

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN12
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN12 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN12's real name (including any description or image capable of identifying HN12) 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 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 dated 2 May 2017, and the restriction order "minded to" and final decisions so far published.

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 Risk Assessment;
 - b. a witness statement by HN12 dated 26 April 2017.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN12 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).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN12'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. Disclosure of HN12's real name would amount to a disproportionate interference with his right to private and family life. In respect of the types and level of interference, see, in particular §8 and §19 of the Risk Assessment and the Witness Statement page 1.
8. It is reasonable to infer that there would be some public interest in HN12. See, in particular, the Risk Assessment at §4, §16, and §19 and Witness Statement pg 2, pg 5, pg 6.

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

9. The Chairman is invited to find that a Restriction Order protecting HN12'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

10. It is in the public interest for HN12’s real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or his family, namely interference with their private and family lives. The evidential basis for this is the Risk Assessment and the Witness Statement.
11. HN12 is concerned about his and his family’s privacy and wellbeing, and wishes to avoid a range of harms to them (see full details in the Witness Statement in particular at p 1; and the Risk Assessment at §8, §15 and §19).

The public interest in disclosure of real identity

12. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN12’s case. The MPS is mindful that the Inquiry will wish to explore aspects of HN12’s deployment, but it is submitted that this investigation will not be fettered by a real name restriction where there is no application in respect of cover name.

Where the public interest balance lies

13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
14. In all the circumstances, the MPS makes this application for a Restriction Order over HN12’s real name on the bases of fairness, and to avoid a disproportionate interference with HN12’s right to private and family life. The MPS submits such an application is also in the public interest and conducive to the Inquiry’s terms of reference.

MPS, Department of Legal Services

19 December 2017