
SECOND NOTE BY COUNSEL TO THE INQUIRY REGARDING APPLICATIONS FOR RESTRICTED REPORTING OF INQUIRY HEARINGS

For Hearing on 12 April 2024

Introduction

1. On 13 March 2024 a note ('CTI Note 1') was circulated setting out the background to, and issues to be considered at a hearing listed on 12 April 2024 concerning applications to the Chairman to impose restrictions on the publication (by the Inquiry, the media, and/or any other party) of private information about individuals which will appear in the hearing bundle for 'Tranche 2' of the Inquiry, and any other consequential restrictions necessary to give effect to any such order (for example, restrictions on attendance at parts of the 'Tranche 2' evidential hearings).
2. Written submissions have since been received on behalf of the BBC, and the Metropolitan Police Service Commissioner's Legal Team ('the MPS'). Updates have also been received on behalf of some of the applicants referred to in CTI Note 1. This note sets out issues which CTI consider may arise further to the written submissions received and sets out the updated position of some applicants.

Updates to applications

3. The three applications from anonymous core participants referred to at §§30-33 of CTI Note 1 have been withdrawn. A further applicant was granted anonymity subsequent to the circulation of CTI Note 1 and withdrew their application for a RRO which was made in the alternative.

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4. Five of the nine applications referred to in CTI Note 1 therefore remain to be resolved at or following the hearing on 12 April. There is one additional applicant, making a total of six individuals currently seeking a RRO.
5. The nature of the information the subject of the applications remains unchanged from that set out at §35 of CTI Note 1, with one exception: on 11 April 2024, a further application was received from one of the pre-existing applicants, seeking a RRO over their identity in connection with an allegation that they make about misconduct towards them by an undercover officer. The effect of the order sought would be that the identity of the person making the allegation against the undercover officer could not be reported or otherwise published, but the fact and nature of the allegation could.
6. The sixth applicant has a Restriction Order in place which means that they will be known by a cypher. The Inquiry responded to their applications for redactions to documents in the hearing bundle after the circulation of CTI Note 1. Those applications also sought RROs alongside redactions. The Inquiry anticipates that to the extent that redactions have not been agreed to, applications for RROs will be made in the alternative by this applicant. CTI consider that there are particular reasons why relevant information capable of identifying this individual, notwithstanding the cypher, will need to appear in the hearing bundle, and that the applications for restricted reporting will therefore need to be considered by the Chair.
7. One of the pre-existing applicants has also confirmed that they are seeking a RRO over information which the Inquiry has declined to redact in the period since CTI Note 1 was circulated.
8. No further applicants for a RRO have come forward since 13 March.

Issues arising from written submissions

9. The written submissions on behalf of the BBC propose that access to the hearing bundle should be given to accredited journalists on the first day of the tranche 2 evidential hearings, to facilitate understanding and accurate reporting, not to be published “unless it is referred to in an open hearing”.
10. Access to the bundles for Tranche 1 Phase 2, and Tranche 1 Phase 3, was provided to accredited journalists upon their request at the same time as core participants. However, none of the evidence in those bundles was subject to a RRO, as will be the case should any of the applications under consideration be granted. We consider that amendment to the terms of the restriction order accompanying disclosure of the hearing bundle to accredited journalists, to ensure that RROs are respected, should be capable of addressing this aspect. However, the RRO applicants may wish to address the Chair on this proposal at the hearing, since it would mean – were RROs to be granted – information subject to a RRO being released to accredited journalists.
11. We do not agree with the BBC that the proposed RROs would “effectively amount to granting anonymity orders through the back door”. Restrictions applied to limited categories of information about an individual may be a necessary and proportionate way of safeguarding the individual’s privacy rights in circumstances where full anonymity is not necessary or proportionate in the context of this inquiry. Indeed, a number of these applicants have never sought anonymity. The balancing exercise to be entered into at this stage engages many of the same considerations as an application for anonymity but does not necessarily lead to the same result.
12. The MPS is correct to assume that the intention is that any final report and conclusions drawn by the Chairman will take account of material subject to a RRO where necessary, albeit reference to such material will need to be worded in such

a way as to uphold the RRO. We accept that core participants should not be fettered in what they include in their submissions by a RRO, and that as a result written submissions made by core participants may need to be redacted or otherwise restricted prior to publication. A question would then arise as to how core participant oral submissions should be delivered; either fully in OPEN with core participants taking care not to refer to any information the subject of a RRO, or with parts of core participant openings having to be heard in private. .

13. We consider that how a RRO would operate in practice and what its precise effect would be is likely to depend on the nature and scope of the application made and granted, and the circumstances of the individual applicant. This is an issue which CTI envisages is likely to be the subject of submissions during the private portion of the hearing on 12 April. However a RRO operates, it is the case that publication on the Inquiry's website of documents and witness accounts touching upon the restricted information would be delayed for additional redaction to take place after the hearings.
14. We agree that the MPS is directly affected by all of the evidence that will be heard in tranche 2 and should therefore be afforded the opportunity to make representations in the event that an application seeks to exclude their attendance (§18 of the MPS submissions). Any other directly affected core participant will be afforded the same opportunity.

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11 April 2024