

UNDERCOVER POLICING INQUIRY

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To all RLRs

By email only

Your ref:
Our ref: PD

Friday, 17 February 2017

Dear all,

Destruction of documents and other issues

I am writing a single response to address a number of mainly common issues, which have been raised in correspondence by Jane Deighton, Richard Parry, Nia Williams and Tamsin Allen (the latter in an email sent on behalf of the non-state, non police core participant group in relation to the recent disclosure regarding document destruction).

The group correspondence also raised four other issues, which I shall address towards the end of this letter. The below sub paragraphs I (a) – (g) are intended to take the essence of the groups' questions arising from the recent disclosure of the alleged document destruction by shredding (and the previously raised allegations of destruction of material relating to Baroness Jones) and to add, where appropriate any additional elements from the other correspondence.

I. Document destruction

(a) Why was the allegation of document destruction not disclosed to the core participants in April 2016?

As the Inquiry noted in its [press statement](#) released on 8 February 2017, 'The Inquiry has not published [this] information before now, so as not to cause prejudice to the Commission's own investigation'. The Inquiry took this approach at the request of the Independent Police Complaints Commission which stated in its application for a restriction order that non-publication was necessary 'to avoid causing any prejudice to the [Independent Police Complaints Commission] investigation ... there are still steps to be taken to secure evidence ... which may be prejudiced if potential subjects are alerted to the investigation.'. Immediately the position changed, following the Independent Police Complaints Commission's decision to publicise the investigation, the Inquiry issued its press notice including the steps it had taken on document assurance.

The Inquiry fully appreciates the concern that the core participants will have felt on hearing about the allegation, and the frustration that they will have felt not to have learned of it sooner, however a thorough and fair investigation of the allegations by the Independent Police Complaints Commission is in the best interests of all. The Inquiry had been advised that that premature publication of the facts would have

prejudiced the Investigation, or could have frustrated it and we would not have wanted our actions to have this effect.

- (b) The Independent Police Complaints Commission state that some of the destruction of documents took place after the instruction to the police not to destroy documents. Given that you had relied on this instruction why did you not inform us of this and take additional steps to preserve the documents as we had requested? Will the Inquiry now take physical control of all the police documents?**

I hope the above answer under paragraph (a) explains why we were not able to inform the core participants of the allegations before now. We note that both allegations (the Baroness Jones document destruction and the more recent shredding allegation) are said to have occurred in 2014, prior to the terms of reference having been set and the official setting up of the Inquiry in 2015, although the police had already issued notices about document preservation before that date¹. The Inquiry has taken into account those prior notifications, although such notifications are only one of a number of points which have been raised in response to repeated and continuing requests for assurance around document preservation made by the Inquiry. The further steps taken by the Inquiry around document retention and assurance after learning of the allegations are listed in the chronology appended to the press release. Further statements provided by the police as part of this process are being prepared for publication, and will be available on the Inquiry's website in due course. Requiring a series of signed witness statements about assurance represents a significant escalation of our assurance work and reflects our concern about the allegations.

The Inquiry has previously set out the reasons why it has concluded that it is not practicable or proportionate for the Inquiry to take physical control of all police material that may contain material relevant to our terms of reference. It is important to remember in this regard that in relation to many areas relevant to the terms of reference there does not exist a complete or central repository of relevant material which could be handed over to the Inquiry; instead, the Inquiry has been engaged for some time in work to identify and secure material of potential relevance from a number of disparate sources. To take physical possession of all potentially relevant police material without first making any assessment of its relevance would require the Inquiry to take control of an extremely large amount of data and hard copy material containing especially sensitive information, including files relating to ongoing matters and material which is likely to turn out to contain no information relevant to fulfilling the terms of reference. Both the massive quantity of such material and its extreme sensitivity would create immense difficulties for the Inquiry; first, in terms of physical space that would be required to store the information, and second the security required for the receipt and storage of it. Whilst the question of whether to take possession or control of particular repositories of police material is being kept under review on a case-by-case basis, we remain of the view that the sheer practicalities of an approach that saw the Inquiry taking possession of all potentially relevant police material would be unwieldy to the point of being unmanageable, disproportionate, and would not be conducive to the effective running of the Inquiry.

