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Re The Undercover Policing Inquiry

OPEN APPLICATION FOR RESTRICTION ORDER (ANONYMITY)

RE: N68

SUBMITTED ON BEHALF OF THE MPS

Restriction Order sought: granting anonymity to witness 'N68', to last indefinitely.

Terms of Restriction Order sought at this stage:

- No direct or indirect disclosure of N68's true identity (including any description or image capable of identifying N68) beyond the Chairman and Inquiry team;
- No direct or indirect disclosure of N68's cover identity (including any description or image capable of identifying N68) beyond the Chairman and Inquiry team;
- The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Statutory basis for application: s.17(3) and s.19(3)(b) Inquiries Act 2005 ('the Act').

Grounds for application:

- S.17(3) (fairness)
- S.19(3)(b) (conducive to inquiry fulfilling terms of reference and necessary in public interest) having regard to s.19(4)(b) (risk of harm or damage)

Legal principles:

Restriction Orders Legal Principles and Approach Ruling dated 3rd May 2016 (the 'Principles Ruling').

Evidence in support (not for circulation wider than Chairman and Inquiry team unless otherwise stated):

- Risk assessment prepared in relation to N68, dated 25th May 2017
- Submissions from members of N68's family, dated 11th July 2017

Outline reasons:

Section 17: statutory and common law fairness

1. A restriction order protecting N68's real and cover identities is required in the application of statutory and common law principles of fairness, in light of the risks outlined in the risk assessment and the matters raised by his/her surviving spouse.

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

2. A restriction order protecting N68's identity is necessary in the public interest having regard in particular to the factors set out in s.19(4) of the Act. The

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Inquiry Chairman has indicated the approach he will take at paragraph 152 of the Principles Ruling:

“...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”.*

The public interest in non-disclosure

3. It is in the public interest for N68’s identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to his/her surviving spouse. The evidential basis for this is the risk assessment and the submissions made by N68’s surviving spouse.
4. It is in the public interest for N68’s identity to be restricted on the basis it would avoid or reduce the risk of damage to effective policing.

The public interest in disclosure

5. The presumption in favour of openness weighs against making a restriction order in N68’s case, and the fact that he/she is deceased reduces the public interest in non-disclosure.

Where does the public interest balance lie?

6. The MPS has considered the Chairman’s Restriction Order ruling dated 3rd May 2016. The MPS has particular regard to the presumption of openness in the Public Inquiry and the public interest in investigating these matters as openly as possible.
7. However, in the particular circumstances of this case the MPS makes this application and invites the Chairman to conclude that the public interest favours non-disclosure. In short:
 - a) The public interest in avoiding harm to N68’s surviving spouse is sufficient to demand restriction of both his/her real and cover identities;
 - b) This is also necessary in order to reduce the risk of damage to effective policing;
 - c) The interests of fairness fall in favour of non-disclosure of N68’s real and cover identities.

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20th July 2017
MPS, Department of Legal Services