IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON RESTRICTION ORDERS
METROPOLITAN POLICE SERVICE
DATED 12 February 2016

I. Introduction

I.1. These are the submissions of the Metropolitan Police Service (MPS) on the applicable legal principles for the making of restriction orders under section 19 of the Inquiries Act 2005.

I.2. For the reasons that follow:

(i) The MPS agrees with counsel to the Inquiry's submissions that in general the question of what to disclose requires a balancing exercise involving considerations of fairness and the public interest.

(ii) However, it is likely that in the overwhelming majority of instances the MPS will be submitting that considerations of fairness and the public interest come down in favour of not disclosing the fact of or details of an undercover police deployment including, but not limited to, the identity of undercover police officer.

(iii) In considering the public interest balance, the public interest in consistently maintaining the stance of Neither Confirm Nor Deny is very high indeed.

(iv) In practice the MPS will be applying for much of the detail of past or current deployments to be considered in the absence of the other Core Participants and of the general public. The MPS wishes to be clear about this at the outset. Where reference is made below to "the public" that should be taken as including the other Core Participants.

I.3. There are two principal reasons for this stance:

(i) So far as individuals are concerned, undercover police officers and their families are likely to face real harm if anything is disclosed that tends to identify them, and will suffer the unfairness of losing a lifelong expectation that their roles would not be made public; and, separately from this

(ii) There is a real risk of damage to the public interest if public disclosures are made, and regard must be had to the bigger picture.

I.4. Part II of these submissions considers whether there is a requirement of openness at public inquiries; Part III sets out the duties of public bodies under statute and common law with regard to Covert Human Intelligence Sources (CHIS) of which undercover police officers (UCOs) are a type; Part IV considers the effect of the Inquiry (as opposed to any other person or body) identifying a UCO; Part V considers the making Restriction Orders under s19 of the 2005 Act; Part VI sets out the types of Restriction Orders that the MPS will be inviting the Chairman to consider; Part VII discusses the Neither Confirm nor Deny policy; Part VIII sets out the conclusions that the MPS invites the Chairman to reach.

I.5. At outset the MPS makes the following general observations:

(i) Individuals who were or who believe themselves to have been affected are likely to have a strong desire to know the full truth. In some cases, depending on the circumstances, that desire may be of real and legitimate weight;

(ii) However, the circumstances of those deployments, the justification for them, the pressures on individual officers and their wellbeing, and the identification of fault, are all for the Inquiry to consider. It would be premature to pass judgment on individuals or particular deployments as part of determining a restriction order application: in this context, s 19(4) Inquiries Act 2005 is likely to be significant.

(iii) The MPS will be applying for restriction orders because it considers that it has a duty to do so in this Inquiry. There is powerful support for the MPS taking this stance. In *R (WV) v Crown Prosecution Service* [2011] EWHC 2480 Thomas LJ, as he then was, noted that the importance of informants to the prevention of crime has been a feature of our law for centuries and observed that, "…*Where assurances are given to registered informants, to others or to the public in general (as is the case of a hotline) that their identity will be protected, those assurances should not be broken by the state without a judicial decision where the interests of the informant, the Crown, the defendant to a trial and the public interest can be carefully and impartially considered*": §29(iv). It followed that any decision that the undertaking of confidence should be broken should be that of a judge: §29(v).

II. Inquiries under the Inquiries Act 2005 and openness

II.1. The question arises, if there are significant closed parts of a public inquiry, is it a public inquiry at all? The MPS submits that the answer is yes.

II.2. Whilst it is right to draw attention to the "public concern" factor that may lead to the institution of an inquiry (s1) and to the starting point that members of the public should be able to have access to the hearings and documents (s18(1)), there is no rule that inquiries under the Inquiries Act 2005 must have a particular quotient of openness in order to deserve the name. A inquiry is no less an inquiry if parts of it are closed to the public. The overriding requirement of fairness under s17, and the public interest balance that may be struck under s19, may lead to an inquiry where even large parts of the evidence considered by the inquiry Chairman are not disseminated.

II.3. Neither the common law nor the provisions of the Inquiries Act 2005 provide an untrammelled principle of open justice. Section 18(1) is expressly "*subject to any restrictions imposed by a notice or order under section 19*". Parliament has recognised that public access to an inquiry may need to be restricted. A restriction order may be made in respect of any part of the

Inquiry's work and in principle, were it necessary, an inquiry under the 2005 Act need not be in public at all.

II.4. The 2005 Act was enacted to give effect to the Government consultation paper, dated 6 May 2004 and entitled "Effective Inquiries" (see Explanatory Notes to 2005 Act). At p45 of the consultation paper the Government agreed with the majority of consultees that there may be occasions where it is necessary for inquiries to conducted wholly or partially in private. Para 38 of the Explanatory Notes stated that "*There may be circumstances in which part or all of an inquiry must be held in private*…". Section 19(1) reflects this, providing for restrictions to be imposed on "*attendance at any inquiry, or at any particular part of an inquiry*" and on "*disclosure or publication of any evidence or documents*".

II.5. The need for much of the evidence to be kept confidential flows from the inevitable sensitivity of an inquiry into undercover policing. In *Kennedy v Information Commissioner* [2015] A.C. 455 Lord Toulson (with whom Lord Neuberger and Lord Clarke agreed) stated at §125,

> "*…The application of the open justice principle may vary considerably according to the nature and subject matter of the inquiry.*"

II.6. The facility for the Chairman to hear and consider material in closed session is a positive feature of the inquiry system. In the 2005 Act Parliament struck a different balance from that applicable in ordinary criminal or civil litigation, where all relevant material must be disclosed to the parties, but material not disclosed may not be relied upon. The safeguard for the public is that the MPS has agreed to provide *everything* relevant to the Chairman so that he can pursue the terms of reference "*as widely and deeply as he considers necessary*". This "*is of the utmost importance*" (*R (Associated Newspapers Ltd) v Leveson* [2012] EWHC 57 Admin at §56). That is a way of addressing public concerns. The balance is "*full production and restricted disclosure*" to be contrasted with "*partial production, and unrestricted disclosure of that*

partial production" as in ordinary civil or criminal proceedings (*RB (Algeria) v Secretary of State for the Home Department* [2010] 2 A.C. 110 at §231).

