

## **Preliminary Issue: Privacy** **Note and directions for further hearing**

1. At the privacy hearing on 31 January 2019, it was agreed that there should be a further hearing to consider:
  - a. the extent to which Articles 13, 14 and 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, also referred to as the General Data Protection Regulation (“GDPR”), apply to the work of the Inquiry; and
  - b. the practical effect of any resulting obligations.
2. Paragraph 25(i) of Counsel to the Inquiry’s Supplementary Note on Privacy, dated 29 January 2019, sets out my provisional view that I am carrying out a function designed to protect members of the public against, inter alia, malpractice or other seriously improper conduct. Accordingly, I am of the view that I am discharging a function that is designated as described in column 1 of the Table set out in paragraph 7 of Schedule 2, Part 2 to the Data Protection Act 2018. That function is conferred on me by an enactment and is of a public nature and exercised in the public interest. My function, therefore, meets the relevant condition specified in column 2 of the Table. Accordingly, it is my view that “the listed GDPR provisions” specified in paragraph 6 of Schedule 2, Part 2 to the Data Protection Act 2018 do not apply to the Inquiry to the extent that the application of those provisions would be likely to prejudice the proper discharge of my function.
3. The submissions made by Mr. Facenna QC, both in writing and orally at the hearing on 31 January 2019, on behalf of the non-police, non-state core participants make clear that my provisional view regarding the applicability of these Articles of the General Data Protection Regulation is not accepted on behalf of those core participants. Indeed, Mr. Facenna’s written submissions dated 24 January 2019 state in unequivocal terms that the Inquiry’s existing approach does not comply with Article 14 of the General Data Protection Regulation.
4. In response to the written submissions on behalf of the non-police, non-state core participants, the Metropolitan Police Service submitted a Note dated 29 January 2019. In paragraph 3 of that Note, the Metropolitan Police Service

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submit that the following exemptions, relating inter alia to Articles 14 and/or 15 of the General Data Protection Regulation, are applicable, or are likely to be applicable to the work of the Inquiry:

- a. Crime and taxation: see paragraph 2(3) of Schedule 2, Part 1 to the Data Protection Act 2018.
  - b. Legal proceedings: see paragraphs 5(2) and 5(3) of Schedule 2, Part 1 to the Data Protection Act 2018.
  - c. Judicial capacity and judicial independence: see paragraphs 14(2) and 14(3) of Schedule 2, Part 2 to the Data Protection Act 2018.
  - d. Protection of the rights of others: see paragraph 16 of Schedule 2, Part 3 to the Data Protection Act 2018.
5. I note that the submissions on privacy on behalf of the Information Commissioner, dated 24 January 2019, understandably do not address the question of whether or not such exemptions are applicable. It is noted in paragraph 7 of those submissions, however, that to the extent that the Inquiry seeks to rely on any exemptions to data subject rights, the Inquiry must ensure that such reliance is considered, documented and transparent.
6. I therefore invite submissions on the following issues:
- a. The extent to which Articles 13, 14 and 15 of the General Data Protection Regulation apply to the work of the Inquiry, having regard to the effect of any applicable exemptions.
  - b. Insofar as Articles 13, 14 and 15 of the General Data Protection Regulation do apply to the work of the Inquiry, and no exemptions are applicable, what obligations do Articles 13, 14 and 15 impose upon the Inquiry, having regard in particular to Article 14(5)(b)? In those circumstances, what would be the practical implications for the Inquiry in relation to the evidence gathering exercise?
  - c. If I am performing a function to which any of the exemptions referred to above and/or set out in Schedule 2 to the Data Protection Act 2018 applies, what obligations do Articles 13, 14 and 15 of the General Data Protection Regulation impose upon the Inquiry? In those circumstances, what would be the practical implications for the Inquiry in relation to the evidence gathering exercise?

7. I direct as follows:

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- a. If the media, the Information Commissioner, or any core participant wishes to make representations on the above issues, they should send their written submissions to the Inquiry by no later than **4.00pm on 8 March 2019**.
- b. There shall be a hearing at which oral submissions on these issues may be made, on **25 March 2019** (subject to confirmation by the Royal Courts of Justice).

12 February 2019

Sir John Mitting  
Chairman, Undercover Policing Inquiry