

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: EN42
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real and cover identities of EN42 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of EN42's real or cover name (including any description or image capable of identifying EN42) 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 bases:

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: the duty to act in a way that is not incompatible with a Convention right, namely the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), and the right to private and family life (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 in respect of Cairo and the 'Minded to' notes dated 25 October 2016 in respect of Jaipur and Karachi and dated 3 August 2017 in respect of a number of former SDS officers.

Evidence in Support

4. This application is supplemented by closed evidence, which is not to be circulated wider than the Chairman and the Inquiry team. The evidence consists of a (i) personal impact statement signed by EN42, (ii) a questionnaire about his or her NPOIU service signed by EN42 and (iii) a witness statement signed by EN42.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the cover and real identities of EN42 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 3

6. There would be a real and immediate risk to EN42 of treatment contrary to Article 3 if EN42's cover or real names were disclosed. The sources of harm and the level of risk are described in detail in EN42's personal impact and witness statements; see for example, §§15, 19, 24, 31 and 40 of his or her witness statement.
7. There would be a real and immediate risk to others of treatment contrary to Article 3 if EN42's cover or real names were disclosed. The sources of harm and the level of risk are described in detail in EN42's personal impact and witness statements; see for example, §§20-21, 25, 26-27, 33 and 41 of his or her witness statement.

Section 19(3)(a) and Article 8

8. Disclosure of EN42's cover or real names would amount to a disproportionate interference with his or her right to private and family life. As noted at §6, the sources of harm and the level of risk are described in detail in EN42's personal impact and witness statements.

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

9. The Chairman is invited to find that a Restriction Order protecting EN42's cover and real names 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.

The public interest in non-disclosure

10. The following public interest factors are pertinent:

- (a) Disclosure and/or publication of EN42's real or cover names would pose a risk of physical harm to EN42. The likely sources and the level of risk of physical harm to EN42 are set out above at §6.
- (b) Disclosure and/or publication of EN42's real or cover names would pose a risk of physical harm to others. The likely sources and the level of risk of physical harm to EN42 are set out above at §7.
- (c) EN42 was promised lifelong anonymity before commencing his or her role: §30 of his or her personal impact statement. There is nothing to suggest that he or she has not respected that anonymity throughout the duration of his or her career.

The public interest in disclosure

- 11. The general presumption in favour of openness weighs against the making of a Restriction Order. It is submitted, however, that the public interest in non-disclosure significantly outweighs the public interest in disclosure.

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 EN42's cover and real names on the basis of the risk of harm to EN42, his or her family and others and the disproportionate interference with EN42's right to private and family life.

MPS, Department of Legal Services

23 August 2017