

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

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**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)  
RE: HN337  
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 HN337 to last indefinitely in the following terms:
  - (1) No direct or indirect disclosure of HN337's real name (including any description or image capable of identifying HN337) beyond the Chairman and the Inquiry team;
  - (2) No direct or indirect disclosure of HN337's cover identity (including any description or image capable of identifying HN337) 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 and Articles 2, 3 and 8 ECHR: namely 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.
  - 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 in respect of former SDS officers.

## **Evidence in Support**

4. This application is supplemented by a closed schedule and closed evidence, 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 neither the real nor cover identity of HN337 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*

6. A restriction order protecting HN337'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 at §14, §15 and §19 there is an objectively verified immediate risk of torture or inhuman or degrading treatment if HN337's real or cover name were to be disclosed. At the higher level of severity, this would amount to a risk to life.
8. Disclosure of HN337's real or cover name would amount to a disproportionate interference with HN337's right to private and family life. In particular, the objective effect of disclosure is set out at §17 of the Risk Assessment. The level of risk posed by this interference with HN337's private and family life is set out in the Risk Assessment at §17 and §19 and in the impact statement.

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

9. The Chairman is invited to find that a Restriction Order protecting HN337'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 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 of real and cover identity

10. The following public interest factors are pertinent:
  - (a) It is in the public interest for HN337’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 or 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.
  - (b) The same public interest demands the restriction of HN337’s cover identity as there is a real risk that knowledge of the cover identity would lead to his or her real identity.
  - (c) HN337 has respected the confidentiality of his or her work and has relied on his or her anonymity as a source of protection and security.

The public interest in disclosure of real and cover identity

11. The MPS appreciates that the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN337’s case, particularly as this application extends over both the real and cover identities. It is accepted that withholding the cover name of HN337 will limit the ability of the Inquiry to scrutinise HN337’s deployment in the public domain. It is submitted that the public interest in openness is outweighed on the facts of this case.

Where the public interest balance lies

12. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
13. In all the circumstances, the MPS makes this application for a Restriction Order over HN337’s real and cover names on the basis of fairness and to avoid a risk of serious harm and of disproportionate interference with HN337’s right to private and family life. The MPS submits such an application is in the public interest and conducive to the Inquiry’s terms of reference.

**MPS, Department of Legal Services**

**27 September 2017**