

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN304
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN304 to last indefinitely in the following terms:
 - No direct or indirect disclosure of HN304's real name (including any description or image capable of identifying HN304) 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

3. 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)(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).
4. 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 in respect of Cairo and HN7; the 'minded to' note dated 25 October 2016 in respect of Jaipur and Karachi; and the 'minded to' notes dated 3 August 2017, 23 October 2017 and 14 November 2017 in respect of former SDS officers.

Evidence in Support

5. This application is supported by a closed Risk Assessment, which is not to be disseminated further than the Chairman and the Inquiry team.

Reasons

Section 17

6. Application of the statutory and common law principles of fairness require that the real identity of HN304 is not disclosed. The considerations which apply are highlighted below in relation to s. 19(3)(b) and s.19(4).

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

7. The Chairman is invited to find that a Restriction Order protecting HN304'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

8. The following public interest factors are pertinent:
 - (a) HN304 was attached to the SOS in the 1970s and infiltrated groups that are now defunct.
 - (b) The likely sources and the level of risk of harm to HN304, including interference with his private and family life, in the event of disclosure of H304's real identity are set out at §19 of the Risk Assessment. Restriction supports the public interest in restricting N304's real name, namely 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.
 - (c) HN304 has respected the confidentiality of his work and in return has expected his own anonymity to be protected.

- (d) It is furthermore in the public interest for HN304's real and cover identity to be restricted on the basis it would avoid or reduce the risk of damage to effective policing.

The public interest in disclosure of real identity

9. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN304's case. However, MPS submits that the public interest in disclosure of HN304's real name attracts little weight in circumstances where the real name alone is of no assistance to the Inquiry in fulfilling its Terms of Reference or to Core Participants or witnesses who would not have known HN304 by his real name.

Where the public interest balance lies

10. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
11. In all the circumstances, the MPS makes this application for a Restriction Order over HN304's real name on the bases of fairness, and to avoid a risk of harm to the officer and their family. The public interest in disclosure of the real name is outweighed by the public interest in restricting publication.
12. 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

30 November 2017