II.7. The Inquiry is different from ordinary civil or criminal litigation, where ultimately the public interest may be safeguarded by one party withdrawing the prosecution or submitting to judgment. By contrast, the Inquiry's investigations will continue until it has fulfilled its terms of reference. The critical feature is that it is thorough. As Toulson LJ observed in the *Leveson* case *supra, at §53,*

> *"…Above all, it is of the greatest importance that the Inquiry should be, and seen by the public to be, as thorough and balanced as is practically possible. If the Chairman is prohibited from admitting the evidence of journalists wanting to give evidence anonymously, there will be a gap in the Inquiry's work…"*

II.8. Owing to its ability to receive evidence and documents, whatever their sensitivity, without necessarily having to make these public, an inquiry under the 2005 Act is best placed to enquire into the matters covered by the present Terms of Reference. On any view, in order to be thorough an inquiry into matters of undercover policing will involve considering matters of extreme sensitivity where there is a real risk of damage to individuals and to the public interest. This will require the receipt of some closed evidence.

II.9. It is therefore useful to consider what might be meant by the phrase used by counsel to the Inquiry in their submissions at para 19, namely a "*…public interest in an open and thorough inquiry which will address the public concerns which have led to the Inquiry being set up*". The phrase raises the question of whether there is a public interest balance inherent in the 2005 Act itself that requires a greater degree of openness in inquiry hearings than, for example, in ordinary civil or criminal proceedings. The phrase used could mean two things:

(i) That the *process* of the Inquiry should be carried out openly so far as possible – that is, the Inquiry should hear evidence openly as well as

thoroughly - and that this open *process* is the means by which Parliament considered that those public concerns would be addressed under the Act; alternatively

(ii) That the *outcome* of the Inquiry should be expressed openly so far as possible – but the public interest in open consideration of the evidence is less than the public interest in the consideration being thorough. The MPS submit that this is the proper analysis of the balance struck by the 2005 Act. It is supported by the legislative background, already considered above, and by authority.

II.10. The function of the Inquiry is ultimately to report to the Home Secretary on the utility and practice of undercover policing generally.

(i) It is therefore vital that the utility and practice is not damaged by public revelation during the Inquiry. It is the function of the Inquiry to consider and report on the evidence, and not, in carrying out its work, to render undercover operations as they are currently carried out, unviable. That would pre-empt the ability of the Secretary of State to accept or reject such recommendations as are made.

(ii) The second module includes considering the "care of undercover police officers". This is likely to involve considering the welfare of current and former undercover officers, and the impact upon them of their deployments. Public revelation during the first module of the true identity of a current or former UCO is likely to impede investigation of the second module.

II.11. The Inquiry's inquisitorial role is relevant. The role of the Inquiry is not to resolve issues between "parties" but to inquire, neutrally, and report. The Bloody Sunday Inquiry made a relevant observation on the relationship between its inquisitorial function and disclosure:

> "*Our task is to do justice by ascertaining, through an inquisitorial process, the truth about what happened on Bloody Sunday. The proper fulfilment of that task does not necessarily require that the identity of everyone who gives evidence to the inquiry should be disclosed in*

public. The tribunal will know the identity of all witnesses and unlike a court, will itself take responsibility for investigating their credibility if there is reason to think that such an investigation is necessary. Indeed we think that there are likely to be circumstances in which granting anonymity will positively help us in our search for the truth. Witnesses are unlikely to come forward and assist the tribunal if they believe that by doing so they will put at risk their own safety or that of their families."

Ruling (24th July 1998) at p61, vol X Report. (NB counsel to the Inquiry's submissions omit an important 'not' in the citation at para 89).

II.12. It is therefore submitted that even an Inquiry which hears a great deal, perhaps most, of material emanating from the MPS in closed session will be able to fulfill its important public function. Before the Litvinenko Inquiry was established, there was an issue as to whether the Secretary of State's earlier refusal to establish one was reasonable. One of the reasons given by the Secretary of State was that a statutory inquiry would serve no more useful function than an inquest because of limits as to what it could ever reveal. The Divisional Court rejected this argument (*R (on the application of Litvinenko) v Secretary of State for the Home Department* [2014] H.R.L.R. 6). At §67 Richards LJ (with whom Treacy LJ and Mitting J agreed) stated:

"*…Of course, a statutory inquiry would have to consider the HMG material in closed session and would be precluded from disclosing it; but the chairman of the inquiry would almost certainly be able to state publicly some useful conclusion based on the material without disclosing the material itself. It is extremely difficult to envisage a situation in which no conclusion could be stated publicly without infringing the restriction notice. All this applies even more forcefully in relation to an inquiry of the kind sought by the Coroner, which would look at all the open evidence as well as the closed material, not only increasing the chances that some useful finding could be made but also*

making it that much easier to express conclusions without revealing the closed material."

II.13. Notably the Divisional Court did not suggest that even extremely stringent restrictions on what an inquiry could go into in public would rob it of its character as an inquiry under the Inquiries Act 2005.

II.14. Having said all that, it is worth emphasizing evidence that will be heard in public.

(i) The evidence of non-police CPs and members of the public will almost certainly be in public;

(ii) With sufficient care, there is no obvious reason why evidence from UCOs cannot be heard in public on particular themes – for example, the Inquiry could choose to question an UCO about his or her general understanding of the appropriateness of sexual relationships. Creative and imaginative solutions will no doubt be found in many instances.

(iii) Public evidence is likely to be given at a high level – i.e. from a more senior officer summarizing a range of deployments, and being able to answer on particular themes, without particular identifying details having to be disclosed.

(iv) The Chairman will be able to state many if not most of his conclusions in public.

II.15. In summary, the purpose of the Inquiry is to provide an effective and comprehensive report to the Secretary of State. If to do so requires hearing evidence in private, then so be it. The Inquiries Act 2005 provides the machinery for open and closed hearings in order to facilitate the best exploration of material for an effective conclusion to be reached.

III. The duties of public bodies with regard to Covert Human Intelligence Sources

III.1. UCOs are Covert Human Intelligence Sources (CHIS) and are authorised under Part II Regulation of Investigatory Powers Act 2000 (RIPA).

