

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN76
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real and cover identity of HN76 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN76's real name (including any description or image capable of identifying HN76) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN76's cover identity (including any description or image capable of identifying HN76) 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 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 Article 8 ECHR: 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 and minded to notes issued since that 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) supplementary closed grounds;
 - (b) a closed Risk Assessment;
 - (c) a closed letter.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN76 is not disclosed. The considerations which apply are highlighted below in relation to s. 19(3)(a) and/or s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN76'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 HN76's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life including a serious risk to his/her physical integrity. The nature and source of the interference feared is set out in the risk assessment at §§8, 12-13, 15-16 and supplementary closed grounds. The level of risk posed by this interference is set out at §19 of the risk assessment. It is reasonable to infer that there would be some public interest in HN76 by virtue of his/her status as a former UCO.
8. The nature of the harm attendant on disclosure of HN76's real name is such that the real risk that disclosure of his/her cover name would lead to his/her real name should not be run: see supplementary closed grounds.

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

9. The Chairman is invited to find that a Restriction Order protecting HN76's real and cover 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 identity

10. The following public interest factors are pertinent:
 - (a) Avoiding or reducing the risk of physical harm to HN76. The likely sources and the level of risk of physical harm to HN76 in the event of disclosure of his/her real and cover identity is set out at §§12-13, 15, 19 of the risk assessment.
 - (b) Avoiding or reducing the risk of unjustified and/or disproportionate interference with HN76’s private and family life. The likely sources and the level of risk of interference to HN76 and his/her family in the event of disclosure of his/her real and cover identity is set out at §§8, 15-16, 19 of the risk assessment.
 - (c) HN76 has respected the confidentiality of his/her deployment and understood that there was a guarantee of anonymity: risk assessment §3.4.
 - (d) Avoiding or reducing the risk of damage to effective policing occasioned by disclosure of HN76’s real and cover identity. See closed letter and supplementary closed grounds.

The public interest in disclosure of real identity

11. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a restriction order in HN76’s case, particularly as this application extends over both the real and cover identities. However, for the reasons set out in the risk assessment and supplementary closed grounds, there is no lesser measure which could meet the identified harm.

Where the public interest balance lies

12. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
13. In all the circumstances, the MPS makes this application for a Restriction Order over HN76’s real and cover names on the bases of fairness, and to avoid

a risk of unjustified and/or disproportionate interference with HN76's right to private and family life. The MPS submits such an application is in the public interest and conducive to the Inquiry's terms of reference.

MPS, Department of Legal Services

23 March 2018