

Proposed Changes to the Process for the Publication of Open Versions of Key Anonymity Applications and Supporting Evidence: Special Demonstration Squad For Consultation

Introduction

1. The Chairman announced in his [20 November 2017 statement](#) that he would consult on a proposal to change the process of applying for and determining anonymity applications. This consultation is primarily of interest to the Inquiry's core participants, police applicants for anonymity and the media. The consultation relates to a proposal to speed up the Inquiry's progress by changing what it publishes and when. The Inquiry would continue to prepare for the publication of evidence where to do so serves a purpose relevant to the restriction order process. The proposal is to avoid unproductive effort preparing for the publication of evidence in cases where it is of little or no use.
2. The issue arises because the Inquiry cannot publish all of the information in the applications and evidence: to do so would either defeat the purpose of the application or be unlawful for other reasons. Experience has shown that separating that which can be published ('open' material) from that which cannot ('closed' material) is a very time consuming process. It is slowing down the Inquiry's progress. The non-police, non-state core participants have not found the amount of open material which can be published sufficient to permit meaningful comment despite the Inquiry publishing as much as it can. In those circumstances the Inquiry has reviewed its approach to separating open material from closed material and is now offering those with an interest in the process the opportunity to comment on the changes which it is minded to adopt.
3. There are three key features to the proposal. First, it would mean that where publication of a real name is the only question for decision, the Inquiry would publish the application but would not ordinarily publish the supporting evidence. An open version of the supporting evidence would only be prepared and published in relation to factual circumstances of a kind which have not been considered by the Inquiry to date.
4. Second, where publication of both an undercover police officer's real and cover names needs to be decided, and the Chairman is minded to grant the application, then the Inquiry would ordinarily publish the application and a gist of the supporting evidence so that those with an interest in the outcome of the application can participate by making submissions.

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5. Third, where the Chairman is minded to refuse an application to restrict a cover name the Inquiry would give the officer an opportunity to make submissions at a closed hearing and would not prepare the material provided in support of the application for publication should the Chairman decide, after hearing from the officer, to refuse the application and release the cover name.
6. It is proposed that this amended process would apply to all anonymity applications by Special Demonstration Squad officers appearing in the tranches after the August 2017 tranche.
7. Responses are sought in writing by 4pm on 11 January 2018.

Detail

8. The Inquiry's original process for determining an anonymity application for a former member of the Special Demonstration Squad is as set out in the [Process Map for Determining Key Anonymity Decisions](#). It refers to the separation of open material from closed material and to the publication of open material. As has been acknowledged, at the stage before an application is determined, nothing in the application or evidence can be published which could reveal the piece of information (real and/or cover name) which an applicant is seeking to restrict. This is self-evident and is what Rule 12 of the Inquiry Rules 2006 protects. In addition, the Inquiry does not publish material that would undermine other restriction order applications, or which might pre-empt restriction order applications which have yet to be made, or that it would be unlawful to publish for any other reason. For example, it restricts publication of some material, especially medical evidence, for reasons of privacy.
9. However, that does not mean that the Chairman only sees the published material or is confined to decide an application solely on the basis of what the applicant provides as might be the case in adversarial litigation. The Chairman sees the complete application and the unredacted supporting evidence. He can and does critically scrutinise that material. He can also seek further evidence either from the applicant or other sources should it be necessary to do so.
10. The Inquiry is finding that separating open material from closed material is requiring a significant amount of time and resources. Not only is this slowing down the anonymity process, some of the material which can be published is of little or no use. In light of the experience to date, the Inquiry believes the speed of the anonymity process can be significantly increased, and its focus improved, by following the below proposal. It seeks to avoid the need for separation where that is likely to be of little or no use but to continue to enable participation in other cases.

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11. This view is informed by the repetition of features in applications for real name restrictions which have been the subject of both written and oral submissions from the non-police, non-state core participants. These repetitious features include evidence about assurances of confidence, loss of employment following retirement from the police force many years before, media intrusion into the lives of officers and their families and absence, to date, of any evidence of misconduct.
12. The proposal would lead to different levels of publication of open material which fall into the four categories set out immediately below. The circumstances in which each level of disclosure would be adopted are set out in the table at pages 4-9 below.

Type 1	Publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish.
Type 2	Publication of the open application but no publication of the supporting evidence unless there is an unusual feature of a kind which the non-police, non-state core participants have not yet had an opportunity to respond to in earlier restriction order applications.
Type 3	Publication of the open application and redacted documents or a gist which can include details of the real name but which contain no details capable of revealing the cover name of the applicant.
Type 4	Not necessary to publish any of the application or the evidence as the state applicant has failed to persuade the Chairman to make the order sought and therefore publication of the name in question will not be restricted.

13. The Inquiry therefore wishes to seek views on the below suggested change to the separation process. It should be remembered that this process is only expected to apply to the applications and evidence supplied in relation to key anonymity applications, including those of all Special Demonstration Squad officers.
14. Core participants who wish to make representations on these proposed changes should do so in writing, via their recognised legal representatives if they are represented, by no later than 4pm on 11 January 2018. Other anonymity applicants and the media may also make such representations as they wish to make in writing and by the same deadline.

1 December 2017

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Type of application	Minded To	Current separation steps	Proposed separation steps
<p><u>Category A</u> Restriction sought over cover and real name.</p>	<p>Chairman Minded To restrict real and cover name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed and suggested open format.</p> <p>(b) Inquiry reviews the suggested open format and agrees or disagrees with suggested redactions/gists. If disagreement, then Chairman decides.</p> <p>(c) Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish.</p>	<p>(a) Applicant supplies application and supporting evidence in closed format.</p> <p>(b) Minded To decision is published.</p> <p>(c) Inquiry asks applicant to supply proposed open format of application and supporting evidence.</p> <p>(d) Inquiry reviews the suggested open format and, informed by reasons in Minded To, agrees or disagrees with suggested redactions/gists of details capable of revealing the real or cover name. If disagreement, then Chairman decides.</p> <p>(e) Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish</p>

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Type of application	Minded To	Current separation steps	Proposed separation steps
<p><u>Category B</u> Restriction sought over cover and real name.</p>	<p>Chairman Minded To restrict real name but publish cover name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed and suggested open format.</p> <p>(b) Inquiry reviews the suggested open format and agrees or disagrees with suggested redactions/gists of details capable of revealing the real or cover name. If disagreement, then Chairman decides.</p> <p>(c) Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish.</p>	<p>(a) Applicant supplies application and supporting evidence in closed format.</p> <p>(b) Minded To decision is published.</p> <p>(c) Offer closed hearing as necessary for applicant to respond to Minded To decision refusing cover name restriction.</p> <p>EITHER a final decision is made to publish cover name but the Chairman remains minded to publish the real name in which case this becomes a Category E case (real name element of the application only remains to be decided) leading to Type 2 publication: publication of the open application but no publication of the supporting evidence unless there is an unusual feature of a kind which the Non-police, non-state core participants have not yet had an opportunity to respond to in earlier restriction order applications.</p> <p>OR a new decision is published where the Chairman is now Minded To restrict real and cover name then see Category A leading to Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish</p>

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Type of application	Minded To	Current separation steps	Proposed separation steps
<p><u>Category C</u> Restriction sought over cover and real name.</p>	<p>Chairman Minded To restrict cover name but publish real name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed and suggested open format.</p> <p>(b) Inquiry reviews the suggested open format and agrees or disagrees with suggested redactions/gists of details capable of revealing the real or cover name. If disagreement, then Chairman decides.</p> <p>(c) Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish</p>	<p>(a) Applicant supplies application and supporting evidence in closed format.</p> <p>(b) Minded To decision is published.</p> <p>(c) Offer closed hearing as necessary for applicant to respond to Minded To decision to publish real name.</p> <p>EITHER final decision is made to publish real name then see steps (d) to (f) below leading to Type 3 publication: publication of the open application and redacted documents or gists which can include details of the real name but which contains no details capable of revealing the cover name of the applicant</p> <p>OR a new decision is published where the Chairman is now Minded To restrict real and cover name then see Category A leading to Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish.</p> <p>(d) Inquiry asks applicant to supply open format of application and evidence supporting a cover name only restriction.</p> <p>(e) Inquiry reviews the suggested open format and, informed by reasons in Minded To, agrees or disagrees with suggested redactions/gists of details capable of revealing the cover name. If disagreement, then Chairman decides.</p> <p>(f) Type 3 publication: publication of the open application and redacted documents or gists which can include details of the real name but which contains no details capable of revealing the cover name of the applicant.</p>

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Type of application	Minded To	Current separation steps	Proposed separation steps
<p><u>Category D</u> Restriction sought over cover and real name.</p>	<p>Chairman Minded To refuse to restrict either cover name or real name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed and suggested open format.</p> <p>(b) Inquiry reviews the suggested open format and agrees or disagrees with suggested redactions/gists of details capable of revealing the real or cover name. If disagreement, then Chairman decides.</p> <p>(c) Type 1 publication; publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish.</p>	<p>(a) Applicant supplies application and supporting evidence in closed format.</p> <p>(b) Minded To decision is published.</p> <p>(c) Offer closed hearing as necessary for applicant to respond to Minded To decision refusing real and cover name restriction.</p> <p>EITHER final decision is made to publish real and cover name so no open publication of the application necessary - Type 4 publication: not necessary to publish any of the application or the evidence as the state applicant has failed to persuade the Chairman to make the order sought and therefore publication of the name in question will not be restricted.</p> <p>OR a new decision is published where the Chairman is now Minded To restrict only the real name in which case this becomes a Category E application leading to Type 2 publication: publication of the open application but no publication of the supporting evidence unless there is an unusual feature of a kind which the Non-police, non-state core participants have not yet had an opportunity to respond to in earlier restriction order applications.</p> <p>OR a new decision is published where the Chairman is now Minded To restrict only the cover name in which case this becomes a Category C type application leading to Type 3 publication: publication of the open application and redacted documents or gists which can include details of the real name but which contains no details capable of revealing the cover name of the applicant.</p> <p>OR a new decision is published where the Chairman is now Minded To restrict real and cover name in which case this becomes a Category A type application leading to Type 1 publication: publication of the open application with a gist of the supporting evidence which contains no details capable of revealing the real or cover name of the applicant or which it would be unlawful to publish.</p>

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Type of application	Minded To	Current separation steps	Proposed separation steps
<p><u>Category E</u> Restriction sought over real name only.</p>	<p>Chairman Minded to restrict real name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed and suggested open format.</p> <p>(b) Inquiry reviews the suggested open format and agrees or disagrees with suggested redactions/gists of details capable of revealing the real name. If disagreement, then Chairman decides.</p> <p>(c) Open version published which contains no details are capable of revealing real name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed format.</p> <p>(b) Minded To decision is published.</p> <p>(c) Inquiry reviews the closed evidence and, informed by reasons in Minded To, considers if there are any features which need to be published to permit the non-police, non-state core participants to respond to new grounds for restricting a real name. If so, gist to be drafted by the Inquiry and, once agreed with state applicant, then published in accordance with Type 2 publication: publication of the open application but no publication of the supporting evidence unless there is an unusual feature of a kind which the non-police, non-state core participants have not yet had an opportunity to respond to in earlier restriction order applications.</p>

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Type of application	Minded To	Current separation steps	Proposed separation steps
<p><u>Category F</u> Restriction sought over real name only.</p>	<p>Chairman Minded to publish real name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed and suggested open format.</p> <p>(b) Inquiry reviews the suggested open format and agrees or disagrees with suggested redactions/gists of details capable of revealing the real name. If disagreement, then Chairman decides.</p> <p>(c) Open version published which contains no details are capable of revealing real name.</p>	<p>(a) Applicant supplies application and supporting evidence in closed format.</p> <p>(b) Minded To decision is published.</p> <p>(c) Offer closed hearing as necessary for applicant to respond to Minded To decision refusing real name restriction.</p> <p>EITHER final decision is made to publish real name so no publication necessary - Type 4 publication: not necessary to publish any of the application or the evidence as the state applicant has failed to persuade the Chairman to make the order sought and therefore publication of the name in question will not be restricted,</p> <p>OR a new decision is published where the Chairman is now Minded To restrict real name then see Category E leading to Type 2 publication; publication of the open application but no publication of the supporting evidence unless there is an unusual feature of a kind which the Non-police, non-state core participants have not yet had an opportunity to respond to in earlier restriction order applications.</p>