

## INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

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### AFFIRMATION OF HAIM JUDAH MICHAEL LEVY CBE KC

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I, **HAIM JUDAH MICHAEL LEVY**, of 11<sup>th</sup> Floor, Madison Building, Gibraltar, Barrister-at-Law, otherwise known as James Levy, **STATE AS FOLLOWS:**

1. I make this affirmation in response to:
  - (i) the request for further evidence contained in the letter from the Inquiry's solicitors to me dated 4 March 2024 ("**the Triay letter**"); and
  - (ii) the invitation to me at the end of that letter to address all or any of the allegations or potential allegations listed in the third to sixth pages of that letter.
2. I now respond to the matters requested and raised in the Triay letter by reference to the respective headings, questions and allegations or potential allegations by Core Participants, as set out in the Triay letter.

(i) **Request for further evidence**

*"1(a) Between 12 May and 9 June 2020, did you discuss (whether via meeting, telephone call or other means) Mr McGrail's position as Commissioner of Police and/or the decision to invite him to retire with any of the following persons?*

- i. Mr Fabian Picardo, KC, the Chief Minister*
- ii. Michael Llamas KC, Attorney General*
- iii. Christian Rocca KC, Director of Public Prosecutions*
- iv. Dr Joseph Britto, Chairman of the Gibraltar Police Federation*
- v. Any other member of HMGOG"*

**Response**

3. I did not.

*“11 In particular, did Mr Levy KC attend a meeting with Mr Baglietto and Mr Picardo KC on 12 May 2020? If so, what was discussed at that meeting?”*

**Response**

4. I did not.

**List of allegations**

5. I set these allegations out in full, for ease of reference and briefly respond to each of them as set out below.

**Allegation 1** – *“The RGP may allege there were sufficient grounds to treat Mr Levy as a suspect and/or to obtain a search warrant against him, that there were reasonable grounds to suspect that the offence of conspiracy to defraud has been committed and that Mr Levy was formally made a suspect on 8 April 2020.”*

**Response**

6. I disagree that there were any or any sufficient grounds to treat me as a suspect of a criminal offence. In my First Witness Statement to the Inquiry (“**Levy 1**”), I attached 3 exhibits, one being Exhibit “HJML1”, which is the voluntary statement I gave to the RGP in June 2020. In “HJML1”, I explain the relevant background to my involvement in 36 North and why there was no proper basis for treating me as a suspect. I do not propose to repeat the contents of that statement here. The fact that there were no grounds to treat me as a suspect was vindicated by the fact that the RGP, having considered my voluntary statement and whatever other information and evidence was at their disposal, concluded that I was not a suspect and even invited me to be a prosecution witness in the Operation Delhi case. Apart from the unconscionability of treating me as a suspect despite the lack of evidence,

it is alarming to note that even the offence of which the RGP claimed to have suspected me, namely conspiracy to defraud at common law, did not exist under Gibraltar law at the time. For these reasons, it was wholly illegitimate, improper and unlawful for the RGP to have treated me as a suspect for that alleged offence.

**Allegation 2** – *“It is asserted by Mr Richardson that the DPP considered that there were reasonable grounds for questioning Mr Levy, and that there would be a lingering doubt otherwise.”*

**Response**

7. I obviously disagree with any allegations that there were any or any reasonable grounds for questioning me as a suspect of an alleged criminal offence of conspiracy to defraud for the same reasons I have outlined at Paragraph 6 above and for the reasons given in Levy1 and its Exhibit “HJML1” and in the correspondence from my solicitors with the Attorney General exhibited at “HJML3”.

