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IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

APPLICATION FOR A RESTRICTION ORDER (ANONYMITY) RE: N326

SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of N326 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of N326's real name (including any description or image capable of identifying him) beyond the Chairman and the Inquiry team;
 - (2) 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 for the Application

2. The Application is made on the following statutory basis:
 - s. 17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry
 - s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR
 - s. 19(3)(b) read together with s.19(4)(b)-(d) of the Inquiries Act 2005: conducive to the inquiry fulfilling its terms of reference or necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
3. The applicable legal 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 dated 25 October 2016 in respect of Jaipur and Karachi.

Evidence in Support

4. This Application should be read together with the following items:
 - N326 MPS Risk Assessment dated 26 May 2017
 - Item*
 - Personal impact statement of N326 dated 10 April 2017

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of N326 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

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Section 19(3)(a) and Article 8

6. The interference with N326's private and family life is set out in his personal impact statement: see §§21, 27-28. The level of risk posed by disclosure of his real name is considered in the Risk Assessment at §§14, 16.2.
7. Confirmation of N326's real name would amount to a disproportionate interference with his right to private and family life. It is possible to trace N326 in his real identity using information in the public domain (see in particular §§22-24, 29 of Personal Impact Statement); as such there are no other protective measures that could be relied on in support that would mitigate the interference with his right to family life. It is reasonable to infer that there would be public interest in N326 simply by virtue of his status as a former UCO. His post-deployment MPS career is likely to increase the media interest.
8. However, the legitimate aim of enabling the Inquiry to fulfil its Terms of Reference can be adequately met by confirmation of N326's cover identity and the fact of his UC deployment.

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

9. The Chairman is invited to find that a restriction order protecting N326's real identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard in particular to the factors set out at s.19(4) of the Act read together with the Chairman's approach at [152] of the Principles Ruling.

The public interest in non-disclosure

10. The following public interest factors are pertinent:
 - (a) N326 is a former UCO who was deployed into the field for a relatively brief period of time almost 50 years ago. The extent of his infiltration is far more superficial than those of later officers. [Personal Impact Statement §§11, 13-16; MPS Risk Assessment §16.1].
 - (b) It was significantly impressed upon N326 that he must maintain the confidentiality of his deployment and of the Unit. He has lived his life since his deployment and his MPS career respecting that confidentiality. [Personal Impact Statement §§18-20].
 - (c) He was deployed UC into groups that have no obvious successor. The extent to which the evidence he is able to give is going to be of primary interest to the CP's and the Inquiry may be limited. [MPS Risk Assessment §§11-12, 16.1]
 - (d) N326 did not use a deceased child's identity, although it should be noted that there is no application to apply for a restriction order over the officer's cover name in any event. [Personal Impact Statement §8]
 - (e) There is no known misconduct and therefore less of a need for detailed public scrutiny, although it should be noted that there is no application to apply for a restriction over the officer's cover name in any event.
 - (f) N326's career after the SDS *Discussion*

The public interest in disclosure

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11. The general presumption in favour of openness weighs against the making of a restriction order in N326's case. However, this must be viewed in light of the fact that the MPS will not be applying for a restriction order over N326's cover identity or his status as a former UCO. The Inquiry would be able to fulfil its Terms of Reference without the publication of N326's real name. The effective participation of CP's and witnesses in the Inquiry would not be impeded by N326's real identity being withheld. Confirmation of the cover identity permits members of the public to come forward if they so wish.

Where the public interest balance lies

12. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. This application is similar in many respects to those submitted for officers of a similar vintage such that the chairman's decision is capable of having an effect on future applications.
13. In all the circumstances, the MPS makes this application for a restriction order on the basis that confirmation of N326's cover identity and status as a former UCO is the most appropriate measure falling short of confirmation of his real identity that reflects the public interest balance and enables the Inquiry to fulfil its Terms of Reference.

MPS, Department of Legal Services

1 June 2017