- (c) What material is contained within the electronic back-ups taken? What action is being taken to interrogate these? Or what other steps are being taken, to establish what has been destroyed, when and by whom?**

The significance of the Inquiry making reference to the electronic back-ups is not (for our purposes) to suggest that we can identify whether or what material may have been destroyed in the two allegations under investigation by the Independent Police Complaints Commission, it is to provide reassurance that no other material could now be deleted from the electronic databases without that fact being apparent (and, in any

¹ See for example paragraph 17 of the statement of DS Hutchinson dated 29 July 2016. See also, for setting up date, s.5 Inquiries Act 2005.

event, with a copy having been retained). The question of what evidence there is about document destruction is the subject of the Independent Police Complaints Commission investigation.

The Inquiry notes that there is an understandable depth of feeling amongst the core participants that action should be being taken, and that the Inquiry should be actively investigating both allegations of document destruction. In fact, the very questions which are uppermost in the concerns of the letters we have received are those which the Independent Police Complaints Commission will be directly investigating, and we support this approach.

(d) Why does the published witness statement of DS Hutchison not make reference to the recently published allegations? Will further evidence be provided about this issue?

As noted under the 'February 2017' chronology entry in the press notice of 8 February 2017, reference was made to the second allegation in the statement of DS Hutchinson in the amended statement dated 3 June 2016 published as updated on 29 July 2016, but those references were subject to redaction at the request of the Independent Police Complaints Commission. As referenced above, detailed further assurance evidence has been sought and obtained from the date on which the Inquiry were made aware of the allegations, and steps are being taken to prepare this evidence for publication (it should be noted that the Inquiry needs first to consider any application from the Police or from the Independent Police Complaints Commission for restriction).

(e) What specific steps will the Inquiry now take using its powers ... to obtain the information that was contained in destroyed documents, to ensure there is a thorough investigation and that, if appropriate, prosecutions are brought for offences under the Inquiries Act? Will there be an Inquiry public hearing about the allegations?

The Inquiry is continuing to use its powers under rule 9 of the Inquiry Rules 2006, and where appropriate section 21 of the Inquiries Act 2005, to recover evidence relevant to its terms of reference. The investigation into the circumstances, extent and conduct of the aftermath of both allegations of document destruction is being conducted by the Independent Police Complaints Commission, and they will conclude what steps ought to be taken at the conclusion of each investigation. In the event that the Inquiry receives material that may assist those investigations in the meantime, it will make the Independent Police Complaints Commission aware of it. We do not consider it would be appropriate for the Inquiry to hold a public hearing to focus on these allegations; the Independent Police Complaints Commission investigations can progress alongside the current work of the Inquiry without either needing to disrupt the other. We will of course continue to take account of the allegations as the Inquiry progresses, and in particular once the outcome of the Independent Police Complaints Commission's investigations is known. In addition, the Inquiry does not at this stage have evidence that the National Public Order Intelligence Unit files which were shredded were in fact relevant to the Inquiry's terms of reference. The work of that unit was not confined to undercover policing.

You will no doubt be aware that the criminal offences created by section 35 of the Inquiries Act 2005 apply only to conduct "during the course of any inquiry". This Inquiry was not in fact set up until 2015, and so these allegations pre-date its existence.

(f) If evidence of improper police conduct which may constitute an offence under s35 of the Inquiry Act 2005, and which are specific to any core participant arise, please confirm that the Inquiry will refer this to the Independent Police Complaints Commission, and grant funding to recognised legal representatives to assist the affected core participant complainant.

In the event that any such evidence came to our attention, the Inquiry would take a decision about the appropriate action depending on the particular circumstances at the time; we anticipate however that we would be very likely to consider prosecution for the s35 offence, and notifying the Independent Police Complaints Commission about the evidence received.

You will be aware that the circumstances in which funding may be granted to a core participant are contained in section 40 of the Inquiries Act 2005. I am not proposing to set the section out in this letter, but it is clear that it provides a power to award funding only for work in relation to the Inquiry. Work in relation to an investigation by the Independent Police Complaints Commission would not fall within the scope of an award that could be made under section 40, in our view. We would of course consider applications for funding on behalf of affected core participants for work in connection with the Inquiry arising out of such circumstances.

