquiry team.

The Commissioner reserves the right to make further submissions as to the effective operation of this Restriction Order during the course of the Inquiry."

10. The application is made on the following grounds:
- (i) Fairness towards the witness as required by section 17(3) of the Inquiries Act 2005; and
 - (ii) So as to be conducive to the Inquiry fulfilling its terms of reference and/or necessary in the public interest under section 19 (3)(b) of the Inquiries Act 2005.
11. In support of the application I have received a witness statement dated 1 July 2016 from Detective Superintendent Neil Hutchison and a Jaipur risk assessment, prepared by Karachi, together with the Risk Assessment Briefing Note and Mosaic Effect reports referred to at paragraphs 3 and 4 above.

Karachi

12. An application dated 30 June 2016 is made by the Metropolitan Police Service on behalf of Karachi for an order that:

"[There should be] No direct or indirect disclosure of Karachi's true identity (including any description or image) beyond [the] Chairman and Inquiry team.

The Commissioner reserves the right to make further submissions as to the effective operation of this Restriction Order during the course of the Inquiry."

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13. The application is made on the following grounds:
 - (i) Fairness towards the witness as required by section 17(3) of the Inquiries Act 2005; and
 - (ii) So as to be conducive to the Inquiry fulfilling its terms of reference and/or necessary in the public interest under section 19 (3)(b) of the Inquiries Act 2005.
14. In support of the application I have received a witness statement dated 1 July 2016 from Detective Superintendent Neil Hutchison, a Karachi risk assessment, prepared by Jaipur, and a closed annex to the application, together with the Mosaic Effect report referred to at paragraph 4 above.

Further progress of the applications

15. At paragraph 4 of my Further Directions of 27 May 2016 I said:

“4. I have considered with the Inquiry’s counsel team whether there is any practicable means by which the non-police, non-state core participants can contribute meaningfully to the resolution of the combined issues of anonymity for Cairo, Jaipur and Karachi and the redaction of material from their documents. First, I am considering at this stage not an application by a Slater and Gordon police officer for anonymity but an application to restrict disclosure of evidence tendered in support of their applications for anonymity. The further the issue is from the main point of controversy the less compelling is a claim to participate in its resolution on the grounds of fairness. Secondly, and critically, by reason of the very nature of the information that I shall have to consider I am quite satisfied that neither the issues raised nor the material itself can be further disclosed before I have made a decision one way or the other. If further disclosure were to be made the purpose of the applications would be defeated. It follows that, at least in the first instance, I must consider these issues alone. If, having read the applications submitted on behalf of Cairo, Jaipur and Karachi, I consider that it is possible to receive submissions from core participants, I will invite them.”

16. I have now read the unredacted and closed material tendered in support of the applications for anonymity. I have concluded that it is not practicable to invite submissions from the non-police, non-state core participants on the issue whether I should make a restriction order whose effect would be to grant anonymity to Cairo. In order to enable the core participants to engage in the merits of the application I

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would have to disclose information about Cairo whose effect would be to undermine the purpose of the application, namely to protect Cairo from a risk of death or serious injury.

17. I have therefore determined that I must proceed to decide the application for anonymity made on behalf of Cairo without inviting submissions from other core participants.
18. However, the applications made on behalf of Jaipur and Karachi do not rely on evidence that, if disclosed, would place them at risk of serious harm. Furthermore, the Metropolitan Police Service intends to instruct Jaipur and Karachi to prepare 'risk assessments' in respect of all the undercover police officers formerly employed by the Special Demonstration Squad and the National Public Order Intelligence Unit in respect of whom restriction orders will be sought. In my view, there is scope, upon the preparation of open disclosure files, for the non-police, non-state core participants to engage with the grounds for anonymity submitted on behalf of Jaipur and Karachi.
19. I shall direct that, in respect of Jaipur's and Karachi's applications for anonymity, the Inquiry's counsel team and counsel for the Metropolitan Police Service should prepare supporting files of provisionally open and/or redacted and/or gisted documents for disclosure. The files will be submitted to me for my approval or decision before disclosure. Following disclosure, I will invite written submissions from the non-police, non-state core participants as to whether the restriction orders sought on behalf of Jaipur and Karachi should be made. At this stage I shall not impose a time limit on the disclosure exercise but I shall direct that it should be expedited. I shall give further directions in due course.
20. I shall now proceed to consider the application for anonymity made on behalf of Cairo.

