

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN3
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN3 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN3's real name (including any description or image capable of identifying HN3) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN3's cover identity (including any description or image capable of identifying HN3) beyond the Chairman and Inquiry team;
 - (3) 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 and Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life.
 - 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 and minded to notes in respect of former SDS officers which have been made or provided to date.

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 closed schedule.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN3 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 HN3'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 HN3's real name would amount to a disproportionate interference with his/her right to private and family life as detailed in the Risk Assessment (§14 and §16) and in the closed schedule. It is reasonable to infer that there would be some public interest in HN3 by virtue of HN3's status as a former UCO.
8. The level of risk posed by this interference with HN3's private and family life is set out in the Risk Assessment at §16 and considered further in the closed schedule.
9. There is a risk that release of a cover name would lead to identification of the real name, and other associated risks. See Risk Assessment at §8 and the closed schedule.

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

10. The Chairman is invited to find that a Restriction Order protecting HN3'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 and cover identities

11. The public interests in non-disclosure include the harms referred to above in respect of Article 8 (disclosure of the real and cover identity would amount to a disproportionate interference with HN3’s private and family life). HN3 had an expectation of confidentiality which extended to cover as well as real identity. Finally, the public interest in harm to HN3 and others is considered in further detail in the closed schedule.

The public interest in disclosure of real identity

12. The MPS appreciates the weight to be given to openness is a factor which weighs against the making of a Restriction Order in HN3’s case. It is accepted that restriction of real and cover identities will limit the extent to which HN3’s deployment could be considered openly.

Where the public interest balance lies

13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
14. In all the circumstances, the MPS makes this application for a Restriction Order over HN3’s real name on the bases of fairness, and to avoid a risk of disproportionate interference with HN3’s right to private and family life. The MPS also submits such an application is in the public interest and conducive to the Inquiry’s terms of reference.

MPS, Department of Legal Services

19 December 2017