

**IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER
POLICING**

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN109
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real and cover identity of HN109 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN109's real name (including any description or image capable of identifying HN109) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN109's cover name (including any description or image capable of identifying HN109) 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 bases:
 - 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: the duty to act in a way that is not incompatible with a Convention right, namely the right to private and family life (Article 8).
 - 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; the 'minded to' note dated 25 October 2016 in respect of Jaipur and Karachi; and the 'minded to'

notes dated 3 August 2017, 23 October 2017 and 14 November 2017 in respect of former SDS officers.

Evidence in Support

4. This application is supported by a closed risk assessment and a closed schedule, which are not to be circulated wider 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 identity of HN109 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. Disclosure of HN109's real name would amount to a disproportionate interference with his/her right to private and family life. The types and levels of interference are set out in the risk assessment in particular at §§5, 6, 8, 11, 15, 16, 18, 19; and see also the closed schedule.
7. It is submitted that there is a real risk that disclosure of HN109's cover identity would lead to disclosure of HN109's real identity. See risk assessment at §15 and the closed schedule. Disclosure of his/her cover identity would therefore result in the interference with his/her Article 8 rights under the ECHR as detailed above.

Section 19(3)(b) and s19(4)

8. The Chairman is invited to find that a Restriction Order protecting HN109's real 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 at s.19(4) of the Act read together with the Chairman's approach at [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

9. It is in the public interest for HN109’s real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to HN109, or his/her family, or others, and/or interference with their private and family lives. The evidential basis for this is the risk assessment and the closed schedule.
10. The same public interest demands the restriction of HN109’s cover identity as there is a real risk that disclosure of the cover identity would lead to his/her real identity.
11. HN109 expected that his/her work would be and would remain confidential.

The public interest in disclosure

12. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN109’s case, particularly as this application extends over both the real and cover identities. The MPS submits this public interest is outweighed on the facts of this case.

Where the public interest balance lies

13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
14. In all the circumstances, the MPS makes this application for a Restriction Order over HN109’s real name on the bases of fairness; and that a failure to restrict would be a disproportionate interference with HNI09 and his/her family’s right to a private and family life; and the MPS submits such an application is also in the public interest of avoiding harm to any person.

MPS, Department of Legal Services

29 November 2017