When considering issues of disclosure it is necessary to have regard not simply to the Inquiries Act 2005, but to the statutory regime created by RIPA, and to the general common law position, which govern the unique sensitivities of CHIS. Even though the decision on disclosure is ultimately for the Chairman having regard to the requirements of the 2005 Act, RIPA and the common law are a vital part of the context within which decisions will fall to be made.

III.2. Section 29 RIPA contains detailed provisions on the authorisation and welfare of CHISs. By ss(2) and (5) an authorisation may only be given if there are arrangements in force for ensuring "…*that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons*." Parliament has therefore provided for the protection of CHIS identities by the relevant investigating authorities (i.e. the police).

III.3. In addition, the CHIS Code of Practice made under s71 RIPA contains detailed guidance on the handling of material. The Code provides at paragraph 7.6 that "…*The records kept by public authorities should be maintained in such a way as to preserve the confidentiality, or prevent disclosure of the identity of the CHIS, and the information provided by that CHIS*." The Code is issued by the Secretary of State and brought into effect on an order being made under the affirmative resolution procedure in each House (s71(9)).

III.4. Consistent with this sensitivity, RIPA further requires that any "complaint" (as defined) or action under Human Rights Act 1998 about the conduct of CHIS or their authorisation should be determined by the Investigatory Powers Tribunal, which has power to hear evidence in open and in closed and which has a duty to safeguard the public interest: s65; s69(6)(b).

III.5. It is submitted that this represents powerful democratic support (democratic, because expressed through legislation) for the general principle that the identities of CHIS should not be revealed.

III.6. The common law is consistent with this position. In *R v H* [2004] 2 AC 134 at §18 Lord Bingham drew attention to, and succinctly summarised, the compromise to the public interest that may occur:

> "…*Circumstances may arise in which material held by the prosecution and tending to undermine the prosecution or assist the defence cannot be disclosed to the defence, fully or even at all, without the risk of serious prejudice to an important public interest. The public interest most regularly engaged is that in the effective investigation and prosecution of serious crime, which may involve resort to informers and undercover agents, or the use of scientific or operational techniques (such as surveillance) which cannot be disclosed without exposing individuals to the risk of personal injury or jeopardising the success of future operations*." [emphasis added].

III.7. The authorities were summarized by Bean J. in *DIL and Others v Commissioner of Police of the Metropolis* [2014] EWHC 2184 who noted at §25 that "…*the common law has long recognised a rule of policy whereby the identities of informers must not be revealed*". In addition to these and to the authorities cited in counsel to the Inquiry's submissions, the MPS draws attention to *R v Mayers* [2009] 1 Cr.App.R.30 in which the Court of Appeal Criminal Division, presided over by Lord Judge CJ, stated at §§30-33 (in observations which are worth stating at length),

> "*A specific problem arises in relation to police witnesses, particularly those working undercover. They are usually specially trained officers, whose usefulness would dissipate and whose safety would be in danger if the truth about their activities became known".*
>
> *"…The need to protect many of these individuals against the exposure of their personal identities is obvious. At the most dangerous level, undercover officers who have penetrated criminal associations can face death or very serious injuries. They operate under assumed names*

and identities. It is not fanciful to expect that extreme measures might be taken to discover their identity, not merely for revenge purposes, but to prevent their future use as witnesses, and to compromise or damage sensitive covert techniques or to discourage them or others from continuing with their activities (all of which serve a valuable public interest). For their true identities to be revealed, or for them to be re-exposed to a defendant, or his colleagues, or indeed to anyone else in court would often create a real risk to their own safety, and that of their colleagues. In any event, their potential for future use in similar operations would be reduced, if not extinguished, itself harmful to the public interest.

"…Covert operations of this type are likely to be undertaken only as a last resort against those suspected of organised and prolific serious crime, who have been sufficiently careful to render themselves impervious to more traditional forms of police work. The work itself is extremely dangerous and requires considerable public investment by way of training. At best, it will not appeal to many, and it would certainly not appeal to the limited number of potential recruits for this kind of work if it were thought that there was any risk that their true identities might be revealed."

III.8. This authority stands alongside the judgment of Judge LJ, as he then was, in *Savage v Chief Constable of Hampshire* [1997] 1 W.L.R. 1061 (Potter and Leggatt LJJ agreeing). That case concerned the question of whether there was any public interest in refusing disclosure where the claimant in a civil damages claim was a self-disclosed informant. The case is authority for the proposition (at 1067) that "…*if a police informer wishes personally to sacrifice his own anonymity, he is not precluded from doing so by the automatic application of the principle of public interest immunity at the behest of the relevant police authority*." However, Judge LJ continued at 1067 as follows:

> "*…That, of course, is not an end of the matter. It is possible that, notwithstanding the wishes of the informer, there remains a significant public interest, extraneous to him and his safety and not already in the public domain, which would be damaged if he were allowed to disclose his role. However, I am unable to understand why the court should infer, for example, that disclosure might assist others involved in criminal activities, or reveal police methods of investigation or hamper their operations, or indicate the state of their inquiries into any particular crime, or even that the police are in possession of information which suggests extreme and urgent danger to the informer if he were to proceed. Considerations such as these might, in an appropriate case, ultimately tip the balance in favour of preserving the informer's anonymity against his wishes in the public interest. There is no evidence that any such consideration applies to the present case.*"

III.9. Two points can fairly be made about this. Firstly, as Judge LJ identified, the claim for non-disclosure in that case foundered on lack of evidence. Secondly, by referring to these potential interests Judge LJ was clearly desirous of avoiding any suggestion that self-disclosure was decisive. Subsequent authority has borne this out: see the decision in *DIL* itself, at §39(3), and since then the decision of the Divisional Court in *Al Fawwaz v Secretary of State for the Home Department* [2015] EWHC 166 (Admin) at §75.

III.10. Having regard to all these matters, and to the dicta of Thomas LJ in *WV*, cited above, it is apparent why, as much as the starting point for the reception of evidence under the 2005 Act is openness, the legislative and common law starting point for information concerning CHIS is confidentiality as against the public.

III.11. Finally on this topic, counsel to the Inquiry cites passages from the judgment of Auld LJ in *Chief Constable of Greater Manchester Police v McNally* [2002] 2 Cr.App.R. 37, and highlights words from §21 of that judgment. These refer to "*…a wider jurisprudential move away from near*

absolute protection of various categories of public interest in non-disclosure" in the light of the trio of cases *Savage, supra, Powell v. Chief Constable of North Wales Constabulary*, CA, The Times, 11 February 2000 and *Whitmarsh v. The Chief Constable of Avon and Somerset Constabulary,* CA, (unreported) 31st March 2000.

