

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN341
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real and cover identity of HN341 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN341's real name (including any description or image capable of identifying HN341) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN341's cover identity (including any description or image capable of identifying HN341) 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.19(3)(a) of the Inquiries Act 2005 and 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;

Alternatively, s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry and

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 evidence or submissions which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. a closed risk assessment with addendum;
 - b. a witness statement from HN341;
 - c. closed submissions.

Reasons

Section 19(3)(a) and Article 2, 3 and 8

5. A restriction order protecting HN341's real and cover 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, particularly, at §19 and the matters referred to in the closed submissions, there is an objectively verified immediate risk of serious harm of a type and severity to engage Article 3 or of death if HN341's real name were to be disclosed.
7. It is likely that disclosure of HN341's cover identity would lead to identification of HN341's real identity (see closed submissions and §19 of the risk assessment). The same objectively verified, immediate risk of serious harm or death applies to disclosure of HN341's cover name.
8. Disclosure of HN341's real name would also amount to a disproportionate interference with HN341's right to private and family life. In particular, the objective effect of disclosure is set out within §14 and §19 of the risk assessment. It is reasonable to infer that there would be some public interest in HN341 by virtue of HN341's status as a former UCO.
9. The level of risk posed by this interference with HN341's private and family life is set out in the risk assessment at §19 and in HN341's witness statement.

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

10. The Chairman is further invited to find that a Restriction Order protecting HN341's real identity is conducive to the Inquiry fulfilling its Terms of Reference and/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

11. The following public interest factors are pertinent:
 - (a) There is an objectively verified, high risk of serious, physical harm to HN341 in the event of release of HN341's real and cover identity;
 - (b) The current risk of physical harm to HN341 is assessed as very low. The increase in risk of harm would be the result of disclosure of the real name. It is in the public interest for publication of HN341's real identity to be restricted on the basis that it would reduce or remove this risk of harm;
 - (c) The evidential basis for the risk of harm is contained at §18 and 19 of the risk assessment and in the matters referred to in the closed submissions;
 - (d) The same public interest demands the restriction of HN341's cover identity as there is a real risk that knowledge of the cover identity would lead to identification of HN341's real identity.

The public interest in disclosure of real and cover identity

12. The MPS appreciates that the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN341's case, particularly as this application extends over both the real and cover identities.

Where the public interest balance lies

13. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
14. In all the circumstances, the MPS makes this application for a Restriction Order over HN341's real and cover identities to avoid violation of HN341's Convention rights, as detailed above. The MPS submits the restriction order sought is necessary in the interests of fairness, the public interest and is conducive to the Inquiry's terms of reference.

Section 17

15. Application of the statutory and common law principles of fairness require that the real and cover identities of HN341 are not disclosed. The

considerations which apply are highlighted above in relation to: s. 19(3)(a) Inquiries Act 2005; 19(3)(b) and s.19(4) Inquiries Act 2005.

MPS, Department of Legal Services

26 October 2017