

In the matter of section 19(3) of the Inquiries Act 2005
Applications for restriction orders in respect of Jaipur and Karachi
‘Minded to’ note

Introduction

1. This Note provides links to documents that are posted on the Inquiry’s website. I can therefore be selective in my references to them.
2. On 30 June 2016, the Metropolitan Police Service submitted applications for restriction orders under section 19 of the Inquiries Act 2005 on behalf of police officers so far known to the Inquiry as ‘[Jaipur](#)’ and ‘[Karachi](#)’. On 22 August 2016 I granted a [restriction order](#) authorising redaction of parts of the evidence submitted in support of the applications.
3. At the time of their applications Jaipur and Karachi performed a dual role for the Metropolitan Police Service: they acted for Operation Motion as welfare, security and liaison officers in the interests of former members of the Special Demonstration Squad and National Public Order Intelligence Unit; they also acted as assessors of risk in support of applications by those officers for restriction orders. In the latter capacity they were the authors of an explanatory document called “The Mosaic Effect and the potential risk to officers”; Jaipur was the author of a further document entitled “Risk Assessment Briefing Note”.
4. The Inquiry gave directions for the receipt of written submissions from core participants in response to the Jaipur and Karachi applications. On 16 August 2016 the Inquiry invited written submissions from ‘the Media’¹, and on 9 September 2016 the Media confirmed that they did not propose to file any.
5. On 19 September 2016 the Inquiry received written [submissions](#) from Ms Ruth Brander on behalf of the non-police, non-state core participants (dated 16 September 2016). In those submissions Ms Brander argued that the dual role of Jaipur and Karachi appeared to undermine the independence of any risk assessment reports that they prepared for the Inquiry. On 27 September 2016 the Metropolitan Police Service notified the Inquiry of its intention no longer to rely on the risk assessment reports of Jaipur and Karachi. They, together with the explanatory documents referred to in paragraph 3 above, have been withdrawn, with my approval. The Metropolitan Police Service intends to instruct replacement

¹ Guardian News & Media Ltd, Associated Newspapers Ltd, Independent Print Ltd, Independent Television News Ltd, Sky UK Ltd, Times Newspapers Ltd, and the BBC

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risk assessors who will be independent of Operation Motion and will not make an application for a restriction order giving them anonymity in the Inquiry.

6. On 30 September 2016 the Inquiry sought further information from the Metropolitan Police Service as to the continuing roles of Jaipur and Karachi; that information was provided by email of 3 October 2016. It was indicated that Jaipur and Karachi would have a continuing role to play during the course of the Inquiry that related only to security, welfare and liaison, to which I refer further at paragraph 18 below.
7. The applications of Jaipur and Karachi remain outstanding. It was and is, in my view, foreseeable that one or both of these officers will be required to give evidence in the course of the Inquiry. My reasons appear at paragraph 25 below. I concluded that I was required to decide the applications. In the light of the changed circumstances the Inquiry invited further written submissions from the core participants affected. On 11 October 2016 the Inquiry received [submissions](#) from Mr Jonathan Hall QC on behalf of Metropolitan Police Service (dated 5 October 2016) and supplemental [submissions](#) from Ms Ruth Brander on behalf of the non-police, non-state core participants (dated 11 October 2016).

The orders sought

8. Both Jaipur and Karachi seek an order whose effect would be to prohibit the disclosure or publication of any evidence or document (or part of any evidence or document) provided to the Inquiry that would, directly or indirectly, identify the applicant.

The grounds for the applications

9. The grounds for the applications, as re-stated in Mr Hall QC's submissions, are that the restriction orders sought:
 - (i) are conducive to the Inquiry fulfilling its terms of reference (section 19 (3)(b)) because the orders would prevent delay and impairment of the efficiency or effectiveness of the Inquiry and would save additional cost (section 19 (4)(d));
 - (ii) are required in the public interest (section 19 (3)(b)) to avoid or reduce a risk of harm or damage (section 19 (4)(b)); and
 - (iii) are required in fairness to the applicants and those whose welfare they are seeking to protect (section 17 (3)).

