Data Protection and Privacy

Counsel to the Inquiry's note regarding disclosure to Non-Police, Non-State Core Participants and Civilian Witnesses

1. The Chairman's Second Statement on Data Protection and Privacy[1], dated 21 August 2019, ("the Second Statement") sets out the approach which the Inquiry intends to adopt to the disclosure of documents and witness statements made by former undercover police officers to non-police, non-state core participants and civilian witnesses for the purpose of taking statements from them.

2. As explained in paragraph 6 of the Second Statement, the Inquiry will provide to a person from whom it seeks evidence a pack of documents, which 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 him/her 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.

3. As made clear in paragraph 6 of the Second Statement, 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 data. In some instances, as explained in paragraph 7 of the Second Statement, the Inquiry recognises that the particularly sensitive nature of the personal data contained in these documents will require particular scrutiny before disclosure to another. However, 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.

4. 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. 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

[1] https://www.ucpi.org.uk/wp-content/uploads/2019/08/20190821-chairmans_second_statement_on_data_protection_and_privacy_san.pdf

by its terms. No document will be disclosed to any witness or legal representative who does not do so: see paragraph 9 of the Second Statement.

5. The above remains the position. The purpose of this note is to provide an update in relation to the final sentence of paragraph 6 of the Second Statement, which states, "*Lists of names and file references commonly found at the end of intelligence reports will be redacted*." The Inquiry does not now consider it necessary to redact such lists of names and file references as a matter of routine before providing intelligence reports to a witness from whom evidence is sought, for the following reasons. First, the lists of names commonly refer to individuals present at a meeting attended by the person from whom evidence is sought. Reminding them of the names of those also present may help to jog their memory of the event. Secondly, the Inquiry has established that the public interest does not require all Special Branch file references to be redacted. Thirdly, for the reasons set out above, the privacy and data protection rights of those persons named do not require all such lists of names to be redacted. Fourthly, the Inquiry's experience to date shows that there is no saving in time or effort in redacting the lists of names and Special Branch file references. Fifthly, where the public interest or a rule of law requires that some or all of any such list of names and file references be redacted, those redactions can be applied as necessary on a bespoke basis.

6. In the circumstances, therefore, it is no longer accurate to state that, "*Lists of names and file references commonly found at the end of intelligence reports will be redacted*." The Inquiry will adopt the same approach to such lists as it adopts to the remainder of such documents, namely to limit redactions to those required by the public interest or a rule of law.

7. This adjusted approach to lists of names and file references will likely result in witnesses from whom evidence is being sought receiving intelligence reports which are less redacted than they would otherwise have been.

8. Paragraph 19 of the Second Statement makes clear that the Inquiry will continue to review its processes as it goes along, as it has to date. This update is issued as a result of that ongoing review and in light of the Inquiry's work since the publication of the Second Statement.

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