**Allegation 3** – *Mr Richardson’s allegations that there were good grounds for seeking a search warrant rather than a production order against me.*

**Response**

8. It beggars belief that Mr Richardson can claim to have genuinely held that belief then or now. The legal or evidential basis to support such a belief is conspicuously absent in the application for the warrants. There was plainly no credible basis for the RGP to tell the Stipendiary Magistrate in the information laid before him (“HJML3”, page 6) that it would not be practicable to communicate with me to enter my office or home or to obtain the information from me other than under the force of a warrant. It was equally baseless to claim that any other methods of obtaining the material were bound to fail (see also paragraph 324 of Application for warrant at p. 99 of “HJML3”) and that there was a “fear” of my defacing or destroying that information if given notice of a Production Order (warrant Application, Paragraph 324). There was not a shred of evidence to support the

alleged 'fear' referred to in the application for the warrants. To the contrary, the evidence shows that I co-operated with the RGP the moment I was contacted, so that the warrants did not have to be physically executed even though I made clear to the RGP I considered them unlawful. My lawyers set out the reasons for the clear legal impropriety of proceeding by warrant fully in the correspondence at "HJML3" and in particular their letter pp. 39-44 of that Exhibit. It is clear that the Court was misled about the need for a warrant and no evidence has yet been forthcoming as to what actually transpired at the hearing itself in terms of what else the then Magistrate, Mr Pitto, was told and how he handled the application. What is abundantly clear is that, in seeking the warrants and threatening to execute them, my legal rights were seriously violated, and I am entitled to have that violation censured and redressed exclusively by the Supreme Court.

#### **9. Mr McGrail's allegations under Paragraph 4**

**Allegation 6(a)** – *"Mr Baglietto KC was communicating with the Attorney General about the search warrant, which was in breach of proper boundaries."* [McGrail 1 para 59.3].

#### **Response**

9.1 This is an outrageous allegation. Mr Baglietto communicated with the Attorney General ("AG") as he was perfectly entitled to do, as my legal representative, because my legal rights had been seriously breached. It was unquestionably perfectly legitimate and proper for Mr Baglietto to complain to the AG, who, apart from being the guardian of the public interest, is the Crown's most senior legal representative in Gibraltar. As is apparent from Mr Baglietto's email to the AG of 12 May 2020 (at pages 9-10 of "HJML3"), he also sought to urgently meet with the RGP to discuss the concerns expressed in that email. Although Mr McGrail was initially amenable to meeting him with the AG and a meeting tentatively set up for the next day, Mr McGrail subsequently declined to meet, as he apparently thought it inappropriate to do so.

**Allegation 4(b)** - *“The Attorney General influenced the RGP officers to consider ways to treat Mr Levy in a way other than as a suspect.”*

**Response**

9.2 If the allegation is that the AG, in allegedly so acting, acted improperly, it is an allegation against him, which I am sure has been put to him and he will deal with. I must, however, say that I have known Mr Llamas KC for many years and consider him to be a person of the highest integrity. I do not, therefore, believe that he would have acted improperly. It is remarkable to hear a former Commissioner of Police suggesting that the AG was precluded from or acted improperly by advising the RGP, DPP or any other officer of the Crown as he considered appropriate.

**Allegation 4(c)** - *At a meeting on 15 May 2020 between the AG, DPP, Mr De Vincenzi, Superintendent Richardson, DI Wyan and Mr McGrail, the Attorney General was “asking/influencing the officers present whether there was any other way to deal with JL without the ‘oppressive’ stigma”. The AG “effectively stat[ed] JL’s position which can only have come from discussions with JL’s representatives.”*

**Allegation 4(d)** - *At a meeting on 20 May between Mr McGrail, the AG and the DPP, the AG “again attempted to steer the Investigation seemingly so as to limit that exposure of JL” [McGrail 1 para 60]. Mr McGrail states that “it seemed that [the AG] considered his position to be that of a broker or intermediary as between law enforcement and a suspect” [McGrail 1 para 61.11].*

**Response to Allegations (c) and (d) above**

9.3 As regards the criticism of the AG's alleged conduct in those paragraphs, I repeat what I say at 9.2 above. As regards the reference in Allegation 4(c) to the AG referring to "oppressive stigma", I do not understand what Mr McGrail means by saying, in relation to the AG, that "he effectively stated JL's position which can only have come from discussions with JL's representatives." Clearly the AG was conscious of my position on the warrants and about my being treated as a suspect. This was clearly set out in the correspondence he had received from my legal representatives setting out my position which made strong complaints of oppressive behaviour by the RGP towards me. I do not consider that he would have acted as a "broker", but rather, as a fair-minded individual acting in accordance with his constitutional and legal role throughout and, if he agreed with any aspect of the representations made on my behalf, he was perfectly entitled to do so and to express his own independent view.

