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Re The Undercover Policing Inquiry

APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
MPS ANONYMITY NO. 3

Restriction order sought: granting anonymity to "Karachi", author of various risk assessments, to last indefinitely.

Terms of Restriction Order sought at this stage:

- No direct or indirect disclosure of the Karachi's true identity (including any description or image) 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

Grounds for application:

- S17(3) (fairness)
- 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):

- Closed Annex to application
- Risk Assessment Karachi;
- Witness statement DSupt Neil Hutchison dated 8 August 2016

Outline reasons:

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1. The principle basis for this application is that revelation of Karachi's true identity is likely to impair the progress of the Inquiry. It should be noted that this not an application based on risk of harm to Karachi himself.
2. Karachi is an MPS police officer with a support role in the MPS Public Inquiry Team, working within "Operation Motion". Karachi is one of two officers tasked with risk management for former SDS officers. This includes:
 - a. Establishing and maintaining contact with, and support of, SDS officers for the purposes of the Undercover Policing Inquiry ("the Inquiry");
 - b. Debriefing SDS officers for risk assessment, and making objective assessment of the risk faced including the level of risk;
 - c. Identifying, assessing and advising on other risks faced by officers as a result of the Inquiry;
 - d. Risk and security management of any compromise issue arising.(DSupt Hutchison witness statement).
3. In pursuance of these duties, Karachi has made contact with, and gained the trust of, a number of former SDS officers; debriefed those persons in considerable detail; and prepared detailed assessments setting out and evaluating the risks faced by each individual. Karachi monitors a range of data to try to ensure risks arising are identified, and continues to meet with and update these persons on matters which may go to risks faced (DSupt Hutchison witness statement).
4. The basis of this application (and the related application on behalf of Jaipur) is unusual, and is not expected to be repeated. Karachi does not claim a risk of harm in the event of his/her identity becoming known. However, there is a real risk the Karachi will be unable to perform his/her current role if disclosure of his/her identity were made. This role is of positive assistance to the smooth running of Inquiry, and will increasingly be so as the Inquiry progresses to examine the evidence of former SDS officers.

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

5. The Chairman is invited to find that a restriction order protecting Karachi's identity is conducive to the Inquiry fulfilling its Terms of Reference (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 interest in non-disclosure

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6. Non-disclosure of Karachi's identity is conducive to the Inquiry fulfilling its ToRs. Disclosure of Karachi's identity is capable of causing delay or impairing the efficiency or effectiveness of the Inquiry. There is also a public interest in avoiding harm to others.
7. There is a benefit to the Inquiry in non-disclosure of Karachi's identity. The evidence presented in support of this application explains that:
 - a. There are a number of reasons why the relationship between SDS officers' and the wider MPS has been strained; however Karachi (and Jaipur) possess an almost unique range of skills and experiences which makes them best placed to carry out the Operation Motion role;
 - b. Karachi's role cannot be undertaken without gaining and retaining the trust of SDS officers;
 - c. For a number of reasons (developed in the evidence) this trust may be damaged by disclosure of Karachi's identity;
 - d. The effect of this will be to make necessary roles of risk management and liaison considerably more difficult;
 - e. Further, there is sound reason to presume that researchers and campaigners who have publically avowed a desire to identify all former SDS officers may seek to exploit the connections between Karachi and these persons were Karachi's identity to be disclosed. Given that anonymity applications by former SDS officers have yet to be determined, it is appropriate to take a cautious approach to Karachi's identity;
 - f. The effect of this too will be to make necessary roles of risk management and liaison considerably more difficult;
 - g. It should not be assumed the Inquiry can take on the liaison role currently fulfilled by Operation Motion and in particular Karachi and Jaipur;
 - h. The ability of Karachi and Jaipur to engage with the SDS officers is central to the production of full, robust and useful risk assessments.(evidence: risk assessment, WS Hutchison)

The public interest in disclosure

8. The general presumption in favour of openness weighs against the making of a restriction order in Karachi's case. However, the making of a restriction is unlikely to have an inhibiting effect on the allaying of public concern because Karachi:
 - a. Is very unlikely to be a witness in the Inquiry;
 - b. Performs a facilitation role which is most effectively and usefully performed discreetly;
 - c. If a gisted curriculum vitae is required to allow proper testing of Karachi's expertise as an assessor of risk, this can be provided and so a need to 'test' risk assessments (if such a need arises) should not, of itself, justify disclosure of identity.

Where does the public interest balance lie?

9. 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 and to the fact that this is not a case in which there is a real risk of harm to Karachi himself.

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10. The MPS recognizes that there are features in this case which weigh for and against applying for a restriction order. The MPS however notes that in the absence of a restriction order application the Chairman will not be able to form his own view on the public interest balance (including on the weight to be attached to the public interest in the smooth running of the Inquiry). This is not a case in which it is possible to say from earlier rulings that a restriction order application ought or ought not to be granted. In these circumstances, the MPS makes this application for a restriction order for the consideration and invites the Chairman to conclude that the public interest favours non-disclosure in this case. In short a restriction order will allow the Chairman to use to best effect the work, expertise and liaison support of the Operation Motion personnel, without inhibiting allaying of public concern.

19 August 2016
MPS, Department of Legal Services

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