III.12. The significance of the cited words should not be misunderstood. Auld LJ was not saying that there was a move away from recognising the importance of safeguarding the public interest with respect to informers; rather, as the passages at §§16-19 demonstrate, Auld LJ was referring to a move away from automatic protection save in limited categories, to the need to undertake a balancing exercise in all cases. But Auld LJ did not doubt the public interest at stake. As Bean J. recognised in *DIL*, at §39(1),

> "…*There is a very strong public interest in protecting the anonymity of informers, and similarly of undercover officers (UCOs), and thus of permitting them and their superiors neither to confirm nor deny their status; but it is for the court to balance the public interest in the NCND policy against any other competing public interests which may be applicable (McNally; Mohamed and CF v SSHD).*" [emphasis added]

IV. Effect of the Inquiry (as opposed to others) identifying a UCO

IV.1. Undercover police officers, and CHIS generally, are in a different position from 'ordinary' individuals who have lived their lives openly but at the time of judicial proceedings wish their identity to be anonymised. UCOs belong to a small category of individuals for whom confidentiality is a defining feature from the start of their careers; it is not for them that the need for confidentiality only arises at the time of a hearing. Under RIPA the identities of CHISs are always confidential.

IV.2. Separately from the statutory position, counsel to the Inquiry have rightly drawn attention to the need for evidence of any assurances that have been give as to confidentiality (Counsel to the Inquiry's submissions at para

88) and the MPS will supply this in relation to individual officers. But the general position is that they and their families were promised lifelong confidentiality. It is therefore entirely accurate to characterize the decision of the Inquiry as not whether to grant protection, but whether to take it away.

IV.3. This consideration applies even in respect of individuals about whom there are already detailed allegations in the public domain. It is now well-established that official confirmation is materially and significantly different from any other form of disclosure (for example by media, or by self-disclosure) and has significant impact in law. This is the ratio of the *DIL* case – it was *only* those individuals who had been officially confirmed about whom Bean J. ordered disclosure (see §§45-6).

IV.4. Significantly, this is how the Court of Appeal approached the matter in *McGartland v Attorney General* [2015] EWCA Civ 686; at §43 Richards LJ (with whom Lewison and McCombe LJJ agreed) referred repeatedly to the question of whether the individual confirmed was or was not the subject of official confirmation. Whilst it might be argued that the Court of Appeal was merely pointing out that the claimant had not made good on the facts the test the claimant had himself proposed (see §39), it should not be thought that the Court of Appeal was uncritically considering the matter.

IV.5. Official confirmation by the Inquiry would be different in kind from any previous disclosures. It would entirely remove any protection, and in reality any ability of the MPS to protect individuals other than by the most dramatic measures. It would certainly remove the ability of the MPS to use the NCND response which, as set out later in these submissions, is an effective stance with real practical value.

IV.6. As to whether there has been a significant factual development since *DIL* was decided by reason of the MPS's public apology (counsel to Inquiry submissions at para 106) this may need to be determined. This is particularly so if it is suggested that the public apology – which quite obviously contained no confirmation as to any individual officer – amounts to official confirmation

as envisaged in *DIL* and *McGartland*. The MPS disputes that the public apology amounts to a significant factual development that is relevant to restriction orders.

IV.7. The same principle extends to official confirmation of any sensitive police tactic. There is a difference in kind between speculation about tactics, however apparently well-informed, and official confirmation of their use.

V. Restriction Orders under the Inquiries Act 2005

V.1. As set out above, a restriction order under s19 may be imposed on any part of the Inquiry and on any evidence or document. However, before turning to subsection (3) which governs the circumstances in which a restriction order may be made, it is worth drawing attention to s19(4) which provides that the Chairman may vary or revoke a restriction order by making a further order during the course of the Inquiry.

V.2. The MPS anticipates that submissions may be made to the effect that individual undercover officers or the MPS generally have forfeited the right to have protection from disclosure as a matter of fairness in light of their alleged conduct. In response, the MPS observes that it would be wrong for the Inquiry to be invited to reach prior judgments about conduct. Having considered the evidence in more detail it may appear that a course of action (for example a decision to authorise a deployment) was justified having regard to the information available to the police; or that an individual decision taken by an officer was less inexcusable than first appeared.

V.3. In any event, it is unlikely that the conduct of an individual officer is ever going to be the sole consideration. Even if an officer could be said to have brought the harm caused by revelation on him or herself, (i) potential damage to his or her family and other members of the public, who must be considered innocent of the conduct that is said to deserve revelation, is highly relevant and must be considered as a matter of fairness (ii) the wider public interest may also be jeopardised, that is the ability to deploy undercover

officers in future cases. Counsel to the Inquiry rightly draw attention to 'illegitimate' operational methods not requiring or meriting protection (with reference to *DIL* at §112) but in practice this is limited: it can only apply to methods that, if they were ever used as tactics in the past, are not used as tactics and never will be used again.

V.4. Counsel to the Inquiry have set out the statutory provisions in their submissions. They were described by Lord Mance (with whom Lord Neuberger and Lord Clarke agreed) in *Kennedy v Information Commissioner* [2015] A.C. 455, at §32, as follows:

> "*…Section 19(1)(3) of the 2005 Act contain the Act's own regime enabling restrictions to be imposed by the relevant minister or the chairman of the inquiry on disclosure or publication of evidence or documents given, produced or provided to an inquiry, where conducive to the inquiry fulfilling its terms of reference or necessary in the public interest. Section 19(4) specifies particular matters which are to be taken into account when considering whether any and what restrictions should be imposed. They reflect potentially competing interests naturally relevant to any such decision: on the one hand, the allaying of public concern and, on the other, any risk of harm or damage, by disclosure or publication; confidentiality; impairment of the efficiency or effectiveness of the inquiry; and cost.*"

V.5. Section 19 therefore requires the Chairman to consider "*potentially competing interests*" relevant to a decision on the making of restrictions. Whether that is done under s19(3)(a) or (b) is likely to be academic, because the MPS respectfully agrees with Pitchford LJ's observations in the *Azelle Rodney case* [2012] EWHC 2783 (Admin) at §38, that "*…it is difficult to envisage evidence the owner of which is obliged not to disclose on the grounds of PII and which may be the subject of a restriction order under section 19(3)(a), which it would not also be in the public interest to restrict under section 19(3)(b)*." The MPS has already agreed that it will seek restriction orders in preference to seeking a ministerial restriction notice. The MPS

further agrees that where it advances a public interest reason it will seek restriction orders under s19(3)(b) in preference to seeking a PII ruling which would then, if successful, require a restriction order to be made under s19(3)(a). However, the MPS does so with two provisos:

(i) The MPS will apply for restriction orders for the same reason that it applies for PII Certificates, that is as a matter of duty to protect the public interest (noting the Pitchford LJ's reference to being "…*obliged not to disclose*"), and the use of s19(3)(b) should not obscure this.