Operation Motion

10. Detective Superintendent Neil Hutchison has been leading the Metropolitan Police Service Assistant Commissioner's Public Inquiry Team to which he refers as 'AC-PIT'. Mr Hutchison has made a [witness statement](#), the original of which is dated 1 July 2016, that explains the purpose and objectives of Operation Motion. I do not consider that, for present purposes, the redacted parts of Mr Hutchison's statement make a material difference to the merits of the applications made on behalf of Jaipur and Karachi and I have not relied on them in forming my provisional view.
11. Operation Motion was formed in 2013, in response to pressures created by media and other revelations of undercover policing, to assess and manage the risk of exposure of former undercover police officers employed by the Special Demonstration Squad and the National Public Order Intelligence Unit, and to provide security and welfare where needed. Following the announcement of the Undercover Policing Inquiry, ultimate supervision of Operation Motion was transferred to the Assistant Commissioner's Public Inquiry Team and full time officers (including Jaipur and Karachi) were deployed to serve it.
12. The tasks allocated to Jaipur and Karachi included:
 - (i) tracing former undercover officers who had served in the Special Demonstration Squad and the National Public Order Intelligence Unit to inform them of the work done by Operation Motion and to maintain lines of communication with them;
 - (ii) preparing risk assessment reports that might be used (a) for considering current requirements for security measures (internal risk assessment) and (b) in support of subsequent applications to the Inquiry for restriction orders (Inquiry risk assessment);
 - (iii) offering personal security reviews and measures;
 - (iv) identifying a need for and offering welfare support;
 - (v) maintaining contact between former undercover officers and the Assistant Commissioner's Public Inquiry Team for the purpose of assisting the Metropolitan Police Service in its response to the Inquiry.
13. Mr Hutchison identifies among former undercover officers a strong expectation of secrecy and confidentiality and, for that reason, alarm and suspicion at the prospect that the Inquiry will require them to expose their undercover roles.

14. In the course of their duties Jaipur and Karachi, using their real names, have visited the homes of several former undercover officers. They have achieved a measure of trust with most of them. Some are reluctant to have contact with the Assistant Commissioner's Public Inquiry Team or the Inquiry. Jaipur and Karachi are seeking to foster good relations. It is Mr Hutchison's view that personal relationships forged between Jaipur, Karachi and many prospective witnesses in the Inquiry will be conducive to the efficient and effective working of the Inquiry. Those relationships risk being undermined if the identities of Jaipur and Karachi are exposed.
15. Mr Hutchison points out that Covert Human Intelligence Source handlers and cover officers routinely use cover identities with the object of protecting the informant or the field officer. Meetings are organised so as to reduce or eliminate the risk of hostile surveillance, but they are costly and time-consuming. It is Mr Hutchison's view that such are the sensitivities of former undercover officers that, if Jaipur and Karachi were to lose their anonymity, they will believe that they too would be at greater risk of compromise or exposure. The result would be that former undercover officers would be more wary of communicating with Jaipur and Karachi and of co-operating with the Inquiry.

Public scrutiny of the risk assessment process

16. In her submissions of 16 September 2016 Ms Brander's principal argument was that the preparation of risk assessments for the Inquiry "will underpin the Inquiry's subsequent decisions as to whether or not the Inquiry grants anonymity to the undercover officers whose behaviour is under scrutiny". The grant of anonymity to the risk assessors would tend to undermine public confidence in the process because it would reduce the capacity of the public to scrutinise it. The "closeness of their connections" to the officers whose risk they were assessing would increase public concern for "fair and accountable scrutiny".
17. To the extent that the anonymity of the Inquiry's risk assessors would generate public suspicion of the process, the decision by the Metropolitan Police Service to withdraw Jaipur and Karachi from their role as risk assessors to the Inquiry has removed this objection to the applications.