Cairo: decision and reasons

21. The principle of openness applies to this procedural decision. The weight to be afforded to the principle will depend, among other things, upon the capacity of the restriction order sought to "*inhibit the allaying of public concern*".⁴

⁴ For an analysis of the factors relevant to section 19 (3)(b) and section 19 (4)(a) of the Inquiries Act 2005, see Restriction Orders: Legal Principles and Approach Ruling, dated 3 May 2016, paragraphs 81 – 112, pages 32 - 44

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22. The evidential material on which Cairo relies in support of the application for anonymity comprises highly sensitive information it would not be in the public interest to disclose.
23. At paragraph 2 above I have summarised Cairo's evidence on issues that are generic to applications for restriction orders providing anonymity to present and former undercover officers. I do not consider that disclosure of Cairo's real identity is necessary to enable core participants effectively to challenge or comment upon Cairo's evidence. On the contrary, if Cairo's real name is withheld somewhat more extensive disclosure of Cairo's experience may be possible.
24. Cairo is a senior police officer who is qualified to speak on the subject matter of Cairo's evidence. Cairo's physical appearance and voice have in the past been associated with an undercover name but, so far, the true identity of the individual has not been associated with any undercover name. Cairo has adopted a range of precautions so as to avoid the risk of that association being made. It is argued that if Cairo's real identity were to be associated with an undercover name Cairo and others would be at a real and immediate risk of death or serious injury.
25. While three grounds have been advanced in support of the application, I consider that it is sufficient in the first instance to concentrate on the public interest test under section 19 (3)(b) of the Inquiries Act 2005. In considering the application made on behalf of Cairo I have applied the Conclusion and Summary of Findings at pages 78 – 82 of my ruling Restriction Orders: Legal Principles and Approach of 3 May 2016 and, in particular, paragraphs A.2, A.3, A.4, A.6, A.11, B.1 and B.3.
26. At this stage of the analysis the factual evaluation I have to make is whether (i) the disclosure of Cairo's real identity would give rise to a significant risk⁵ that Cairo would become associated with the undercover past to which I have referred at paragraph 24 and (ii) if that undercover past was exposed Cairo and others would be at significant risk⁶ of death or serious physical injury. I am quite satisfied on the evidence I have seen that the disclosure of the real name would give rise to a significant risk of exposure of Cairo's undercover past and, in consequence, a significant risk to the officer and others of death or serious physical injury from recriminatory action. In reaching the public interest balance I am required further to assess the magnitude of the risks to which I have referred in order to reach a conclusion as to whether and, if so, to what extent a restriction order would avoid or reduce the risk.

⁵ In this paragraph, by "significant" risk I mean a risk that is more than minimal but whose outcome is less than certain

⁶ As footnote 5

27. I turn to the public interest balance the nature of which I sought to encapsulate in my ruling of 3 May 2016, at paragraph B.3:
- (i) The public interest in non-disclosure is represented, primarily, by the need to avoid a risk of harm to a police officer and others from disclosure of the officer's real identity.
 - (ii) I consider that there is a substantial risk ⁷ that, if Cairo's real identity were disclosed, an association would be made with Cairo's undercover past. Should that association be made, by reason of its nature, Cairo and others would be at substantial risk of death or serious injury.
 - (iii) The public interest in disclosure is represented, primarily, by the need to allay public concern that non-disclosure of a witness' name might occasion. The public would be concerned if non-disclosure had the effect of hampering significantly the ability of core participants to challenge or comment upon the witness's evidence. Furthermore, in recognition of the public's right to be informed of the proceedings of a statutory inquiry, the starting point is one of openness and transparency.
 - (iv) Where there exists a substantial risk ⁸ of physical harm to a person or persons upon disclosure of a witness's true identity, the scope for public concern in non-disclosure of that identity is limited. Further, in my view, disclosure of Cairo's true identity is not necessary to allay public concern as to the Inquiry's proceedings or to enable core participants effectively to challenge or comment upon the evidence.
 - (v) For the reasons stated, I am satisfied that the substantial risk ⁹ of death or serious injury to Cairo and others that would attend the disclosure of Cairo's real identity places the public interest balance firmly in favour of non-disclosure.
28. Having reached these conclusions it is sufficient for me to make the order requested on public interest grounds. However, I consider that for similar reasons I would be required to make the order on the ground of fairness to the witness. It is therefore unnecessary for me to reach a concluded view as to whether the stringent test that applies to obligations under Article 2 and Article 3 of the European Convention on

⁷ In this sub-paragraph, by "substantial" risk I mean that a risk is much more than minimal but whose outcome is less than certain

⁸ As footnote 7

⁹ As footnote 7

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Human Rights is met, although for the reasons I have stated, I incline to the view that it is.

29. As stated at paragraph 22 above, the evidence on which Cairo relies in support of the application is highly sensitive and cannot, in the public interest, be disclosed. I have therefore prepared a 'closed' ruling that summarises the evidence on which I have relied in reaching my conclusions at paragraphs 26 and 27 above. I have concluded that publication of that ruling would have the effect of undermining the restriction order I propose to make. For this reason I shall, under section 17 (1) and (3) of the Inquiries Act 2005, direct that my closed ruling shall be disclosed only to certain persons (including Cairo and the Metropolitan Police Service), as identified in the restriction order.
30. I shall direct that counsel for the Metropolitan Police Service and counsel to the Inquiry prepare a file of Cairo's provisionally open and/or redacted and/or gisted witness statement of 12 February 2016, summarised at paragraph 2 above, for disclosure. The file will be submitted to me for approval or decision. Disclosure of the file shall take place as soon as possible after 14 days has elapsed from the publication of this ruling.

19 July 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry