

IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)

RE: HN23

SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN23 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN23's real name (including any description or image capable of identifying him/her) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN23's cover name (including any description or image capable of identifying him/her) beyond the Chairman and the Inquiry team;
 - (3) 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 Articles 2, 3 and 8 ECHR: the right to life under Article 2; the prohibition against torture and inhuman or degrading treatment under Article 3; and 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 HN7 and the 'Minded To' notes dated 25 October 2016 and 3 August 2017.

Evidence in Support

4. This application is supplemented by supplementary closed grounds, a closed Risk Assessment and a closed Impact Statement, which is not to be disseminated further than the Chairman and the Inquiry team.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real and cover identity of HN23 is not disclosed. The considerations which apply are highlighted below in relation to s 19(3)(a), s.19(3)(b) and s.19(4).

Section 19(3)(a) and Articles 2, 3 and 8 ECHR

6. A restriction order protecting HN23's 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 2, 3 and 8.
7. In light of the contents of the Risk Assessment there is an objectively verified immediate risk of loss of life or torture, or inhuman or degrading treatment if HN23's real name were to be disclosed. See the risk assessment at §14, §15 and the impact statement at §5.
8. In addition, disclosure of HN23's real name would amount to a disproportionate interference with his/her private and family life. The evidential basis for this is as set out in the risk assessment (particularly at §17, §19) and the impact statement (particularly at §§22-30).
9. There is a real basis to conclude that disclosure of HN23's cover identity would lead to discovery of his/her real identity (see risk assessment at §18, §19 and impact statement at §36). Disclosure of his/her cover identity would therefore result in the interference with his/her rights under the ECHR detailed above.
10. Even in the event that the Chairman is not persuaded that the link between real and cover name would be made, the associated risk of harm is so high that it is a risk that should not be taken.

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

11. A restriction order protecting HN23's real and cover 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 in s.19(4) of the Act. The 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 interests in non-disclosure

12. It is in the public interest for HN23’s real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or his/her family, namely physical harm and/or interference with their private and family lives. The evidential basis for this is the risk assessment and the impact statement.
13. The same public interest demands the restriction of HN23’s cover identity as there is a real risk that knowledge of the cover identity would lead to his/her real identity.
14. Restriction of HN23’s cover identity is also in the public interest of avoiding harm to others. See risk assessment at §4.17, §19.1 and impact statement at §12, §30.
15. It is furthermore in the public interest for HN23’s real and cover identity to be restricted on the basis it would avoid or reduce the risk of damage to effective policing. See risk assessment at §19.

The public interest in disclosure

16. The MPS appreciates that the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN23’s case, particularly as this application extends over both the real and cover identities.

Where the public interest balance lies

17. The MPS has considered the Chairman’s Principles Ruling. 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.
18. In all the circumstances we invite the Chairman to conclude that the public interest favours non-disclosure for the following reasons:
 - (a) Disclosure of HN23’s real or cover identity would breach his/her rights under Articles 2, 3 and 8 of the ECHR;
 - (b) The public interest in avoiding harm to HN23 and his/her family is sufficient to demand restriction of his/her real and cover identity;
 - (c) The public interest in avoiding harm to others is sufficient to demand restriction of HN23’s real and cover identity;
 - (d) Restriction is also necessary in order to reduce the risk of damage to effective policing;
 - (e) The interests of fairness fall in favour of non-disclosure of HN23’s real and cover identity.

5 September 2017

MPS, Department of Legal Services