The risk of harm or damage

18. In his supplementary submissions Mr Hall QC described the continuing roles of Jaipur and Karachi. As I understand it, they will continue to perform their current welfare, liaison and *internal* risk management roles and will, if required, gather evidence relevant to the assessment of risk by independent risk assessors reporting

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to the Inquiry. It will be for the independent risk assessors to utilise the services of Jaipur and Karachi and to carry out such further inquiries and investigations as they consider appropriate to their task.

19. The Metropolitan Police Service, relying on the evidence of Mr Hutchison, identifies an objective risk that those who are intent on exposing the identities of former undercover police officers would use the real identities of Jaipur and Karachi as the starting point for their efforts to do so. Jaipur and Karachi, once identified, would be susceptible to profiling and, if profiling is successful, to surveillance. Former undercover officers would be vulnerable to discovery outside the restriction order process whenever they were in the company of Jaipur and Karachi, including at the Inquiry itself. Mr Hutchison referred in his statement to the activities of the Undercover Research Group as evidence of the determination of the Group to expose former undercover officers and their supervisors.
20. In Ms Brander's submissions of 16 September 2016 the non-police, non-state core participants responded that the risk of exposure of former undercover officers through association with Jaipur and Karachi was "minimal" and, in any event, manageable.
21. Relying on the witness statement of a founding member of the Undercover Research Group, Dónal O'Driscoll, it was argued that the Undercover Research Group has never engaged in surveillance of the kind envisaged and does not intend to do so now. Even if such surveillance were to be attempted, the question is posed, and I paraphrase: How would the interested spectator know that Jaipur and Karachi were meeting a former undercover officer rather than someone who was not?
22. Ms Brander argued that the activities of the Undercover Research Group have been unfairly characterised. She submitted, relying on Dr O'Driscoll's witness statement, that:

"URG has, on a number of occasions, deliberately omitted material of a personal nature from a public profile on the basis that such information did not serve the public interest and was intrusive".

She maintains that profiles published by the Undercover Research Group on its website are (i) drawn from publicly available material, (ii) subject to a strict policy of accuracy and verifiability, and a specific right of reply, and (iii) published in the context of the clear public interest in exposing abuses. She concluded:

"Indeed, the knowledge that enabled those abuses to be brought to light has largely come about due to the combined work of many dozens of the activists

affected, including those involved in the URG.”

23. Ms Brander posed the question whether, in any event, the welfare role performed by Jaipur and Karachi was desirable in the public interest. Those officers whose confidence in the Metropolitan Police Service had been lost through disaffection with their experience of undercover policing, its management and supervision were potential ‘whistleblowers’. If and to the extent that Jaipur and Karachi were engaged in attempts to win back the confidence of those former officers, they could be obstructing the ability of the Inquiry to get to the truth.
24. In her supplementary submissions of 11 October 2016 Ms Brander argued that the withdrawal of Jaipur and Karachi as risk assessors did not answer the objections of the non-police, non-state core participants to their applications for anonymity. The starting point is openness of and access to the Inquiry’s proceedings. She submitted that the nature and extent of the evidential role of Jaipur and Karachi remains unclear:

“The greater their role in matters of evidential significance to the Inquiry, the greater the public interest is likely to be in disclosure of their identities. Were restriction orders to be granted at this stage, such orders would, at very least, need to be kept under strict review while the extent of these officers’ roles becomes clear.”

