

UNDERCOVER POLICING INQUIRY

Chairman's Second Statement on Data Protection and Privacy Disclosure to Non-Police, Non-State Core Participants and Civilian Witnesses

1. The time has now arrived at which the Inquiry should set out the approach which it intends to adopt to the disclosure of documents and witness statements made by former undercover officers to non-police, non-state core participants and civilian witnesses for the purpose of taking statements from them.
2. Two hearings were held on 31 January 2019 and 25 March 2019 to permit oral submissions to be made by all those with an interest in the question of the application of the law regarding privacy and data protection. Written submissions were provided in advance. As indicated at the conclusion of those hearings, and my [statement of 11 April 2019](#)¹, the Inquiry has engaged in discussion about practical arrangements which might be put in place, having regard to the rights of those whose personal data appears within the documentation which the Inquiry must disclose to witnesses in order to gather evidence to meet the Terms of Reference. The exchange between the Inquiry and the non-police, non-state core participants is annexed to this statement.
3. I had hoped that it would be possible to conduct a trial with nine non-police, non-state core participants, three non-police, non-state core participant groups and two Recognised Legal Representatives, based on the documents created by undercover officers during their deployment, in which Mrs Reel and the 'Justice for Ricky Reel' Campaign were named, preparatory to disclosing them to her. Despite the best efforts of the coordinating Recognised Legal Representative, Lydia Dagostino, this has not succeeded: it has not been possible to agree the basis upon which the documents could be shown to those named in them within a confidentiality circle. A complex proposal has been made by the coordinated group for the conduct of the trial alone, the certain effect of which would be to postpone the time at which documents can be disclosed. The proposal is set out in the documents annexed (Items 6-8). The trial will not be pursued.
4. As already noted, the Inquiry invited non-police, non-state core participants represented by Recognised Legal Representatives to submit their views on the

¹ https://www.ucpi.org.uk/wp-content/uploads/2019/04/20190411-Chairmans_Statement_on_Data_Protection_and_Privacy.pdf

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process which the Inquiry should follow. Within the correspondence, a helpful statement was made, which expressed a unanimous view, which I quote verbatim from the email of Lydia Dagostino sent on 9 July 2019:

“All RLRs/NPSCPs wish to ensure that the Inquiry does not follow the pathway of reduced disclosure and/or increased redactions in the documents to be disclosed.”

5. The process which the Inquiry will adopt will give effect to this view.
6. The Inquiry will provide to a person from whom it seeks evidence a pack of documents. This will usually include a set of intelligence reports and at least extracts, if not all, of witness statement/s by undercover officer/s. The documents which will be disclosed to that person will be those which are relevant and necessary for him/her to see to enable them to provide evidence to the Inquiry. They will include any document in which that person is named in the text of the document or is otherwise identified in the document. The documents will be unredacted, except where the public interest or a rule of law requires that they should be. Redactions will not routinely be made because they refer to personal data, including special category personal data. Lists of names and file references commonly found at the end of intelligence reports will be redacted.
7. Some documents will contain particularly sensitive personal data about one person that calls for particular scrutiny before disclosure to another, even for the purposes of producing a witness statement, for example, details of intimate personal relationships with named individuals. In that event, the Inquiry will either:
 - a. make its own assessment of the balance to be struck between the need to disclose the information and the data protection and privacy rights of the subject of the data, irrespective of whether the person is readily contactable, or
 - b. where such an individual is readily contactable, attempt to contact them before disclosing the information to others, in order to afford them the chance to object to such disclosure.

In the latter case, there may be situations in which the Inquiry has to decide whether it is necessary to disclose information notwithstanding objection – for

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example, because the proposed recipient needs to know it to provide informed evidence to the Inquiry. It is anticipated that the net result will be that almost all personal data, including special category personal data, will not normally be restricted from disclosure to a witness from whom evidence is sought.