(ii) The use of s19(3)(b) does not disapply an important principle relevant to traditional PII applications, which derives from the approach to the expertise of public authorities with regard to assessing damage (discussed below).

19(3)(a) Obligation to make a Restriction Order

V.6. Section 19(3)(a) cannot be ignored. Section 6 of the Human Rights Act 1998 prohibits any public authority (including the Inquiry) from acting in a way which is incompatible with any of the scheduled Convention rights, and is a statutory provision that would, if the disclosure would otherwise be incompatible, *require* a restriction order under ss3(a).

V.7. A disclosure may result in a violation of Art2, 3, or 8 with respect to a range of possible individuals: the UCO him or herself; his or her family; other connected individuals. In *A v BBC (Scotland)* [2015] A.C. 588 Lord Reed (with whom the rest of the Court agreed) referred to Arts2 and 3 as follows: "…*Articles 2 and 3 may for example apply where parties or witnesses are in physical danger. The rights guaranteed by those articles are, in this context, unqualified. The Convention therefore requires that proceedings must be organised in such a way that the interests protected by those articles are not unjustifiably imperilled: Doorson, para 70. In our domestic law, the court's power to prevent the identification of a witness is accordingly part of the structure of laws which enables the United Kingdom to comply with its*

obligations under those articles: In re Guardian News and Media Ltd [2010] UKSC 1; [2010] 2 AC 697, para 27 per Lord Rodger."

V.8. Otherwise the MPS make no submissions on Arts2 and 3 and agree with counsel to the Inquiry's submissions as to the general approach.

V.9. So far as Art8 is concerned, respectfully aligning itself with Girvan LJ in *Re A and others' Application for Judicial Review (Nelson Witnesses)* [2009] NICA 6 at §33, cited by counsel to the Inquiry in their submissions at §68, the MPS is not so sanguine about leaving this article out of account on the basis that all matters will be wrapped up in the s19(3)(b) process.

V.10. Art8 considerations require an intense focus on the private and family life of the individual affected. It is likely that any disclosures pertaining to an individual undercover officer will be of a sufficient level of seriousness to interfere with his or her Art8 rights, and that of his or her family. It is submitted that the approach of the House of Lords at §64 (per Lord Phillips, with whom all members of the House agreed) in *Norris v United States* [2010] 2 A.C. 487 is no less applicable in the present context: "…*When considering interference with article 8, the family unit had to be considered as a whole, and each family member had to be regarded as a victim.*"

V.11. In addition a person's professional life and therefore his source of income, is plainly capable of falling within the scope of Art8: *Niemitz v Germany* [1992] 16 EHRR 97 at §111 and *R (on the application of Associated newspapers Ltd v The Rt Hon Lord Justice Leveson* [2012] EWHC 57 (Admin) at §§49, 55. This may well be relevant if revelation of a former UCO's identity would affect his ability to pursue a particular occupation. If that degree of interference is not lawful necessary and proportionate, a restriction order must be made.

V.12. The position of witnesses in a criminal trial was considered by the ECtHR in *Doorson v Netherlands* 22 EHRR 330. At §70 the Court observed that whereas Art6 did not require the interests of witnesses to be taken into

consideration (Art6 not applying in any event to proceedings before an Inquiry):

> "*…However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of Article 8 of the Convention. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify.*"

V.13. Some of those for whom restriction orders will be sought will be witnesses; some will not be witnesses but will be the subject of documentary or oral evidence that the Inquiry will be considering. The same considerations will apply in relation to individuals who are not witnesses, but whose private or family life may be interfered with by disclosure of any information about them. It is well established that the right to respect for private and family life within Art8 may also require measures to protect anonymity or restrict the reporting of personal information: see for example, *Craxi (No. 2) v Italy* (2004) 38 EHRR 47 and *X (woman formerly known as Mary Bell) v SO* [2003] 2 FCR 686. It is submitted that the appropriate test is whether there is a real risk of interference.

V.14. Again, where that interference cannot be justified, in particular as being necessary for fulfilment of the Inquiry's functions and proportionate in the sense that there is no lesser degree of disclosure that could reasonably be used to secure that end, a restriction order will have to be made. The leading analysis of what is required by proportionality is to be found in Lord Sumption's speech in *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700 at §20:

> "… *[T]he question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to that objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community*."

V.15. Or, as it was put by Lord Rodger (giving the judgment of the Court) in *In re Guardian News and Media Ltd and others* [2010] 2 A.C. 697 at §52, "… *the question for the court accordingly is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies M to justify any resulting curtailment of his right and his family's right to respect for their private and family life.*"

V.16. Counsel to the Inquiry is right that it is difficult to conceive in advance of practical differences between the application of Art8 and of the common law and statutory duties of fairness, but much will depend on the particular facts. The statutory duty of fairness under s17(3) itself may require a restriction order to be made, and the following observation of Lord Carswell in *Re Officer L* is particularly relevant. His Lordship observed at §22:

> *"…It is <u>unfair and wrong that witnesses should be avoidably subjected to fears arising from giving evidence</u>, the more so if that has an adverse impact on their health. It is possible to envisage a range of other matters which could make for unfairness in relation of witnesses."*
> [emphasis added].

V.17. That said, the MPS submits that Art8 ought in principle to be considered separately from s19(3)(b). This is because where it applies, and it may well depending upon the particular facts, the Inquiry has a *duty* to make a restriction order under s19(3)(a).