Assessment

The public interest in disclosure

25. I have said, at paragraph 7 above, that it is foreseeable that Jaipur and Karachi may be required to give evidence in the Inquiry. I have in mind two specific possibilities: (i) that they will in the course of the Inquiry’s consideration of an application for a restriction order be required to provide evidence of a statement made to them by the applicant or of an investigation whose result, providing evidence of risk, is utilised by the independent risk assessors; and/or (ii) that they will, in their welfare role and/or in the course of making an *internal* assessment of risk to a former undercover officer and the security measures required to meet such a risk, acquire personal knowledge of the welfare and security needs of the undercover officer and the long term effects upon the undercover officer of their undercover role and its sequelae; if so, just as the evidence of the undercover field officers’ managers will be relevant to Module Two of the Inquiry (systemic issues), so may the evidence of Jaipur and Karachi.

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26. I accept the submission made to me that there is a public interest in the transparency, so far as possible, of the Inquiry's process in resolving applications for restriction orders. The principle of openness and accountability applies also to evidence received from witnesses in Module Two.

The risk and level of harm or damage on non-disclosure

27. I agree with Ms Brander's observation (at paragraph 24 above) to the effect that the closer a witness' evidence is to the essential subject matter of the Inquiry the weightier is the public interest in openness and accountability for that evidence. I also understand the view that the Inquiry should be wary of submissions that, if accepted, would protect from public scrutiny individuals whose conduct is being investigated. However, the conduct of Jaipur and Karachi is not being investigated. Their remit is to gather evidence relevant to a risk of harm.
28. Evidence of the kind foreseen at paragraph 25 (i) above would be at least twice removed from the subject matter of the Inquiry. It would comprise evidence of a statement made by the applicant to Jaipur and/or Karachi and/or of an investigation leading to identification of a risk to the applicant. In either event the significance of the evidence would be evaluated, first, by an independent risk assessor and, subsequently, by me. The very nature of the information made available by this means is likely to be such that disclosure of it would undermine the purpose of the application or result in a separate risk of harm to persons other than the applicant. If so, I would have to consider the evidence privately and, in that event, no significant public interest would be served by disclosing the identity of the person supplying it.
29. As to paragraph 25 (ii), if and when the time comes for Jaipur and Karachi to make witness statements in Module Two of the Inquiry it is likely that I will have made restriction orders whose effect will be to protect the anonymity of some of the former undercover officers whose welfare has been their responsibility. I will then be in a good position to judge whether disclosure of the identities of Jaipur and Karachi would tend to undermine any of the orders made. For reasons I consider below, disclosing the identities of Jaipur and Karachi now may well give rise to the exposure of former undercover officers and, thus, to a risk of harm or damage the extent of which it is not yet possible to know.

The public interest in non-disclosure

30. A preliminary step I am, inferentially, invited by Ms Brander to take is to make an assessment as to whether the roles that will be performed by Jaipur and Karachi have any public interest dimension. In my view, they clearly do. However,

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provisionally, I do not accept the suggestion that current efforts by Jaipur and Karachi to improve security and welfare and encourage contact with the Assistant Commissioner's Public Inquiry Team and the Inquiry will have a detrimental effect upon the willingness of police witnesses to 'blow the whistle' on past failings of management. The suggestion is entirely speculative; furthermore, if a police witness has suffered, historically, from poor management I find it very unlikely that recent improvement in safety and welfare would induce a material change in that witness's evidence.

31. Provisionally, I accept the opinion of Detective Superintendent Hutchison that many former undercover officers employed by the Special Demonstration Squad and the National Public Order Intelligence Unit have been and will be alarmed at the prospect of giving evidence to the Inquiry. They will have served and retired in the expectation that they would remain anonymous and that their former undercover roles would be segregated entirely from their private and family life and remain secret. I am not here indicating an acceptance of the argument that any former undercover officer thought they had an absolute guarantee of confidentiality for life. I am recognising the common sense of the proposition that the very nature of the deployments undertaken depended on secrecy. An expectation that their employer would do all it reasonably could to protect officers from exposure would be natural and probable whatever the precise terms of a personal assurance. That many officers were disturbed at media revelations of undercover operations, some made with the apparent approval of more senior officers, cannot reasonably be a matter of surprise.
32. Provisionally, I accept also that concerted and persistent attempts have been made by former targets of undercover operations publicly to identify the officers who targeted them. I do not for a moment suggest that these efforts were unlawful or inappropriate or other than understandable, particularly in the case of political and environmental (including animal rights) activists with whom personal and sometimes intimate relationships had been made and abandoned. The significance to be attached to this provisional finding, however, is that there is a plain risk that any information placed in the public domain that is capable of being used to identify a former undercover police officer is likely to be used for that purpose.
33. I am well aware of the work of the Undercover Research Group from Dr O'Driscoll's evidence, from its application to be designated a core participant and from a study of its public website. I need make no finding or comment about the claim that the Undercover Research Group exists to fulfill a public, as opposed to a sectional, if not self, interest. I need only point out that (i) the effect of continuing efforts to

