

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN356
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the identity of the deceased former officer known as HN356 to last indefinitely in the following terms:

No direct or indirect disclosure of HN356's real name (including any description or image capable of identifying HN356) 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

3. The Application is made pursuant to:
 - a. Section 17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry;
 - b. Section 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 respect for private and family life; and
 - c. Section 19(3)(b) read together with section 19(4)(b)-(d) of the Inquiries Act 2005: a Restriction Order is 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).
4. 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, 23 October 2017 and 14 November 2017 in respect of former SDS officers.

Evidence in Support

5. This application is supported by the following evidence which is not to be disseminated beyond the Chairman and the Inquiry team:
 - a. Closed supplementary grounds;
 - b. A closed risk assessment; and
 - c. A closed document setting out the views of HN356's surviving spouse [SUBJECT TO CONSENT].

Reasons

Section 17

6. Application of the statutory and common law principles of fairness require that the real identity of HN356 be restricted. 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

7. A restriction order protecting HN356's real name is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way that is incompatible with a Convention right. The Convention right in issue is Article 8.
8. Disclosure of HN356's real name would amount to a disproportionate interference with HN356's spouse's right to respect for private and family life. The evidential basis for this interference is the risk assessment at page 5 and the closed letter. Further, it is reasonable to infer that there would be some public interest in HN356 by virtue of HN356's work as a former UCO. This attention may cause additional stress and anxiety to HN356's spouse, as set out in the closed letter.

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

9. The Chairman is invited to find that a Restriction Order protecting HN356'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.*

Public interest in non-disclosure of real identity

10. The following public interest factors are pertinent:
 - a. HN356 is deceased. HN356 is survived by a spouse and grown-up children. The effect of disclosure of HN356's real and cover identity on HN356's surviving family is set out in the risk assessment at page 5 and in the closed document setting out the views of HN356's surviving spouse. In particular, restriction of HN356's real identity is in the public interest of avoiding harm or reducing harm to HN356's spouse that would be occasioned by disclosure of HN356's real identity, in particular, in light of her fears and her health.
 - b. HN356's spouse agreed to HN356's deployment based on assurances that every effort would be made to avoid disclosure of HN356's deployment. The evidential basis for this is the closed letter setting out the views of the late HN356's surviving spouse.

The public interest in disclosure of real identity

11. The MPS appreciates that the public interest in openness is a factor that weighs against the making of a Restriction Order in HN356's case. However, MPS submits that the public interest in disclosure of HN356's real name attracts little or no weight 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 HN356 by his real name.

Where the public interest balance lies

12. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the importance of openness in the Inquiry.
13. In all the circumstances, the MPS makes this application for a Restriction Order over HN356's real name on the bases of fairness and to avoid a disproportionate interference with HN356's spouse's right to respect for private and family life.

14. Such a restriction is also in the public interest in order to avoid or reduce a risk of harm to HN356's spouse and/or is consistent with the Inquiry's terms of reference, having regard to the assurances of confidentiality that were given.
15. No application is made in respect of HN356's cover name.

MPS, Department of Legal Services

29 November 2017