

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN96
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real and cover identities of HN96 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN96's real name (including any description or image capable of identifying HN96) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN96's cover identity (including any description or image capable of identifying HN96) 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 the 'minded to' notes issued to date in respect of various former SDS officers.

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 Impact Statement;
 - c. supplementary closed grounds.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN96 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 HN96'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 HN96's real name would amount to an unjustified and/or disproportionate interference with HN96's right to private and family life. The nature and source of the interference is set out in the risk assessment at §§15, 18 and 19 and in the impact account. Further, it is reasonable to infer that there would be some public interest in HN96 by virtue of HN96 being a former UCO.
8. The level of risk posed by this interference with HN96's private and family life is set out in the risk assessment at §19.

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

9. The Chairman is invited to find that a Restriction Order protecting HN96'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 identity

10. The following public interest factors are pertinent:
 - (a) There is a public interest in avoiding or reducing the risk of causing harm to HN96 or others, namely physical harm, should the real identity be disclosed. The likely source and the level of risk of physical harm is set out in the risk assessment at §§13, 15, 19.
 - (b) The harm identified in relation to Article 8 ECHR (see above) is also relevant in the assessment of the public interest balance and weighs against disclosure of HN96’s real name.
 - (c) The same public interest demands restriction of HN96’s cover identity as there is a real risk that knowledge of HN96’s cover identity could lead to discovery of HN96’s real identity. Owing to the nature and level of the risk, that is not a risk that should be run.
 - (d) HN96 was promised lifelong anonymity by HN96’s managers at the time. The promise was made in the presence of HN96’s spouse. HN96 has respected the confidentiality of the work carried out since the conclusion of the deployment.

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 HN96’s case, particularly as this application extends over both the real and cover identities.

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 HN96’s real and cover identities on the bases of fairness, and to avoid a risk of disproportionate interference with HN96’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.