

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE UNDERCOVER POLICING INQUIRY

**SUBMISSIONS ON THE PUBLICATION OF IMAGES OF FORMER
UNDERCOVER OFFICERS**

Background

1. On 23 January 2018, the Inquiry team disseminated an email from Tamsin Allen dated 20 December 2018 and the response from Piers Doggart dated 12 January 2018. The initial email questioned the appropriateness of the prohibition on the publication of images capable of identifying the subject of restriction orders, particularly in cases where only the officer's real name has been restricted.
2. The Chairman responded as follows:

“As to images which come into the possession of the Inquiry, publication by the Inquiry of a photograph of an officer as he or she appeared during his or her deployment will be considered on a case by case basis.”

The proposed approach to the disclosure of images

3. The representatives for the Slater and Gordon officers agree that publication should be considered on a case by case basis. Prior to disclosure of an image of a former UCO, the Inquiry should assess the risk of identification of the officer from the photograph as against the public interest in disclosing the image.

4. The former will vary from case to case, depending on factors such as the clarity of the image and the difference between each officer's former and current appearance. Where publication of the image tends to lead to identification of the officer in his or her real name, it is prohibited under the terms of the order. This is so even where there is a strong public interest in publishing the image.
5. Where the risk of identification is low, it should be balanced against the public interest in the publication of images. This is a dynamic factor which must be assessed separately for each officer. Examples of the public interest in publication might include where the photograph depicts the officer engaging in disputed conduct or where the image would assist in obtaining evidence from persons who knew them during the relevant period.
6. In many cases, the publication of a photograph will not assist in the gathering of evidence. The Inquiry should not attempt to gather any and all evidence about each officer's deployment. For reasons both practical and principled, it must direct itself to evidence which meets a threshold of relevance. For example, the Inquiry will wish to consider evidence of misconduct and of widespread institutional practices, but it need not trace the daily events of each deployment.
7. Evidence which meets the threshold of relevance is unlikely to come from those who cannot recognise the officers by their cover names. Those who were close to the individuals at the time will have known their names, and those who cannot recall their names are unlikely to recall their actions in sufficient detail to be of use to the Inquiry.
8. Assessing the public interest in publication will also require a review of what is known about the conduct of the officers. Where there is no prima facie evidence to suggest misconduct, the Inquiry should not risk disclosure of officers' identities by publishing images of them in the speculative hope of uncovering wrongdoing.
9. This was acknowledged by the Chair in the open hearing of 21 November 2017, when he said, "*because of the revelations that have been made, it is possible to reach a provisional view in some cases that there may be more revelations and in others that*

*there may not be*¹. He went on to say, “*There has to come a point, I think, at which the desire to know everything possible has to be curtailed in the interests of finishing things.*” The Chair agreed that it might also have to be curtailed in the interests of fairness to individuals.²

The risks of restricting images on a case by case basis

10. In the small subset of cases where an image is Inquiry evidence but is also in the possession of a third party, there is a risk that the process of determining whether it may be published could undermine the restriction order and compromise the identity of the officer. For example, if a witness provides photographs of a person whom he or she suspects to be an undercover officer as evidence to the Inquiry and the Inquiry then prohibits publication, this may serve as confirmation that the individual is in fact an officer.
11. In this and in other scenarios, restriction of an image could also act as confirmation that the officer still resembles that image, thereby disclosing their physical appearance. This creates a catch-22 situation, where refusal to publish an image on the grounds that it tends to identify the subject would itself release information tending to identify the subject.
12. In such circumstances the Inquiry is presented with an invidious choice. It could refuse to comment on the status of the image under the restriction order and risk its publication, or prevent publication and thereby indirectly release information about the officer’s appearance. Each image will need to be considered individually, but in the majority of cases the latter option should be preferred, being the course which causes less harm to the officer.

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¹ Transcript at page 67.

² Transcript at page 99.

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