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expose former undercover officers is to pre-empt the responsibility of the Inquiry to make assessments in the public interest as to whether an identity should be disclosed, (ii) any judgement as to the justification for exposure made by activists seeking information about an individual officer is likely to be made with an incomplete knowledge of the risks to the officer should their real or undercover identity and/or personal details be exposed, and (iii) former undercover officers are themselves viewing the Undercover Research Group's website with some anxiety.

34. Provisionally, I do not accept the attempt made by Ms Brander to diminish the weight of the submission of the Metropolitan Police Service that disclosure of the real names of Jaipur and Karachi may well lead to concerted attempts to link them, by means of surveillance, with former undercover police officers and, by that means, to identify the undercover officers. I do not underestimate the persistence and determination that would be required. I do not conclude that the risk arises specifically from the Undercover Research Group as a group. I conclude, provisionally, that it is likely to arise from individuals, whether alone or, more probably, collectively, who are (i) strongly motivated to expose undercover police officers who were deployed to target or infiltrate environmental or political groups, or prominent members of them, (ii) are opposed to undercover policing in principle, and/or (iii) seek to undermine the policy neither to confirm nor deny the identity of an undercover police officer or the existence of an undercover police operation. I therefore accept, provisionally, that disclosure of the real names of Jaipur and Karachi would create an objective risk of harm or damage resulting from the pre-emptive exposure of former undercover officers.
35. The Metropolitan Police Service undoubtedly has security and welfare responsibilities towards their former undercover officers that it is attempting to fulfill through Operation Motion. Having regard to public revelations since 2009 about undercover officers and their work and the formation of this public inquiry into undercover policing, it seems to me highly likely, as submitted, that a large number of former undercover officers who have relevant evidence to give to the Inquiry will be extremely anxious about the possibility of exposure and its consequences. The stated purpose of the Metropolitan Police Service, namely to utilise Operation Motion to the advantage of the Inquiry, by encouraging confidence in Jaipur and Karachi and, thus, in the Inquiry's process, seems to me to have an obvious public interest dimension.
36. Provisionally, I also accept Mr Hall QC's submission that disclosure of the real names of Jaipur and Karachi is likely to diminish their ability to generate and maintain confident relationships with the officers whom they contact, with the

consequence that the prospect for willing co-operation with the Inquiry will be diminished. In my view, there may well be a secondary but important effect upon the former undercover officers should their relationships with Jaipur and Karachi deteriorate. When assessing applications for restriction orders I depend upon up to date evidence of a risk of harm or damage. The former undercover officers themselves will be disadvantaged if, through fear and suspicion, they neglect to pass on to the risk assessors, via Jaipur or Karachi, information relevant to the assessment.

37. Provisionally, I conclude that there is a public interest in favour of a restriction order protecting the real names of Jaipur and Karachi.

