
NOTE FROM COUNSEL TO THE INQUIRY RESPONDING TO SUBMISSIONS MADE CONCERNING THE OPEN GENERIC RESTRICTION ORDER DOCUMENTS

Introduction

1. On 19 March 2018, further to paragraph 11 of its [Restriction Protocol](#), the Inquiry published open documents relevant to its generic restriction order process. Those documents were:
 - a. Open generic grounds for restriction;
 - b. A witness statement from Chief Constable Alan Pughsley on behalf of the National Police Chiefs' Council;
 - c. A witness statement from Cairo on behalf of the Metropolitan Police Service;
 - d. A gisted witness statement from Christopher Farrimond on behalf of the National Crime Agency;
 - e. A witness statement from Geoff Bluemel on behalf of the National Crime Agency;
 - f. Submissions made by the Metropolitan Police Service; and
 - g. Submissions and an accompanying table provided by the National Police Chiefs' Council.
2. An explanatory note from Counsel to the Inquiry was published at the same time and can be found [here](#).
3. Core participants and 'the Media' were afforded an opportunity to respond to the open generic material by 19 April 2018. Submissions were received on behalf of:
 - a. The [non-police, non-state core participants](#); and
 - b. [Peter Francis](#).
4. The purpose of this note is to provide clarification where sought and/or where Counsel to the Inquiry consider that it may assist the comprehension of the Inquiry's approach to the restriction of information in documents.

Correlation between open submissions and open grounds

5. The non-police, non-state core participants, at paragraph 11 of their submissions, seek clarification as to the correlation between the published open generic grounds, which are numbered, and the grounds referred to by letter in the submissions from the Metropolitan Police Service and the National Police Chiefs' Council. The submissions on behalf of Peter Francis make a similar request.
6. The Inquiry legal team recognises that there is a need for clarification on this point and is grateful to these core participants for highlighting the discrepancy. In order to aid understanding of the references to grounds or categories by letter within the submissions of the Metropolitan Police Service and the National Police Chiefs' Council, the Inquiry is able to offer the following explanation. The three open umbrella categories ('Harm to People', 'Harm to Policing' and 'Other') appear in both the open and closed version of the grounds for restrictions. In the closed version of the grounds for restriction each of the three umbrella categories ('Harm to People', 'Harm to Policing' and 'Other') is composed of subcategories each of which has been given a letter. The letters correspond to the three open umbrella categories in the following order:
 - a. The open umbrella category 'Harm to People' covers closed umbrella categories A - D;
 - b. The open umbrella category 'Harm to Policing' covers closed umbrella categories E - I and M; and
 - c. All other closed umbrella categories fall within the open umbrella category 'Other'.
7. The lettered subcategories in the closed grounds are gisted in the Umbrella category column of the open grounds, in each case under the appropriate umbrella category.
8. The reason why the closed lettered subcategories do not exactly correspond with the open sub categories is because in some cases making clear which closed subcategory was relied upon by an applicant would allow an inference to be made as to what has been redacted and thereby undermine the restriction order.
9. The open numbered grounds for restriction are constructed to enable the Inquiry to indicate publicly the basis for a restriction order in a way which will not undermine the order. If, in any particular case, the Inquiry cannot use a specific open ground then it will use ground number 27: sensitive other.

Counsel to the Inquiry's position regarding the application of the generic grounds

10. The non-police, non-state core participants have also drawn attention to paragraph 16 of Counsel to the Inquiry's explanatory note of 19 March 2018 which they consider to be ambiguous. Counsel to the Inquiry can confirm that the former interpretation and not the latter is the position which the Inquiry adopts: each application for restriction is considered on its own facts, including an assessment of whether any harm/damage is likely to be caused by disclosure of the information in question. The generic grounds, evidence and submissions are designed to avoid police/state applicants having to repeat the same evidence and submissions where applications are made repeatedly to restrict similar evidence on the same or similar grounds, but the Inquiry will consider applications individually and in accordance with section 19 of the Inquiries Act 2005¹.

Level of scrutiny of restriction order applications by the Inquiry

11. As set out in paragraphs 22-24 of the Restriction Protocol, applications to restrict information are ordinarily considered first by the Inquiry Legal Team. Applications not agreed to by the Inquiry Legal Team (or which are later the subject of challenge to an Inquiry Legal Team decision) are referred to the Chairman for a decision.
12. The non-police, non-state core participants rightly remind the Inquiry of the need to rigorously scrutinise the applications made. The Inquiry does so, having regard to the Legal Principles Ruling of May 2016. The Inquiry also wishes to reassure the non-police, non-state core participants that it has and will have regard in particular to:
 - a. The importance of objectively assessing asserted risk and/or harm/damage;
 - b. The need to scrutinise particularly carefully any application that seeks to restrict information already in the public domain;
 - c. The distinction between historical and current information in relation to police tactics and techniques; and

¹ Save that the names of individuals granted anonymity (and other details that would identify them, or reveal their real name where anonymity applies to real name only) will be redacted and replaced with their cyphers pursuant to the restriction order granting anonymity, without the need for a full application to be made or considered in relation to each document in which those details appear.