V.18. A further point is derived from another observation of Girvan LJ in *In the matter of an Application by Officers C, D, H & R for Leave to Apply for Judicial Review* [2012] NICA 47 at §46. His Lordship observed in the context of Art2 (but the MPS would submit that the point must apply equally to any Convention right) that risk may increase and referred to the fact that "*…the incalculable extent of that increase depended on what the witness might say in the course of the evidence, how controversial his evidence might be perceived to be and how he might be questioned in the course of the investigation.*" It is submitted that this argues in favour of a precautionary approach (see also 'the Mosaic effect' below).

V.19. Care must be exercised because in one sense the process is irreversible: once the identity of a UCO has been revealed the benefit of anonymity has been lost forever whereas a grant of anonymity can always be reconsidered in light of future events.

V.20. Although Art10 has been raised by counsel to the Inquiry as a possible countervailing consideration (submissions at para 90 refer to "*the freedom to receive information under Art10"*), the Supreme Court decided in *Kennedy, supra,* that Article 10 of the Convention does not contain a right to receive information from public authorities (per Lords Neuberger, Mance, Clarke, Sumption and Toulson at §§93-4, 144-8 and 154).

19(3)(b) Necessary in the public interest

V.21. It will be necessary to consider s19(3)(b) if no restriction order is already required under s19(3)(a) (or under s17(3)).

V.22. In those circumstances, the MPS's principal submission will be that restriction orders are required under s19(3)(b) because they are *necessary in the public interest.*

V.23. In deciding whether a restriction order is to be made, the Chairman is required to have regards *"in particular to the matters mentioned in subsection (4)"*. These non-exhaustive factors are considered in turn.

19(4)(a) Public Concern

V.24. It is accepted that any restriction is capable of inhibiting the allaying of public concern, although it is submitted that the public at large will understand that restrictions of some sort are likely to be inevitable owing to the subject matter. It is also submitted that the public at large will be reassured that the inquiry is able to require the production to the Chairman of anything, however sensitive.

V.25. Conversely the public at large would be rightly concerned if the ability to prevent and detect crime was adversely affected. It is submitted that this reflects the nature of the Inquiry. Unlike a civil action for damages, the Inquiry is not a means of vindicating a particular private interest. Rather, it is brought on behalf of the entire public.

19(4)(b) Risk of Harm or Damage

V.26. Ss4(b) requires the Chairman to have regard to "*any risk of harm or damage that could be avoided or reduced by any such restriction*".

V.27. A risk of harm arises not only:

(i) Where the fact of the deployment and identity of the UCO is not known at all, and disclosure by the Inquiry would put an entirely new piece of information into the public domain; but also

(ii) Where there are detailed allegations concerning the deployment and identity of the UCO in the public domain, but these have not been the subject of official confirmation.

V.28. In the first place harm, whether physical or emotional, may be done to individuals. Harm may be done directly to an individual (e.g. a revenge attack) or may result more indirectly (e.g. social ostracization; subjective fears leading to serious emotional unhappiness).

V.29. In the second place, harm to the public interest.

V.30. Attached to these submissions are:

(i) A general schedule of harm [TAB1].
(ii) A more detailed summary of the harm that may be caused by the revelation and/or official confirmation of UCO identities or deployments [TAB2]. This document is redacted.
(iii) The witness statement of witness "Cairo" explaining and evidencing that harm [TAB3]. This document is redacted.
(iv) A report on risk assessments and general risk [TAB4]. This document is redacted.

V.31. The above documents have all been served unredacted on the Inquiry. The basis for the redactions is that disclosure risks damage to individuals or to the public interest. If necessary at this stage, the MPS applies for restriction orders with respect to these documents.

19(4)(c) Confidentiality

V.32. Section 19(4)(c) refers to "…*any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry*".

V.33. The evidence attached to these submissions shows that UCOs have historically been and continue to be recruited in the clear expectation that their identity will remain confidential. Public authorities who deploy UCOS,

including the police, are expected to maintain records so as to preserve confidentiality and prevent disclosure of their identity. Undercover officers are, in turn, expected not to reveal either the fact of an undercover role or the detail of any undercover deployment without express permission from their manager.

V.34. It follows that the MPS and each individual UCO holds information regarding their undercover career subject to conditions of confidentiality. This includes the identity of UCOs, i.e. the fact known to the MPS that a particular police officer has volunteered for and taken on the role of UCO. Confidentiality is a reciprocal obligation owed between UCOs and their employer, and all information concerning UC deployments has been acquired by the MPS and the UCO subject to conditions of confidentiality. It is because of the condition of confidentiality that such extraordinary steps are taken to keep details of UCOs compartmentalised from other police officers even within the same force.

V.35. It is therefore submitted that the degree of confidentiality is strong: assurances are given by a public authority who is also an employer; for the purposes of securing that an individual performs a public duty; the stakes for the individual and the public interest of revelation are likely to be high; in most if not all cases that confidentiality has been respected for a period of time which may measure into the decades; they are conditions of confidentiality around which the UCO and his or her family are likely to have based their lives. The position is different from that of the firearms officer considered in the *Azelle Rodney* Inquiry who was being called to give evidence "…*simply to speak of what he did overtly and in daylight seven years before*" (see counsel to Inquiry submissions at para 65).

V.36. It is evident why Parliament expressly included considerations of confidentiality into s19(4): because an inquiry may have to, as this one has to, inquire into matters of great sensitivity. It will be necessary for the Inquiry to consider whether as a matter of fact the information was given in confidence; what the strength of any conditions of confidentiality were; and take that into

account recognising that the existence of confidentiality – predating the Inquiry by perhaps many years – is likely to be relevant both to harm, and to fairness (cf the passages from *R v Lord Saville of Newdigate and others sitting as The Bloody Sunday Inquiry, ex parte B, O, U and V* (unreported, 30 March 1999, CA) cited by counsel to the Inquiry in their submissions at paras 86-9).

V.37. In addition there are statutory requirements of confidentiality created by RIPA and the Code of Practice which are both considered above. These are strong provisions because they are expressions by the legislature of maintaining confidentiality in this line of work.