8. I do not intend, in this statement, to itemise such data by category. The first batch of documents for disclosure will be provided to Mrs Reel, her daughter and their RLR and have been prepared by senior counsel as per Counsel to the Inquiry's Note dated 2 May 2019 and accompanying annex. Further early cases will also be undertaken by senior counsel and will inform the development of guidance.
9. Once consideration of redaction of particularly sensitive material has concluded, the pack will be issued to the witness. The data protection rights of those about whom information appears in the pack, other than the person from whom evidence is sought, will be protected by the making of a restriction order under section 19 of the Inquiries Act 2005, prohibiting the disclosure of any part of any such document to any other person except his/her Recognised Legal Representative (see Annex for the template restriction order – Item 3). Both the individual and their Recognised Legal Representative will be required to agree in advance to this process, and to acknowledge receipt of the restriction order in writing. They will, therefore, be bound by its terms. No document will be disclosed to any witness or legal representative who does not do so.
10. The practical consequence is that only those who will accept the process described (i.e. the receipt of material subject to a restriction order) will receive any significant disclosure. It will also mean, in the first instance, that a person who does receive disclosure under a restriction order will not be able to talk to others affected by the same deployment/s about the content of the documents disclosed to them. Those affected by a deployment may wish to exchange views with others named in the same documents about their content. For this to occur, a high measure of cooperation between those affected and the Inquiry will be required. The Inquiry will do its best to facilitate such cooperation by taking the steps set out below, but is bound to do so within the confines of restriction orders to protect public and private interests and its own need to obtain the best evidence from those able to provide it.

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11. If, on receipt of a witness pack from the Inquiry, the recipient considers that the contents of one or more documents should be shown to others, then the recipient can identify to the Inquiry the names of those who should also be contacted. They can also submit a written request to the Inquiry to vary the restriction order, to allow them to discuss the contents with one or more named individuals. The Inquiry will consider the request and if agreed it will issue a further restriction order naming those individuals to whom the documents may be shown. As in the case of the initial recipient, they must acknowledge receipt of the restriction order in writing. In this manner, self-identifying confidentiality circles could be formed. There may be circumstances in which the Inquiry would postpone disclosure to others until the initial recipient has provided a witness statement to the Inquiry.
12. Prior to publication of this statement a draft was shown to the Recognised Legal Representatives of the non-police, non-state core participants in advance of a meeting with them on 31 July 2019. This prompted a detailed written submission on 19 August 2019 (Items 9-10 of the Annex). I do not intend to respond to submissions made previously, save to observe that this statement is made in the light of experience gained by the Inquiry since publication of my predecessor's statement on 30 May 2017.
13. At paragraph 49 of their submissions, alternative proposals were made on behalf of "some" NPNSCPs:
 - “(a) Provide each data subject with their data. Redact from the published document only the data that subjects require redaction of or data made subject of ROs. ...
 - (b) The use of cyphers and gisting.”
14. The problem with the first proposal is that it will inevitably require the personal data of others (B, C, D...) to be disclosed to the data subject (A) before A can express a view about disclosure of A's data to others, so each of B, C and D will have to be shown their data first; but that will require the data of A, of B and of C to be shown to D, before D can consent and so on. The circle is unbreakable. Any suggestion of prior redaction of the documents beforehand is impracticable. I have so far read or considered over 60,000 pages of intelligence reports produced by, or on the basis of intelligence produced by, undercover officers

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between 1968 and the mid-1990s. Well over half contain references to more than one person – frequently to many. Multiple redactions and the production of several versions of the same document would be required before they could be shown to data subjects. Even though only a proportion of the material that I have read will need to be sent to civilian witnesses, the Inquiry still lacks the human, physical and financial resources to do this. Nor does it have the time.

15. The problem with the second proposal is that the use of a cypher, with otherwise unredacted text, or with a meaningful gist would inevitably identify the cyphered person to the person to whom disclosure was made. Only a gist so devoid of content as to make it uninformative would be likely to conceal identity.
16. Paragraphs 58-60 of the non-police, non-state core participants' submissions contain a helpful suggestion about notification to members of groups which are core participants prior to seeking evidence from a representative of the group. It will be explored in discussions with the RLRs.
17. The Inquiry will always gratefully receive information about potential witnesses from non-police, non-state core participants and witnesses to whom documents are disclosed.
18. The content of this statement takes precedence over the Restrictions Protocol previously published by the Inquiry.
19. The Inquiry will continue to review its processes as it goes along, as it has to date.

21 August 2019

Sir John Mitting
Chairman, Undercover Policing Inquiry