

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN332
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN332 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN332's real name (including any description or image capable of identifying HN332) 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' schedule detailing background;
- b. A witness statement dated 10 October 2017;
- c. A general practitioner letter dated 15 May 2017

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN332 is not disclosed. The considerations which apply are highlighted below in relation to s. 19(3)(a) and/or 19(3)(b) and s.19(4) below.

Section 19(3)(a) and Article 8

6. A restriction order protecting HN332'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 disclosure of HN332's real name would generate some interest which would be unwelcome and would interfere with his/her right to private and family life. It is submitted that that interference would be disproportionate due to HN332's particular circumstances, in particular HN332's age and health. These are detailed in the closed evidence provided in support of this application.
8. Further, such interference is not necessary to meet an aim listed at article 8(2). In particular, publication of HN332's name is not necessary to assist the Inquiry in meeting the Terms of Reference: evidence about HN332's work, if required, could be given using HN332's cipher.

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

9. The Chairman is further invited to find that a Restriction Order protecting HN332'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.

The public interest in non-disclosure of real identity

10. The following public interest factors are pertinent:
 - a. HN332 was attached to the SOS in the late 1960s/early 1970s and retired from the Metropolitan Police Service more than three decades ago.

- b. Disclosure would be unwelcome given HN332's age and health, as detailed in the closed schedule and evidence.

The public interest in disclosure of real identity

11. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in HN332's case. However, a restriction over HN332's real name will not interfere with the Inquiry meeting its Terms of Reference or the effective participation of Core Participants and witnesses. The use of HN332's cipher will allow evidence to be given about his/her work without disadvantage to members of the public, who would not have known HN332's real name in this context in any event.

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 HN332's real name on the bases of fairness, and to avoid a risk or serious harm/of disproportionate interference with HN332's right to private and family life. The MPS further submits such an application is in the public interest and conducive to the Inquiry's terms of reference.

MPS, Department of Legal Services

17 October 2017