

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN13
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of the former officer known as HN13 in the following terms:

No direct or indirect disclosure of HN13's real name (including any description or image capable of identifying HN13) 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 pursuant to:
 - a. Section 17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry; and
 - b. Section 19(3)(b) read together with section 19(4)(b)-(d) of the Inquiries Act 2005: a Restriction Order is 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 the following evidence which is not to be disseminated beyond the Chairman and the Inquiry team:

- a. A closed risk assessment; and
- b. A closed witness statement.

Reasons

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

6. The Chairman is invited to find that a Restriction Order protecting HN13'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

Public interest in non-disclosure of real identity

7. The following public interest factors are pertinent:
 - a. HN13 is deceased. HN13 is survived by a spouse and family. HN13 was assured that anonymity would be maintained. These assurances were passed on to HN13's spouse by HN13. Both of them understood that the confidentiality surrounding HN13's deployment would last forever and HN13's spouse says that this was paramount to HN13's decision to undertake it.
 - b. Disclosure of HN13's real name would cause HN13's spouse and/or family harm, namely distress and concern. The evidential basis for this is the witness statement and the risk assessment at §8 and §19.

The public interest in disclosure of real identity

8. The MPS appreciates that public interest in openness is a factor that weighs against the making of a Restriction Order in HN13's case. However, MPS submits that the public interest in disclosure of HN13's real name attracts little

or no 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 HN13 by his real name.

Where the public interest balance lies

9. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Inquiry.
10. In all the circumstances, the MPS makes this application for a Restriction Order over HN13's real name on the basis that:
 - a. Disclosure of HN13's real name is not necessary in the fair pursuit or fulfilment of the Inquiry's terms of reference; and
 - b. The Restriction Order sought could avoid or reduce the risk of harm (in the form of distress and concern) to HN13's family.
11. No application is made in respect of HN13's cover name.

MPS, Department of Legal Services

29 November 2017