

Re The Undercover Policing Inquiry

**APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
RE: N104
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order sought: granting anonymity to 'N104'.

Terms of Restriction Order

1. The MPS applies for a restriction over the real identity of N104 to last indefinitely in the following terms:
 - a. No direct or indirect disclosure of N104's true identity (including any description or current image capable of identifying N104) beyond the Chairman and Inquiry team;
 - b. The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Legal basis

2. The application is made on the following statutory bases:
 - a. S.17(3) Inquiries Act 2005 ('the Act'): the duty to act with fairness in the procedure or conduct of an inquiry;
 - b. S. 19(3)(a) of the Act: restriction is required by s 6(1) of the Human Rights Act 1998 which prohibits a public authority acting in a way which is incompatible with a Convention right (the rights being Article 3, prohibition of torture, inhuman or degrading treatment; and Article 8 the right to private and family life.
 - c. S. 19(3)(b) of the Act: restriction is conducive to the inquiry fulfilling its terms of reference or is necessary in the public interest, having regard in particular to s.19(4)(b) and (c).
3. The applicable principles have been comprehensively set out in the Chairman's Restriction Order: Legal Principles and Approach Ruling ("the Principles Ruling") of 3 May 2016. Regard has also been had to the restriction order rulings in respect of Cairo and the 'minded to' note in respect of Jaipur and Karachi.

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Evidence in support at the date of this application

4. The risk assessment dated 26 May 2017.
5. This document is not to be circulated wider than the Chairman and Inquiry team.

Reasons

Section 17: statutory and common law fairness

6. A restriction order protecting N104's real and cover identities is required in the application of statutory and common law principles of fairness. The considerations which apply are highlighted below in relation to s 19(3)(b) and s 19(4).

Section 19(3)(a): Articles 3 and 8

7. A restriction order protecting N104's real identity is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right. The Convention rights in issue are Articles 3 and 8.
8. Article 3: in the event of confirmation of real identity, the Chairman is invited to consider whether N104 would be at risk of harm from persons associated with groups infiltrated by N104. A number of such persons have convictions and arrests for violence, and others have known research skills. This risk has been assessed as "medium". In evaluating this risk, the Chairman is invited to consider, in particular, the Risk Assessment §5.11, §14.1, §16.1, §16.2.
9. Article 8: in the event of confirmation of real identity, it is submitted that the private and family life of N104 and N104's family would be interfered with. The risk assessment details some of the effects on members of N104's family which the risk assessor concludes would be "*significant adverse and negative impacts*" [Risk Assessment §14; §16.2]. The probability of interference in the event of confirmation is assessed to be high and the impact serious. In addition, should further protective measures be required in the event of confirmation, this would

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comprise further interference with N104's family and private life, and the family and private life of a number of N104's family members.

Sections 19(3)(b) and 19(4)

10. A restriction order protecting N104's real identity is conducive to the Inquiry fulfilling its terms of reference or is necessary in the public interest having regard to the factors set out in s 19(4) of the Act read together with the Chairman's approach at paragraph 152 of the Principles Ruling¹.

11. The public interest in non-disclosure:

- a. Avoiding harm to a police officer or any other person (see above at paragraphs 8 and 9 for the identified harms).
- b. The public interest in reducing the risk of damage to effective policing. See, in particular but not exclusively, the Risk Assessment at §4.4, §4.9, §4.15, §4.19.
- c. Express assurances of confidentiality were made to N104 and N104's spouse which it would appear operated as an inducement to carry out undercover work [Risk Assessment at §3.4].

12. The public interest in disclosure:

- a. Notwithstanding the general presumption in favour of openness, the restriction over true identity will not greatly inhibit the allaying of public concern in circumstances where there is no application for a restriction over N104's cover name or the fact of deployment as a UCO. The confirmed cover name will permit proper exploration of any matters relating to N104's deployment which may cause public concern.

13. Where the public interest balance lies:

¹ "...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".

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- a. The MPS has considered the Principles Ruling and has had particular regard to the presumption in favour of openness in the Public Inquiry. In light of the confirmation of cover identity permitting appropriate investigation of N104's deployment; and the potential risks of harm arising from disclosure, the Chairman is invited to find that the public interest at this time weighs in favour of restriction over N104's true identity.

30 June 2017

MPS, Department of Legal Services