- d. The inhibiting effect of restrictions on the allaying of public concern in relation to undercover policing.

Redactions applied to the tradecraft documents published on 19 March 2018

13. By email on 10 April 2018 the non-police, non-state core participants asked to see the redactions originally applied for by the Metropolitan Police Service over the tradecraft documents published on 19 March 2018 but which were refused by the Inquiry, in order to assist them to gauge the level of scrutiny that is being applied to such applications, and on what issues.
14. The Inquiry sought representations from the state bodies that applied to restrict parts of the tradecraft documents using the generic grounds and materials. Those bodies resist identification of the information over which applications for restriction were made but refused.
15. Having considered the representations received the Chairman has decided not to accede in full to the request made by the non-police, non-state core participants. Decisions to refuse applications to restrict information may be made where the Inquiry does not consider that the alleged risk of harm or damage is made out on the evidence and submissions put before it, but may also be made where the Inquiry accepts that there is some risk of harm or damage but nonetheless considers that the public interest in disclosure of the information outweighs that risk. Therefore, even though the Inquiry refused to redact the information in question, the Chairman accepts the representations made to him by the state bodies that to highlight the information over which applications were made would reveal what information is considered most likely give rise to a risk of harm or damage, and in so doing to draw the attention of those who might have an interest in undermining legitimate policing to matters of particular sensitivity or vulnerability which they might exploit.
16. The reason the non-police, non-state core participants seek the information is to assist them to gauge the extent of the scrutiny applied by the Inquiry to the applications for restriction made by the Metropolitan Police Service. The Inquiry considers that that can be demonstrated by provision of the following information: The Metropolitan Police Service made over 100 applications to restrict information within the tradecraft documents ultimately published on 19 March 2018. Those applications were made on a variety of closed generic grounds. At the first review the Inquiry Legal Team agreed approximately half of the applications made, and rejected just under half. The remainder were the subject of partial agreement by the Inquiry Legal Team, or a request for clarification or further information. A small number of those latter applications were agreed to

by the Inquiry Legal Team following the provision of the further information or clarification requested.

17. Of the applications that were not agreed by the Inquiry Legal Team, the Metropolitan Police Service pursued the majority before the Chairman at a closed hearing (a small number being withdrawn before the hearing). Having heard submissions, the Chairman agreed wholly or in part to just over half of those applications, and rejected the remainder.
18. It should be noted when considering the information set out above that:
 - a. A single application cannot be equated with a single redaction. For example, some applications sought the redaction of multiple examples of a name or other word or detail appearing within a document; where the Inquiry agreed to that application (e.g. if it related to the name of an individual (provisionally) granted anonymity), the application will have resulted in multiple redactions.
 - b. The scope of the applications made ranged from an application to redact a single word, to applications to redact entire paragraphs or pages.
 - c. The Metropolitan Police Service was not the only state body to apply to restrict information within the tradecraft documents published on 19 March 2018.
 - d. The proportion of applications rejected in relation to any particular document will depend upon the merits of the applications concerned.

Terms of Reference – scope

19. The Inquiry wishes to correct what appears to be a misunderstanding at paragraph 33 of the submissions on behalf of the non-police, non-state core participants. Whilst it is correct that the Terms of Reference refer to “undercover police operations”, that term is explicitly defined as follows:

*“For the purpose of the inquiry, the term **“undercover police operations”** means **the use by a police force of a police officer as a covert human intelligence source (CHIS)** within the meaning of section 26(8) of the Regulation of Investigatory Powers Act 2000, whether before or after the commencement of that Act. The terms “undercover police officer”, “undercover policing”, “undercover police activity” should be understood accordingly.” [Emphasis added]*

20. Therefore, whilst there may be particular circumstances in which the activities of third parties other than undercover police officers are relevant to the Inquiry's investigations, the Inquiry does not consider it accurate to assert that the Terms of Reference require the investigation of the use of third parties by police more generally – the primary focus of the Inquiry is on the use of undercover police officers and their deployments. The Inquiry will approach applications to restrict the details of third parties on that basis, and does not intend to require full anonymity applications from such individuals (save in the event that particular circumstances may call for a different approach).

Involvement of the UK Intelligence Community

21. The Inquiry confirms that the UK Intelligence Community is seeking restrictions over the disclosure of information where the UK Intelligence Community assesses that disclosure would lead to a risk of harm or damage as set out in the Section 19(4)(b) of the Inquiries Act 2005, in particular damage to national security. The Inquiry will not provide information about the UK Intelligence Community's applications or submissions where to do so would undermine the UK Intelligence Community's applications or submissions so as to deprive them of purpose.
22. The Inquiry also acknowledges that it has received assistance from the UK Intelligence Community that will assist it to fulfil its terms of reference.

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