

**Re The Undercover Policing Inquiry**

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**OPEN APPLICATION FOR RESTRICTION ORDER (ANONYMITY)  
RE: HN40  
SUBMITTED ON BEHALF OF THE MPS**

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**Restriction Order Sought**

1. The MPS apply for a restriction order over the real and cover identity of HN40 to last indefinitely in the following terms:
  - (1) No direct or indirect disclosure of HN40's real identity (including any description or image capable of identifying HN40) beyond the Chairman and Inquiry team;
  - (2) No direct or indirect disclosure of HN40's cover identity (including any description or image capable of identifying HN40) beyond the Chairman and 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 the 'Minded to' note dated 25 October 2016 in respect of Jaipur and Karachi.

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

- Closed risk assessment prepared in relation to HN40
- Expert report in relation to HN40

**Outline reasons:**

***Section 17: statutory and common law fairness***

4. A restriction order protecting HN40's real and cover identity is required in the application of statutory and common law principles of fairness, in light of the risks described in the risk assessment and the concerns outlined in the expert report.

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

5. A restriction order protecting HN40'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.
6. In light of the contents of the risk assessment (and expert report), there is an objectively verified immediate risk of torture, or inhuman or degrading treatment if HN40's real name were to be disclosed. See the risk assessment at §14, §15, §18, §19; see expert report at §4. At the higher level of severity this would amount to a risk to life.
7. In addition, disclosure of HN40'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 expert report (particularly at §3.3.23, §3.3.24, §4).
8. There is a real basis to conclude that disclosure of HN40's cover identity would lead to discovery of his/her real identity (as detailed in the risk assessment – see risk assessment at §4.14, §18.3, §19). Disclosure of his/her cover identity would therefore result in the interference with his/her rights under the ECHR detailed above.
9. Even in the event that the link between real and cover name is not made, there is an objectively verified immediate risk of serious harm if HN40's cover name were to be disclosed: see expert report at §4.9-4.12 and §4.14-§4.15.

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

10. A restriction order protecting HN40'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

11. It is in the public interest for HN40'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 expert report, and mentioned above.
12. The same public interest demands the restriction of HN40's cover identity: (a) as there is a real risk that knowledge of the cover identity would lead to his/her real identity; (b) the expert report suggests that release of HN40's cover name alone could result in harm to him/her (at §4).
13. Restriction of HN40's cover identity is also in the public interest of avoiding harm to others. See risk assessment at §4.16, §8.1, §11.2, §19. See also, separately, expert report at §4.10-§4.12.
14. It is furthermore in the public interest for HN40'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

15. The MPS appreciates that the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN40's case, particularly as this application extends over both the real and cover identities.

#### Where the public interest balance lies

16. The MPS has considered the Chairman's Restriction Order ruling dated 3<sup>rd</sup> 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.

17. In all the circumstances we invite the Chairman to conclude that the public interest favours non-disclosure for the following reasons:

- a) Disclosure of HN40's real or cover identity name would breach his/her rights under articles 2, 3 and 8 of the ECHR;
- b) The public interest in avoiding harm to HN40 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 HN40'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 HN40's real and cover identity.

**31<sup>st</sup> July 2017**

**MPS, Department of Legal Services**