

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN344
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real identity of HN344 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN344's real name (including any description or image capable of identifying HN344) 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

2. 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).
3. 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 in respect of former SDS officers.

Evidence in Support

4. This application is supplemented by evidence which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. a closed risk assessment with addendum.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN344 is not disclosed. The considerations which apply are highlighted below in relation to 19(3)(b) and s.19(4).

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

6. The Chairman is invited to find that a Restriction Order protecting HN344'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

7. The following public interest factors are pertinent:
 - (a) HN344 is a former UCO whose deployment took place in the early 1970s and was brief in time, lasting approximately one year.
 - (b) For over forty years, HN344 has respected the confidentiality of the undercover work performed and expects this role to be kept confidential.
 - (c) There is no allegation of wrongdoing or misconduct on the part of HN344.
 - (d) There is a risk of interference with HN344's private life if the real identity is disclosed (§19 risk assessment).

The public interest in disclosure of real identity

8. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in H344's case. However, the MPS submits that there is no identifiable public interest in disclosure of HN344's real name 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 HN344 by the 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 Public Inquiry.
10. In all the circumstances, the MPS makes this application for a Restriction Order over HN344's real name on the bases of fairness; 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

31 October 2017

