

Inquiry into the Retirement of the Former Commissioner of Police

Summary of rulings concerning applications for restriction orders heard at PH5

1. On 15th December 2023, I delivered two rulings on applications heard at the Fifth Preliminary Hearing ('PH5'). The applications were for restriction orders (that is, applications to restrict the publication to the general public of documents that have been disclosed to the Inquiry) by two parties: the Royal Gibraltar Police ('RGP') and the Chief Minister ('CM').
2. Both rulings were published on a 'closed' basis (that is, published only to members of the Inquiry's confidentiality ring), primarily because the parties made their submissions and presented their arguments on the expectation that they would not be published.
3. However, to serve the principles of open justice and ensure the public is appropriately informed about the work of the Inquiry, I set out brief summaries below of both rulings below.

Principles to be applied to restriction order applications

4. In both rulings, I reiterated the principles to be applied to determination of applications for restriction orders, which I summarised in my amended judgment dated 25 August 2022 following PH1 at [10]-[11].¹ I also referred to paragraphs 24, 25 and 13(d) of the Inquiry's Documents Protocol, the latter paragraph being on the judgment of the House of Lords in *R v H* [2004] UKHL 3 at [36].

The application by the RGP

5. The RGP sought redactions to various documents relevant to two issues in the Inquiry: Operation Delhi (issue 5) and the Incident at Sea (Issue 3). These redactions were sought on the basis that disclosure and publication of the documents identified in Annex A would harm the public interest, and specifically the RGP's 'Policing Obligations' under section 44 of the Police Act 2006. The Delhi Defendants made submissions in response to the application in respect of the Operation Delhi documents, stressing their desire for issue 5 matters to be heard in public.
6. I rejected the RGP's application to redact Operation Delhi documents, on the basis that I did not consider there to be a real risk of harm to the public interest, or at least the remoteness or improbability of the risk was decisively outweighed by the overwhelming public interest in hearing the evidence in public, given that acceding to the RGP's application would require

¹ <https://coircomp.gi/wp-content/uploads/2022/09/Amended-Ruling-on-Open-Justice-and-Recommendations-25-August-2022.pdf>.

most, if not all, of the evidence and submissions in respect of Operation Delhi to be heard in private. I have made clear that I would be prepared to consider a more focussed application with objections to specific parts of the material being published, but to date none has been forthcoming.

7. In relation to the RGP's application regarding the Incident at Sea, although I did not consider that wholesale restriction of documents was warranted, I accepted that, in principle, one of the grounds of objection put forward by the RGP might be well founded, namely that publication of parts of the documents would or might reveal information about police assets, training and pursuit instructions and operational techniques. I therefore invited Counsel to the Inquiry and the RGP's Counsel to collaborate in identifying any such passages and indicated that I would be willing to direct redactions limited to protection of matters of that nature.

The application by the CM

8. The Chief Minister also made an application for redactions to various documents touching upon Operation Delhi. In advance of PH5, Counsel to the Inquiry and the Government parties reached agreement that all but eight of the redactions sought could be excluded on the basis of irrelevance to the Inquiry. I agreed with this position.
9. Of the remaining eight redactions to documents, I first considered the relevance of these documents and I concluded that although I would not need to consider the full extent of the evidence against the Operation Delhi Defendants, I would need to examine some of the material. While some of the material was highly technical and unlikely to be relevant to the Inquiry, other material was highly relevant. I rejected the argument by the Chief Minister that disclosure of the material which was the subject of the application could present a national security risk, and therefore refused to make the restriction order sought, subject to a small number of redactions which could be made without diminishing public understanding.

15 December 2023