

IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

APPLICATION FOR A RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN87's REAL NAME AND COVER NAME

SUBMITTED ON BEHALF OF THE DL TEAM

1. This document uses the following abbreviations: DL (the Designated Lawyers team), IA (Inquiries Act), SDS (the Special Demonstration Squad), R/A (Risk Assessment) and I/S (Impact Statement).
2. This application should be read together with the open application submitted by the CL team in respect of real name restriction. The DL team support that application.
3. The DL also apply for a restriction order over the real and cover identity of HN87 to last indefinitely in the usual terms.
4. The legal basis for the application is s.19(3)(a) IA read with Articles 2, 3, and 8; s.17(3) IA and s.19(3)(b) IA read together with s.19(4)(b)-(d) IA. The applicable legal principles have been comprehensively set out in the Principles Ruling of 3 May 2016. Regard has also been had to the restriction order in respect of Cairo and the Minded to note dated 25 October 2016 in respect of Jaipur and Karachi.
5. This application is supplemented by evidence not to be disseminated beyond the Chairman and the Inquiry Team namely a closed R/A, an I/S from HN87 and a Closed Schedule. That evidence is also relevant to the Inquiry's consideration of real name protection.

Reasons

Section 17

6. Application of the statutory and common law principles of fairness require that the real and cover identities of HN87 are 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 Articles 3 and 8

7. A restriction order protecting HN87's real and cover 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 Rights in issue are Articles 2, 3 and 8.
8. Disclosure of HN87's real and/or cover identity would amount to an unjustified and/or disproportionate interference with his/her right to private and family life and

that of his/her family. It would also give rise to a serious risk to his/her physical integrity including a risk of serious harm or risk to life.

9. The nature and source of the interference feared is set out in the I/S, R/A and supplementary closed grounds. This includes a risk of physical harm, impact on his/her legitimate business interests, and a significant impact on his/her partner and child/children.
10. There is a real basis to conclude that disclosure of HN87's cover identity would lead to discovery of his/her real identity (see R/A 19.3 and I/S). The nature of the harm attendant on disclosure of HN87's real name is such that the real risk that disclosure of his/her cover name should not be run: see also supplementary closed grounds.

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

11. Paragraphs 9-12 of the CL's application are repeated.
12. The following additional public interest factors in non-disclosure of cover identity (and real identity) are relevant:
 - a. HN87 is a former UCO. The likely sources and level of the risk of physical harm to HN87 are set out at paragraphs 15 and 19 R/A, and in his/her I/S.
 - b. HN87 has respected the confidentiality of his/her deployment and understood that his/her identity would be protected (3.4 R/A; I/S 6);
 - c. The points set out in relation to article 8 by the CL team and above are equally applicable as public interest factors in favour of non-disclosure;
 - d. The same public interest demands the restriction of HN87's cover identity given the real risk that knowledge of the cover identity would lead to his/her identity being discovered thereby triggering the identified harms.
13. It is acknowledged that there is a significant public interest of openness weighing against the making of a restriction order, particularly as this application also extends over the cover identity. However, the DL submit that no other measure is sufficient to provide the necessary protection from identified harms.
14. In all the circumstances the DL team makes this application for a Restriction Order over HN87's real and cover names on the bases of fairness, and to avoid a risk of harm to HN87 and others and unjustified and/or disproportionate interference with HN87 (and others) respect for their private and family lives. Such an application is in the public interest and conducive to fulfilment of the terms of reference.

Designated Lawyers

1 May 2018