

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

[OPEN] APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN122's REAL AND COVER NAMES SUBMITTED BY THE DESIGNATED LAWYERS

1. The following abbreviations are used herein:

“A/N”	application notice;
“DL”	the Designated Lawyers, i.e. Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as such;
“CL”	the Metropolitan Police Service's Commissioner's Lawyers;
“I/S”	impact statement;
“R/A”	risk assessment;
“SDS”	Special Operations Squad / Special Demonstration Squad.

2. This A/N is submitted further to and should be read together with the following:

- a) CLOSED R/A dated 5 January 2018;
- b) CLOSED I/S dated 09 January 2018;

3. This real and cover name application is also intended as an application to restrict disclosure of the dates of deployment and the group(s) targeted as releasing

those will have the same effect as releasing the cover name and is made pursuant to:

- a) Inquiries Act 2005, s.17(3) (fairness);
 - b) Inquiries Act 2005, s.19(3)(a) read with the Human Rights Act 1998, s.6 and the ECHR, Article 3 (prohibition on torture or inhuman or degrading treatment or punishment) and Article 8 (right to respect for private and family life);
 - c) Inquiries Act 2005, s.19(3)(b) read with s.19(4)(b)-(c) (fulfilment of terms of reference and necessary in public interest having regard to risk of harm or damage and conditions of confidentiality).
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 later rulings and Minded to notes.
 5. The CL have requested an extension with respect to any application they intend to make.

Restriction Order Sought

6. The DL apply for a Restriction Order over the real and cover names of HN122 to last indefinitely in the following terms:
 - a) No direct or indirect disclosure of HN122's real name (including any description or image capable of identifying HN122) beyond the Chairman and the Inquiry team; and
 - b) No direct or indirect disclosure of HN122's cover identity (including any description or image capable of identifying HN122 beyond the Chairman and the Inquiry team).

7. The DL reserve the right to make further submissions as to the effective operation of this Restriction Order during the course of the Inquiry and in light of the CL's application once finalised.

Reasons

Section 19(3)(a) and Articles 3 and 8

8. A Restriction Order protecting HN122's real and cover 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 rights in issue are Articles 3 and 8.
9. With reference to R/A, paragraphs 19.4 and 19.6 and I/S, paragraph 11 the risk of physical harm to HN122 is high and there is a real and immediate risk of torture or inhuman or degrading treatment or punishment should HN122's real or cover identity be disclosed or uncovered.
10. Further, with reference to R/A, paragraphs 19.5 and 19.7 and I/S, paragraphs 12-14 the risk of interference with HN122's private and family life should his/her real or cover name be disclosed or uncovered is high [R/A, pp.12, 14.5, 19.4 and 19.5; I/S, pp.13]. The release of the same would amount to a disproportionate interference with HN122's right to respect for private and family life.

Sets out concern regarding publication of cover name and real name including risks to third parties, risk of harm and interference with public life

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14. Per R/A, paragraph 4.5, there are notable triggers that, should deployment periods and the group(s) be disclosed, may lead to identification of HN122's cover name.

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

15. The Chairman is invited to find that a Restriction Order protecting HN122's real and cover 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 paragraph 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 the non-disclosure of real or cover identity

16. With reference to the above factors concerning the harm and impact on HN122, his/her family and other 3rd parties there is a clear public interest in avoiding harm and a disproportionate interference in HN122's, and others', right to private and a family life, even if the Chairman doesn't consider the level of harm to meet the threshold of Article 3.
17. Furthermore, the fact that the release of HN122's cover and real name would be contrary to HN122's reasonable expectations of confidentiality and privacy and HN122's subjective concerns about the possible consequences of this [I/S, pps.16-17] are both relevant to an assessment of the reasonableness and fairness of release, its capacity to serve a recognisable public interest and its proportionality for the purposes of Article 8(2).

Sets out concern regarding publication of cover name and real name including risks to third parties, risk of harm and interference with public life

The public interest in disclosure of real and cover identity

19. It is appreciated that the general presumption in favour of openness is a factor that weighs against the making of a Restriction Order in HN122's case, particularly as this application extends over both real and cover names.
20. There is no identifiable public interest in the disclosure of HN122's real identity in circumstances where s/he would not have been known to his/her associates by his/her real identity and the Inquiry's ability to fulfil its Terms of Reference would not be furthered by disclosure of HN122's real name.

21. It is acknowledged that the Chairman's ability to explore aspects of HN122's deployment may be restricted where HN122's cover name is also restricted because of the potential that the details of his/her deployment would result in identification of his/her cover and real name.

Where the public interest balance lies

22. It is plain that any details given publicly about HN122's deployment would risk his/her identity becoming known. Consequently, HN122 would be at real and immediate (or at the very least serious) risk of physical harm as a result of recriminatory action. Whether the orders sought are granted on a public interest basis, a human rights basis or both, it is respectfully submitted that they are appropriate and necessary and conducive to the Inquiry's Terms of Reference.
23. The Chairman is invited to conclude the public interest favours non-disclosure for the following reasons in particular:
 - a) The public interest in avoiding harm to HN122 and his/her family is sufficient to demand restriction of real and cover identities;
 - b) The public interest in avoiding harm to others is sufficient to demand a restriction of HN122's real and cover identities.
24. In all the circumstances, the DL makes this application for a Restriction Order over HN122's real and cover names in order to avoid a real and immediate risk of torture or to inhuman or degrading treatment or punishment of HN122 and a disproportionate interference with HN122's right to respect for private and family life.
25. It is also submitted that the application for common law and statutory (section 17(3), Inquiries Act 2005) principles of fairness require the real and cover

identities of HN122 to be restricted. The same factors highlighted above support that conclusions.

THE DESIGNATED LAWYERS (UCPI)

31 January 2018