The risk and level of harm or damage on disclosure

38. The responsibility of the Inquiry is to balance all aspects of the public interest. It requires me to consider, among other things, (i) the risk of harm or damage to former undercover officers and their families and (ii) the effect of disclosure on the ability of the Inquiry to carry out its investigation in a measured, effective and efficient way.
39. First, it seems to me that disclosure of the identities of Jaipur and Karachi gives rise to an objective risk of exposure of the identities of former undercover officers. Exposure would, in turn, give rise to a risk of harm or damage whose magnitude it is not yet possible to assess.
40. Secondly, the public interest would be severely damaged by the pre-emptive exposure of the identities of former undercover police officers outside the restriction order process that section 19 of the Inquiries Act 2005 requires the Inquiry to adopt.
41. Thirdly, I have provisionally concluded that, if Jaipur and Karachi were to be publicly identified, many of the former undercover officers on whose evidence the fulfillment of the Inquiry's terms of reference must depend are likely to be alarmed and react with suspicion to the Inquiry and its process. It is clearly not in the public interest that witnesses whose evidence may be central to the Inquiry are equivocal as to whether they can trust the individuals whose task it is to protect their welfare or, indeed, whether they can trust the Inquiry itself.

The public interest balance

42. My provisional conclusions as to the appropriate balance of the public interest are as follows.

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43. The proceedings of the Inquiry should be as transparent as the circumstances allow. The “proceedings of the Inquiry” includes the resolution of restriction order applications. The greater the significance of the evidence to the subject matter of the Inquiry the more pressing is the need for public accountability.
44. The evidence of Jaipur and Karachi, if admitted during consideration of restriction order applications, would not touch on the subject matter of the Inquiry; neither would it constitute evidence to the Inquiry of an assessment of risk. It would provide information relevant to an assessment by ‘independent’ risk assessors.
45. The assessment of risk offered to the Chairman in support of a restriction order application would be made by an officer or officers whose true identity would be known.
46. The information provided to the risk assessors by Jaipur and Karachi is likely to be sensitive and, for that reason, considered by the Chairman privately. In that event, there would be no significant public interest in disclosure of the identities of Jaipur and Karachi, whose identities would, however, be known to the Inquiry.
47. There is a real risk that disclosure of the identities of Jaipur and Karachi would result in concerted attempts to use that disclosure to trace and identify former undercover officers. Those attempts would pre-empt, if not undermine, the duty of the Inquiry to impose restriction orders when they are required in the public interest, and they would be likely to cause alarm and disaffection among the former undercover officers on whose evidence the fulfillment of the Inquiry’s terms of reference is likely to depend. Should any attempt be successful a risk of harm or damage would arise that it is not yet possible to quantify.
48. Alternatively, there is a real risk that, if the true identities of Jaipur and Karachi become known, former members of the Special Demonstration Squad and the National Public Order Intelligence Unit would *fear* exposure from continued association with them and/or with the Inquiry, thus diminishing the effectiveness and efficiency of the Inquiry’s process.

Conclusion

49. I consider that at present the weight of public interest falls in favour of granting restriction orders whose purpose is to maintain the anonymity of Jaipur and Karachi in the Inquiry. I am minded to make restriction orders to that effect.

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50. Since this is my provisional view it is unnecessary for me to consider whether fairness under common law or section 17 (3) of the Inquiries Act 2005 adds any relevant dimension to the applications.
51. Any restriction order is subject to review. Those under consideration are no exception. Specifically, however, should the time come when either Jaipur or Karachi is required to give evidence about part of the subject matter of the Inquiry I would reconsider the restriction order. By that time I would be in a position in to re-assess the risks of harm to which I have referred in this Note in the light of all the restriction orders made and of experience in the meantime.

Next Steps

52. The non-police, non-state core participants should notify the Inquiry by 4pm on Wednesday, 9 November 2016 whether they wish to address further submissions to me orally. If so, they should identify reasons why an oral hearing is required and why the written submissions made do not suffice.
53. In the absence of notification I will make the order. Otherwise I will notify core participants whether I consider that an oral hearing is required and, if so, issue directions for the hearing to take place.

25 October 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry