

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

OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)

RE: HN331

SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN331 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN331's real name (including any description or image capable of identifying HN331) beyond the Chairman and the Inquiry team;
 - (2) 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 Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR
 - 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 which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. A closed “short form” Risk Assessment;
 - b. A closed witness statement dated 2 October 2017.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN331 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. A restriction order protecting HN331’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 submitted that disclosure of HN331’s real name would amount to a disproportionate interference with the right to private and family life of his/her close family members. It is reasonable to infer that there would be some public interest in HN331 by virtue of HN331’s status as a former UCO. The witness statement made in support of this application makes clear that, in the circumstances of HN331’s case, such interest would be unwelcome and highly distressing for his/her surviving family.

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

8. The Chairman is invited to find that a Restriction Order protecting HN331’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 of real identity

9. The following public interest factors are pertinent:
 - a. HN331 was attached to the SOS in the late 1960s and infiltrated a group which is now defunct. The deployment duration was around a year. No cover identity is known.
 - b. HN331 is now deceased (he/she died in the 1970s aged in his/her 30s) and is survived by a widow/er who is in advanced years. The effects on him/her of potential disclosure are set out in the witness statement, along with the effects on other family members.
 - c. Restriction of HN331's identity would avoid the risk of interference with HN331's family and their private lives, or of causing distress to HN331's surviving family.
 - d. There is no evidence to suggest the HN331 did not respect the confidentiality of his/her deployment by making public disclosure or the like.
 - e. There is a public interest generally in reducing the risk of damage to effective policing by providing the real identities of persons who carried out undercover work.

The public interest in disclosure of real identity

10. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in HN331's case. However, the MPS submits that there is no identifiable public interest in disclosure of HN331's real name in circumstances where the real name alone is of no assistance to the Inquiry in fulfilling its Terms of Reference or to Core Participants or witnesses who would not have known HN331 by his/her real name.

Where the public interest balance lies

11. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
12. In all the circumstances, the MPS makes this application for a Restriction Order over HN331's real name on the bases of fairness, to avoid a risk of disproportionate interference with the right to private and family life of HN331's surviving family, and on the basis that a restriction is, on balance, in the public interest and conducive to the Inquiry's terms of reference.