V.38. For reasons already stated, the MPS cautions against any assumption that by his or her actions an individual UCO may have forfeited the right to confidentiality. Moreover:

(i) Any argument that, for example, *all* SDS officers had forfeited their right to anonymity because of the activities of some of them would be both wrong and unfair in the extreme to the remainder;

(ii) The detailed circumstances in which a decision that confidentiality should be forfeited in a particular individual's case would be soon forgotten (cf Lord Carswell's reference to uneasiness in *In re Scappiaticci* [2003] NIQB 56 at §15); all future UCOs and CHIS would see is that confidentiality had not been protected.

(iii) Care must be taken to avoid decisions based on the benefit of hindsight or differing standards – the events subject to this Inquiry go back to 1968, i.e. over 47 years ago.

(iv) Care must be taken to avoid scapegoating.

V.39. The MPS submits that the circumstances are such that the considerations of confidentiality – feeding into the overall determination under Art8, statutory fairness, and the public interest – are very strong.

9(4)(d) Cause delay or impair the efficiency or effectiveness on the Inquiry or otherwise result in additional cost

V.40. The extent to which not imposing a restriction would be likely to delay or impair the efficiency or effectiveness of the Inquiry or otherwise result in additional cost, is a relevant consideration. The Inquiry depends upon the cooperation of witnesses (as indeed does the MPS itself, in gathering relevant evidence for the Inquiry from potential witnesses, some of who will have long retired); and it would be unrealistic to pretend that the degree of cooperation from witnesses will not be affected by considerations of personal security and the extent to which revealing information will put themselves and their families at risk or perceived risk.

V.41. This is a further consideration for Module 2. It will be difficult for the Inquiry to judge the impact on UCOs' wellbeing as a result of their deployments if the inquiry process itself is damaging by reason of disclosures.

V.42. It follows that fairness to witnesses – enabling them to give evidence without fear – is likely to go hand in hand with effectiveness.

V.43. Additional cost is relevant and under s19(4)(b) this is "*…(whether to public funds or to witnesses or others)*". The consequence of identification may be costly to the state (if an individual has to be rehoused or protected) and to the individual, who may have to re-establish his or her life elsewhere, or lose a source of income).

19(3)(b) Conducive to the Inquiry fulfilling its terms of reference

V.44. Restriction orders may also be ordered because they are conducive to the Inquiry fulfilling its terms of reference. This is relevant in 2 ways: firstly, because any harm to the tactic of undercover policing caused during the inquiry will prevent the Inquiry fulfilling its terms of reference, because it will limit the opportunity to "*…make recommendations as to the future*

deployment of undercover police officers" (Terms of Reference, §10); secondly, for the reasons given above in relation to efficiency and effectiveness.

VI. Examples of Restriction Orders

VI.1. The nature of the restriction orders that will be sought by the MPS will depend upon the particular facts. It is important to make clear that anonymity is not the sole restriction for which the MPS will be applying. Counsel to the Inquiry has set out a range of measures which may be required. The measures for which the MPS will contend are those which, with no more restriction on public access than can be justified:

(i) Ensure that no material is disclosed by the MPS or the Inquiry, whether documentary, in the course of oral evidence, or during submissions, that confirms any matter that could lead to the identification of a UCO;

(ii) Ensure that no material is disclosed that puts others at risk of harm;

(iii) Ensure that no material is disclosed that could damage the public interest (principally, in the prevention and detection of crime but also in safeguarding national security and international relations, where applicable);

The above will apply save where UCOs have been officially confirmed, or where there is an illegitimate method that is not and never will be used.

VI.2. Again, to be clear, this includes the disclosure of information that could when pieced together with other information lead to the identification of individuals or techniques. This is sometimes referred to as the mosaic effect.

VI.3. Attached to these submissions is the Mosaic Report [TAB5], redacted. Again, this document has been served unredacted on the Inquiry. The basis for the redactions is that disclosure risks damage to individuals or to the public interest. If necessary at this stage, the MPS applies for restriction orders with respect to this document.

VI.4. In summary, the mosaic effect occurs when the information in an individual dataset, in isolation, may not pose a risk of identifying an individual or threatening some other important interest, but when combined with other available information, could pose such risk. This is a clear and present risk given the motivation of individuals and groups to 'out' UCOs, and technological advances and social media which have significantly increased the ability of interested persons to 'data-mine' publicly available information.

VI.5. The fact that disclosure of a limited category of information may have much wider impact has received judicial recognition in a variety of Information Tribunal cases, strikingly in *MPS v IC*, EA/2010/0006 which considered the disclosure of information in the context of CHIS. The request for information was as follows: "*How much money has Croydon Police spent in each of the last three years on paying informants?*". The Tribunal considered and accepted detailed evidence as to the wider effect of the disclosure. The decision is worth reading in full. The Tribunal concluded at §87 that it "…*should consider the effect of disclosure of the disputed information on existing or potential CHIS, including in particular those in the Croydon area*" and having done so concluded the effect of the disclosure on the confidence of CHIS that their identities would be protected meant that it would be contrary to the public interest to require an answer to the question.

VI.6. It follows that (a) one cannot look at information in isolation and (b) in light of this, and the fact that it will be often difficult to take a snapshot of what information is already in the public domain, a precautionary approach in relation to the disclosure of information by the Inquiry or the MPS is the right one.

VII. The Neither Confirm nor Deny Policy

VII.1. In the Secretary to the Inquiry's letter dated 9 November 2015, the question is posed: "*What is the correct approach in principle to an application for a restriction order based on the assertion that the Inquiry should respect*

the policy of neither confirming nor denying matters which might identify an undercover police officer or otherwise undermine undercover policing?"

VII.2. Another way of putting this question is, is there a public interest in the police being able to neither confirm or deny certain matters? If there is, and depending upon the weight to be attached to that public interest, the Inquiry has power to grant a restriction order that will enable the police to maintain their position.

VII.3. To illustrate how this stance works in practice, a series of worked examples are given at TAB6.

VII.4. The MPS agrees with the analysis in the Cabinet Office witness statement of Paddy McGuinness dated 13 January 2016 [TAB7]. We make the following observations on this statement and its relevance to the Inquiry's consideration of restriction order applications made by the MPS.

VII.5. The statement is expert evidence, drawn from the expertise of the maker, the UK's Deputy National Security Adviser, and of other individuals working in Government departments: §2-4. It is served on behalf of the Government and therefore represents the Government's position based on its institutional experience in matters of secrecy.

