
COUNSEL TO THE INQUIRY'S EXPLANATORY NOTE TO ACCOMPANY THE PUBLICATION OF OPEN GENERIC RESTRICTION ORDER DOCUMENTS AND SPECIAL DEMONSTRATION SQUAD 'TRADECRAFT' MATERIALS ON 19 MARCH 2018

Introduction

1. On 30 May 2017 the Inquiry formally adopted a 'Protocol for the Imposition of Restrictions to the Publication of Documents and other Evidence Produced to the Inquiry by the Metropolitan Police Service' ([the Restriction Protocol](#))¹. Paragraphs 8-13 of the Protocol address the production of a generic set of documents to assist in the processing of applications for restriction of information within documents. The Open generic documents, namely the Open Schedule, Open Generic Submissions and Open Generic Evidence are now being published.
2. In accordance with paragraph 11 of the Restriction Protocol, core participants and the Media are now afforded the opportunity to respond to this material; any **responses** should be provided to the Inquiry **by 4pm on 19 April 2018**. This is an opportunity for core participants to make any observations they wish to make about the Open Schedule. The Inquiry will consider any such observations before finalising the Open Schedule. This is also an opportunity for the core participants to respond with their own generic submissions and generic evidence, if they wish to. Any such generic submissions and evidence will be taken into account as the Inquiry considers applications made by the Metropolitan Police Service (and any other state bodies to whom the Restriction Protocol applies) for restriction orders relating to documents.
3. Along with these Open generic documents, the Inquiry is publishing the contents of a folder entitled 'Tradecraft – Binder 2', and related documents, which were held by the Special Demonstration Squad and provided to the Inquiry by the Metropolitan Police Service. The contents of the folder entitled 'Tradecraft – Binder 2' include the 'Special Demonstration Squad Tradecraft Manual'.

¹ Although expressed as relating to the Metropolitan Police Service, it is the intention of the Inquiry that the protocol should be adhered to by all police bodies and government agencies and departments providing material to the Inquiry, should they seek to restrict public access to any of that material.

4. The Inquiry's investigation in relation to the Special Demonstration Squad continues. The purpose of publishing these 'tradecraft' and associated documents at this stage is to provide a number of worked examples of documents which have been (a) determined as being relevant and necessary to the discharge of the Inquiry's terms of reference and (b) the subject of restriction order applications using the generic grounds, generic evidence and generic submissions as well as specific evidence and submissions directed towards specific parts of the applications (in accordance with paragraph 16(ii) of the Restriction Protocol). The applications for restriction orders were partly agreed by the Inquiry legal team. The applications which were not agreed were the subject of a Closed hearing following which the Chairman produced a Closed ruling. The redactions applied to the published documents reflect those agreements and the Chairman's Closed ruling. The redactions have been numbered within the documents and the documents are published together with a schedule which sets out the relevant Open ground(s) for restriction which is the basis for each redaction. In some instances, the redactions applied are provisional; for example, where a relevant decision on anonymity is pending. The Inquiry will keep these redactions under review and lift redactions as appropriate.
5. Any **responses** to these example documents should also be provided to the Inquiry **by 4pm on 19 April 2018**. This is an opportunity for the core participants and Media to make any specific submissions and submit any specific evidence that they wish the Inquiry to consider in relation to the restrictions which have been applied to the example documents.

Background

6. The Undercover Policing Inquiry is a statutory inquiry set up under the Inquiries Act 2005. Section 18 of that Act imposes upon the Chairman of the Inquiry an obligation to take such steps as he considers reasonable to secure the attendance of members of the public, and their ability to obtain or to view a record of evidence and documents given, produced or provided to the Inquiry. Section 18 is, however, expressly subject to section 19 of the Act which provides for the imposition of restrictions on public access to the Inquiry in certain circumstances, including in relation to the disclosure or publication of evidence or documents.
7. The Restriction Protocol sets out the manner in which the Chairman intends that applications for him to make a restriction order under section 19 of the Act

will usually be dealt with². Because of the subject matter of this inquiry and the volume of documents likely to be relevant and necessary for the Inquiry to consider in fulfilling its terms of reference, it is anticipated that a large number of applications for restriction will be received from police bodies and government agencies. In order to ensure that those applications can be determined in such a way as to avoid unnecessarily delaying the substantive progress of the Inquiry, the Protocol proposes that a generic set of documents be prepared at the outset to record grounds, evidence and submissions anticipated to be common to many applications for restriction.

8. The Inquiry first sought to prompt the creation of the generic documents in late 2016. Since then, and in particular since the adoption of the Protocol on 30 May 2017, the Inquiry legal team has been liaising with the legal teams for the Metropolitan Police Service, the National Police Chiefs' Council and the National Crime Agency who have taken responsibility for drafting the generic documents on which they intend to rely in the making of applications for restriction. It is anticipated that other police and state bodies will also use the generic grounds to make applications for restriction over material that they provide to the Inquiry.

