

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF

PETER FRANCIS

RE

“PRIVACY”

1. These brief submissions are made in response to the Chairman’s Note and Directions dated 29 November 2018.
2. We make submissions at the level of generality at this stage. Peter Francis (‘PF’) has not made a subject access request (‘SAR’) to the Inquiry. That said, the Inquiry has not complied with Article 14 of the GDPR in relation to any of his personal data that it holds.
3. His primary interest in this issue is as a CP who wants ensure that the Inquiry is able to act as effectively, efficiently and transparently as possible in fulfilling its TOR.
4. His simple submission is that the Inquiry must comply with its obligations as a data processor, in particular under Articles 13, 14 and 15, *unless* the Inquiry is satisfied that it can bring itself within an exemption. We note that the only relevant exemption appears to be Article 14 (5) (b), which applies where:

*“... the provision of such information proves **impossible** or **would involve a disproportionate effort**, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. **In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available**” (emphasis added)*

5. We note that the exemption is staged and even if the first stage applies, the Inquiry still has to take appropriate measures to protect rights. We assume that the Inquiry has formed a view as to whether this (or any other exemption) applies and if so, what measures it will take.
6. The “Privacy” section of the Restriction Protocol does not appear to confront data protection obligations but rather focusses on a timetable and process for obtaining witness evidence.
7. If, for example, the contents of witness packs sent to witnesses (former UCOs), even if limited to sending them back their own intelligence reports containing personal data of NPNSCPs and others who attended relevant meetings, constitutes a breach of the GDPR (and presumably the Inquiry has sought legal advice on this issue), then that process will need to be halted. If doing so does not constitute a breach, the Inquiry can continue this process, as long as the Inquiry has its obligation to minimise any risk of a breach at the forefront.
8. Separately, and in any event, the Inquiry has to fulfil its legal obligations to those, including the NPNSCPs, in relation to whom it is processing personal data which it has not obtained from them, if no exemptions apply. Where documents refer to multiple NPNSCPs, the Inquiry can consult with those NPNSCPs as to the extent of redaction necessary. Where there is a Restriction Order in place, then the Inquiry will in any event have to redact accordingly before sharing with others.
9. In relation to the Inquiry’s obligations to non-CPs in relation to whom it holds personal data, and in relation to whom it has no direct contact, privacy notices in accordance with Article 14 (subject to the Article 14 (5) exemption), should already have been put in the public domain. To be compliant, such notices need to contain transparent and meaningful information of any reporting (not just infiltration) – for example, dates, times, locations, named meetings, and which groups were targeted in that period (again, no doubt the Inquiry has taken its own legal advice as to what constitutes a proper Notice). The Inquiry will need to seek the assistance of the media, as it did in relation to relatives of deceased children, and should pay for targeted adverts, as data subjects will have no reason to check the Inquiry website or database.

10. Thereafter, in relation to onward publication, the only difficult issue that will arise at that stage is how to deal with the personal data of those who have not been in contact with the Inquiry, even after proper privacy notices have been published. In those circumstances, the Inquiry would have to consider a redaction protocol which is compliant with the objectives of the GDPR.

11. Such a process would avoid any need for hearings about deployments to be held in private, subject to the resolution of the issue of how those subject to Restriction Orders can give public evidence where so directed.

MAYA SIKAND
GARDEN COURT CHAMBERS

24 January 2018