(g) What impact will this issue have on timing and resources?

All core participants will now have received the directions from the Chairman towards a hearing on 5 April. The topics for discussion at that hearing will inevitably include consideration of timing and resources. However, it is not anticipated that the document destruction allegations of themselves, or the investigation by the Independent Police Complaints Commission, will have a significant affect on either the overall timescale or the resources of the Inquiry.

Finally, on the issue of document destruction there have been a number of requests for a meeting with the Inquiry legal team. Whilst, as you know, the team are always happy to discuss the work of the Inquiry, the content of this letter is intended to respond as fully as we can to the important concerns which your clients have raised. The Inquiry also needs to bear in mind the cost to the public purse of large scale meetings and balance that cost with the benefits to the Inquiry that would arise. In this case, were there to be such a meeting, we would not be able to provide further information than appears in this letter.

2. Risk assessors

We note the further comments about the risk assessors Reid and Shanahan. We did circulate details of these risk assessors to your group on 9 December 2016. We had asked for responses to this by 16 December, so the receipt of comments in February does have the capacity to frustrate work on which the assessors will have already embarked. Nevertheless, we will raise the points which you have raised with the Metropolitan Police Service.

Without prejudice to that, we can confirm:

- That the Inquiry is content that there is no inconsistency between what we have been told about Shanahan and his LinkedIn profile;
- As was published with the names and CVs of the risk assessors, the Metropolitan Police Service have stated that where there is any conflict between an assessor's own policing background and that of the officer whose risk they are assessing they will ensure that a colleague performs the assessment. In these circumstances, we have forwarded the instances that the non police, non state core participants have identified to make sure that the Metropolitan Police Service and their assessors have them in mind when checking for conflict.

3. Police redactions procedure

We note the concern raised, but it is without foundation. We can confirm that all the police forces are continuing to provide un-redacted information, subject to the limited types of exception (such as legal professional privilege) mentioned in your email, or in special circumstances with the consent of the Inquiry, and in accordance with the terms of the draft protocol to which you refer.

4. Release of names of groups infiltrated by undercover officers whose identity has been confirmed by the Inquiry

You ask whether we will now consider releasing the names of groups infiltrated by undercover officers whose identity has been confirmed by the Inquiry. As we have previously stated, the Inquiry is taking a systematic approach to applications for restriction, starting with individual applications for anonymity from undercover officers, beginning with the Special Demonstration Squad and now progressing (simultaneously) to those who worked in the National Public Order Intelligence Unit. Once these applications have been determined, the processing of restriction applications over documents will be able to proceed more swiftly, informed by the earlier decisions on anonymity. We do not consider that it would be helpful at this stage to invite the police to consider whether they would seek to restrict the detail of any of the groups infiltrated by those officers the Inquiry has identified to date. This would serve only to distract from the principal objective of completing the anonymity process. We are also not persuaded that it would result in any real benefit, since it might serve only to unduly alarm members within those groups who had not been directly affected by undercover policing, whereas those who had been directly affected are likely to have become aware of that fact by virtue of the publication of the identity of the officer by the Inquiry in any event. As we have said before, evidence as to the groups infiltrated will come into the public domain, subject to any restriction orders, when we publish documents which we have processed. The draft protocols explain that the timing of publication of documents, or tranches of documents, will be decided by the Inquiry in due course.

5. The privacy rights of the non-state core participants

You ask when you may hear back about the further written submissions you sent to the Inquiry on 22 December about the privacy rights of your client group in the context of the restriction order process. As those submissions identify, this is a complex issue and the Inquiry has been giving it careful consideration. We expect to be in a position to issue a further iteration of the draft protocols for consultation within the next month which will be informed by the submissions you have made. We will also revert to you about the other questions which you raised in the covering letter accompanying those submissions.

I hope that the content of this letter does address the concerns which have been raised recently in correspondence.

Yours sincerely,



Piers Doggart
Solicitor to the Inquiry