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IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

APPLICATION FOR A RESTRICTION ORDER (ANONYMITY) RE: N329
SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of N329 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of N329'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:
 - N329 Risk Assessment dated 23 February 2017
 - Personal impact statement of N329 dated 30 March 2017
5. The aforementioned documents are not to be circulated wider than the Chairman and the Inquiry team unless otherwise stated.

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Reasons

Section 17

6. Application of the statutory and common law principles of fairness require that the real identity of N329 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

7. The interference with N329's private and family life is set out in his personal impact statement: see §§16-20. The level of risk posed by disclosure of his real name is considered in the Risk Assessment at §16.2.
8. Confirmation of N329's real name would amount to a disproportionate interference with his right to private and family life. Owing to the nature of N329's current activities and the ease with which he is able to be traced in his real identity [see Risk Assessment §§5.5, 5.10, 6.5, 16.2; Personal Impact Statement §§14-15], there are no other protective measures that could be relied on in support that would mitigate the interference with his right to private and family life. His real name alone would be sufficient information for him to be traced by the media or the public, if they so wished. His wife and children may also be affected. It is reasonable to infer that there would be public interest in N329 simply by virtue of his status as a former UCO.
9. However, the legitimate aim of enabling the Inquiry to fulfil its Terms of Reference can be adequately met by confirmation of N329's cover identity and his status as a UCO.

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

10. The Chairman is invited to find that a restriction order protecting N329'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

11. The following public interest factors are pertinent:
 - (a) N329 is a former UCO whose deployment was brief in duration and concluded some 50 years ago. The extent of his infiltration can best be described as superficial [Personal Impact Statement §§4-9; Risk Assessment §§4.4, 16.1].
 - (b) N329 has lived his life since his deployment and his MPS career upholding the confidentiality of the SDS and of his status as a former UCO [Personal Impact Statement §17].
 - (c) He was deployed UC into a group which is no longer in existence and which has no successor organisation. The extent to which the evidence he is able to give is going to be of primary interest to the CPs and the Inquiry may be limited. This is further limited by his ability to recall events so long ago.

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- (d) He did not use a deceased child's identity.
- (e) There is no known misconduct and therefore less of a need for detailed public scrutiny.

The public interest in disclosure

12. The general presumption in favour of openness weighs against the making of a restriction order in N329's case. However, this must be viewed in light of the fact that the MPS will not be applying for a restriction order over N329'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 N329's real name. The effective participation of CP's and witnesses in the Inquiry would not be impeded by N329'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

13. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. This is the first application for an officer in this position but the circumstances are not unique. The Chairman's decision is capable of having an effect for future applicants.
14. In all the circumstances, the MPS makes this application for a restriction order on the basis that confirmation of N329'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

29 March 2017