VII.6. It provides an expert assessment (a) that the NCND evidence is an *effective* means of maintaining the secrecy of operations (§§10-11) and (b) that in order to be effective it needs to be applied *consistently* (§17).

VII.7. It provides evidence as to the fundamental importance of maintaining promises of anonymity to agents: §31, 35.

VII.8. It provides evidence as to the need to apply NCND where there is public reporting of allegedly sensitive information short of official confirmation: §32.

VII.9. The focus of the statement is national security. In *R (on the application of Binyam Mohammed) v SSFCA* [2011] Q.B. 218, Lord Neuberger MR identified at §131 two practical reasons why in the field of national security a court would need *"cogent reasons"* for differing from a damage assessment by the Foreign Secretary: firstly, he was far better informed than the court as to the consequences of disclosure; secondly, he had *"… far more relevant experience, than any judge for the purpose of assessing the likely attitude and actions of foreign intelligence services as a result of the publication of the redacted paragraphs, and the consequences of any such actions so far as the prevention of terrorism in this country is concerned."*

VII.10. The same point in relation to PII decisions was recently made by Lord Thomas CJ, giving the judgment of the Court of Appeal Criminal Division in *Guardian News and Media Ltd and others v R* [2016] EWCA Crim 11 at §52:

> *In making that decision the court will pay the highest regard to what is stated by the Secretary of State in his or her Certificate. As Lord Hoffman made clear in Secretary of State for the Home Department v Rehman [2003] 1 AC 153 at paragraph 50-57, a court should not depart from the view of the Secretary of State on national security issues, provided there is an evidential basis for the decision of the Secretary of State. That is because under our constitution the identification and delineation of national security interests is for the Executive branch of the state. Although the circumstances will be very rare, the court is also free to depart from the views set out in the Certificate as to the weight to be attached to the national security interests. That is because it is always for the court to make the decision on whether those interests necessitate the departure from the principle of open justice.*

VII.11. It is therefore submitted that the Inquiry would need cogent reasons for differing from Government's assessment as to (a) the utility and need to effectively apply NCND in the field of national security (a point that is also made in the witness statement at §§24-5) and (b) the importance of keeping

promises of anonymity. This is clearly relevant to this Inquiry where any police UCO operation relates to national security matters.

VII.12. The question arises, what weight does this expert assessment by the Government as to NCND have in the field of non-national security deployments?

VII.13. The MPS submit that it has exactly the same weight, and is just as relevant to non-national security operations. There is no reason to distinguish the importance of NCND in the national security context and in the context of undercover deployments. To do so would be illogical as the same underlying interests are in play (the interests listed in the statement at §10; and see also the paramount responsibility to protect the safety and lives of individuals: §22).

VII.14. It follows that, absent "cogent reasons" for deciding otherwise:

(i) NCND is an effective tactic in UCO deployments;

(ii) That to be effective it needs to be applied consistently;

(iii) That keeping promises as to anonymity is crucial;

(iv) That NCND remains an effective tactic even where there has been public revelation falling short of official confirmation.

VII.15. Ultimately, having given weight to this, it remains open to the Chairman, as the ultimate decision maker (*Binyam Mohammed* at §132) to conclude that this public interest is outweighed by other public interests. However, just as in the national security context, it is necessary to have regard to the wider effect of requiring a confirmation or denial. Like the Government (see §23), the MPS considers that the public interest in protecting the interests at stake will often be *"very high indeed"* and that in practice the circumstances where it will not maintain NCND with respect to undercover deployments will be rare, the more so in light of its statutory duty of confidentiality under RIPA.

VII.16. The above points are made solely by reference to the Cabinet Office statement. To the extent that it is necessary to do so, these points are supported

by the MPS's own expert evidence. It is submitted that the nature of an undercover police deployment, the extent to which the police go to keep their tactics confidential, the justification for so doing, the consequences for the individuals and the undercover tactic if disclosure is made, and the utility of the NCND tactic, are matters in which the police have significant institutional expertise. It is submitted that the assessments of the MPS in this specialised field carry particular weight and, as with the Cabinet Office evidence, should be accepted absent cogent reasons to the contrary.

VII.17. In conclusion, there is no difference in the MPS's submission between the safeguarding effect of NCND in the context of intelligence matters concerning the Security and Intelligence Agencies, its officers, and its agents; and in the context of intelligence matters concerning undercover police officers and covert human intelligence sources. Whilst the *nature* of the protected public interest that is principally the subject of the Cabinet Office statement, namely national security, is of greater significance than preventing and detecting crime (a) the ability to prevent and detect crime is a vital public interest (b) in practice there may be an overlap, because police undercover work will on occasion be directed at prevention of terrorism (c) the harm that may be suffered by an undercover police officer or police CHIS who is detected may be no less severe than of an intelligence officer or agent who is detected.

VII.18. Finally, the practical utility of the NCND position is apparent from the Mosaic Report: those who seek to identify UCOs are by their own admission hampered by it.

VII.19. The MPS further agree that any examples of past exceptions (which are in truth extremely limited) are no more than examples of the application of the public interest balance. A position that sought to identify automatic exceptions would be as inconsistent with authority as the automatic application of NCND. It would also be unsustainable. For example, a position where the MPS were permitted to maintain NCND only in respect of SDS

officers who were deployed on national security matters would tend to reveal those officers who had a national security role.

VIII. Conclusions

VIII.1. The MPS invites the Chairman to endorse the following general principles in light of the submissions above.

(i) Each restriction order requires a balancing exercise whose outcome will depend upon the particular facts.

(ii) There is no particular quotient of openness that is required by an inquiry under the Inquiries Act 2005.

(iii) Nor do considerations of public interest, or of fairness, operate differently in the context of an inquiry under the 2005 Act than they do in other legal proceedings.

(iv) There is a strong interest in keeping the identity of undercover officers confidential.

(v) A precautionary approach to restriction orders is appropriate.

(vi) The confidentiality granted to officers at the outset of their careers is a relevant consideration when judging fairness.

(vii) The impact upon an officer's family should be considered.

(viii) The Neither Confirm Nor Deny stance is an effective tactic, which is lawfully used to protect the public interest.

(ix) There is a very high public interest in the consistent application of Neither Confirm Nor Deny.

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12 FEBRUARY 2016