Generic documents being published

9. The Inquiry is now publishing the following Open documents:
 - a. Generic grounds for restriction (i.e. the Open Schedule referred to in paragraphs 8 to 13 of the Restriction Protocol).
 - b. Generic evidence in support of the grounds:
 - i. Witness statement of Chief Constable Alan Pughsley on behalf of the National Police Chiefs' Council, dated 14 February 2018;
 - ii. Witness statement of Geoff Bluemel on behalf of the National Crime Agency, dated 28 September 2017;
 - iii. Gisted witness statement of Christopher Farrimond on behalf of the National Crime Agency, dated 27 September 2017;
 - iv. Witness statement of Cairo on behalf of the Metropolitan Police Service, dated 4 August 2017.

² The Protocol sets out the *process* for the determination of such applications; as to the legal principles to be applied in determining the applications, see the 'Restriction Orders: Legal Principles and Approach' ruling of the (former) Chairman, dated 3 May 2016.

- c. Generic submissions
 - i. On behalf of the National Police Chiefs' Council, dated 22 January 2018, along with accompanying chart;
 - ii. On behalf of the Metropolitan Police Service, dated 14 February 2018.
10. As envisaged by the Restriction Protocol, Closed counterparts exist for each of the Open documents being published. The separation of open from closed material in these documents has been overseen by the Inquiry.
11. It should be noted that since these documents are designed to explain particular sensitivities associated with the use of undercover policing which it will be argued support the restriction of information in particular documents, much of it could not be published now without prospectively undermining applications for restriction that are yet to be made. It follows that the redaction of information within the generic documents is not determinative of whether particular information in relevant and necessary documents will be redacted during the course of the Inquiry – each application will be determined on its merits. But it would not be fair for the Inquiry to undermine or predetermine applications that have yet to be made by publishing certain information at this stage.
12. The Inquiry has sought where possible to gist information that has been redacted in order to assist the participants and the public to understand the main points being made by the state bodies about why information should be restricted on the generic grounds set out, in order to enable meaningful engagement with this process. The Inquiry hopes that publication of the generic documents will lead to a greater understanding of the process by which the Inquiry proposes that applications for restriction will generally be considered and determined, albeit within the confines referred to above that are inherent in a process of this type.
13. The generic documents that are being published are complete as at the date of publication. The Inquiry envisages that as the process of determining applications for restriction begins in earnest and the generic documents are put into use, the need may arise for additional generic grounds supported by generic evidence and/or generic submissions, to be added. Paragraphs 12 and 17 of the Restriction Protocol set out the procedure that will be adopted should this become necessary.

Use to which the generic documents are intended to be put

14. The primary function of the generic documents is to increase the efficiency with which the Inquiry is able to process the anticipated large volume of applications for restriction over relevant and necessary documents. The Inquiry anticipates that in relation to some applications for restriction, the state bodies may do no more than to point to a particular Closed ground and assert that the information it is sought to restrict falls squarely within that category. A name or other identifying details of a person who has been granted anonymity might be a category where that is the usual approach. Conversely, some applications will require further individual submissions and/or evidence to be provided to explain why the particular generic ground(s) cited, along with any relevant generic evidence, support restriction of the information. In some cases there will be no applicable generic ground or evidence and in those cases a bespoke application will be required.
15. Where a restriction order is made and leads to redaction of particular information, it is intended that a specific Open ground (or grounds) will be published alongside each redaction in order to assist participants and the public to understand the basis upon which the Inquiry has agreed to restrict information in documents³.
16. The existence of a particular ground within the generic grounds does not mean that the Inquiry agrees that all information falling within that category should be restricted in accordance with section 19 of the Inquiries Act 2005, rather it indicates that the state bodies have identified it as a ground upon which they are likely to apply to restrict information, and the Inquiry accepts that the ground could in principle justify a restriction being granted.
17. The Inquiry has continued to process a small number of documents for restriction in the absence of a full set of generic materials, seeking evidence and submissions in support of individual applications where necessary, in accordance with paragraph 13 of the Restriction Protocol (for example, the assurance evidence published on the Inquiry's website). This exercise has helped to inform the state participants and the Inquiry as to the likely grounds on which applications for restriction will be made, and has assisted in the drafting of the grounds, evidence and submissions. The Inquiry will continue to process a small number of applications for restriction pending the receipt of any

³ In order not to undermine restrictions made there may be some examples where no Open ground can be provided.

UNDERCOVER POLICING INQUIRY

representations on the generic documents in order to ensure progress continues to be made in processing the evidence so far received.

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