

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN302
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real and cover identities of HN302 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN302's real name (including any description or image capable of identifying HN302) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN302's cover identity (including any description or image capable of identifying HN302) 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.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 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 and 'minded to' notes issued since that date.

Evidence in Support

4. This application is supplemented by a closed Risk Assessment and supplementary closed grounds which are 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 the real and cover identity of HN302 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 Article 8 ECHR

6. A restriction order protecting HN302'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 right in issue is Article 8.
7. It is reasonable to infer that there would be public interest in HN302. Disclosure of HN302's real name would amount to an unjustified and/or disproportionate interference with his or her right to private and family life. The evidential basis for this is as set out in the Risk Assessment (particularly at §19) and extends to a risk of serious physical harm (see §19.4) and potential harassment of HN302 and his/her family. See further in the supplementary closed grounds.
8. There is a real basis to conclude that disclosure of HN302's cover identity would lead to discovery of his/her real identity (see Risk Assessment at §19.1; §19.3). Disclosure of his/her cover identity would therefore result in the interference with his/her rights under the ECHR detailed above.
9. Even in the event that the Chairman is uncertain whether the link between real and cover name would be made, the risk of harm in the event that the link were made is so high that it is a risk which should not be taken.

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

10. The Chairman is invited to find that a Restriction Order protecting HN302'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

11. It is in the public interest for HN302'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/her family, namely physical harm and/or interference with their private and family lives. The evidential basis for this is the risk assessment.
12. The same public interest demands the restriction of HN302's cover identity as there is a real risk that knowledge of the cover identity would lead to his/her real identity.
13. Restriction of HN302's cover identity is also in the public interest of avoiding harm to others. See Risk Assessment at §18.

The public interest in disclosure

14. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN302's case, particularly as this application extends over both the real and cover identities.
15. However, MPS submits that there are no lesser alternative lesser measures to a restriction order over HN302's real and cover names that would avoid or reduce sufficiently the risks to HN302 and others.

Where the public interest balance lies

16. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry and the public interest in investigating these matters as openly as possible.
17. In the alternative, we invite the Chairman to conclude that the public interest favours non-disclosure for the following reasons:
 - (a) The public interest in avoiding harm to HN302 and his/her family is sufficient to demand restriction of his/her real and cover identity;
 - (b) The public interest in avoiding harm to others is sufficient to demand restriction of HN302's real and cover identity;

- (c) Restriction is also necessary in order to reduce the risk of damage to effective policing; and
- (d) The interests of fairness fall in favour of non-disclosure of HN302's real and cover identity.

MPS, Department of Legal Services

29 January 2017