**Allegation 4(e)** - *The information in Hassans' letter of 15 May 2020 could only have come from the Chief Minister and was "an improper communication by the CM" which had left Mr McGrail "totally sold out" on the matter [McGrail 3 para 170R]. The Inquiry understands this to be a reference to Hassans' statement in that letter that: "we believe is the case, the DPP advised the Commissioner against the making of these application" [Exhibit HJML3 p39].*

### **Response**

9.4 I see that Mr McGrail also repeats this allegation in his Fifth Affidavit. Nearly four years after the event, I do not recall how my legal representative, Mr Baglietto, may have been given to understand that the DPP had advised against the making of the application for the warrants. However, even if this information came from the Chief Minister, I do not consider it improper for my legal representative to have been told this when the RGP had, whilst at my office with the warrants, told me that they had taken advice "from the highest level" or similar words.

9.5 I can, however, reasonably conclude that what I was told by the RGP was an attempt to intimidate or coerce me on the alleged but clearly false basis that the DPP or some other senior Crown lawyer had advised in favour of proceeding by search warrant against me,

when clearly the decision to proceed by warrant was taken by the RGP exclusively and of its own initiative. The letter from the DPP to the Magistrates' Court at page 68 of "HJML 3" and the transcripts of meetings disclosed to me by the Inquiry show that the DPP never advised that the warrants be obtained.

**Allegation 4(f)** – *Mr Levy and the Chief Minister were in actual communication with each other at the time the investigating officers were at Hassans with the warrant, which amounted to "inappropriate behaviour" [McGrail 5 para 118].*

**Response**

9.6 I did not communicate with the Chief Minister at the time that the investigating officers were at my office. As Mr McGrail conceded at paragraph 118 of "McGrail 5", this is just suspicion on his part. I can confirm that his allegation is incorrect.

**Allegation 4(g)** – *Mr Levy was "tipped off" about the RGP's interest in him by someone in his close circle [McGrail 3 para 147 (ii) (d)] and that the Chief Minister tipped him off on the contested matter of the DPP advising the RGP on the warrants [McGrail 5 para 129].*

**Response**

9.7 I object to Mr McGrail's use of the term "tipping off" if, by using it, Mr McGrail is implying improper behaviour. Given my firm's involvement in 36 North, it could be reasonably anticipated that the RGP might wish to speak to me, but not as a suspect, which I only discovered, to my consternation and bewilderment, on the date the RGP sought to execute the warrants. Similarly, that I or my legal adviser may have been told about the contested matter of the DPP advising the RGP on the warrants is not improper and, as I say, I do not recall how I was informed about this.

**Allegation 4(h)** - Mr Levy sought to remove Mr McGrail from his post in retribution for the search warrant. [McGrail 5 para 170R].

**Response**

9.8 This is completely untrue; I obviously do not have the power, nor did I seek to remove Mr McGrail from his post. If the unlawful and/or improper conduct of the RGP in seeking a warrant to obtain evidence from me, played any part in the process which led to Mr McGrail's resignation and was relied upon in any discussions with him or in any deliberations forming part of that process, I cannot say, as I was not involved in it.

**Allegation 5** – “Mr John Perez alleges that between January and October 2020, Mr Levy, Mr Perez, and Mr Caine Sanchez “periodically” updated the Chief Minister as to progress with 36 North.” [Perez 1, para 41].

**Response**

10. I have no issue with that “allegation”, as it is not an allegation of impropriety. It was perfectly legitimate for me to engage with the Chief Minister in relation to 36 North, as I explain in Exhibit “HJML1” and as shown in exhibit bundle “HJML2”.

**Allegation 6** - Mr McGrail also alleges that Mr Levy made job offers and/or other rewards to police officers in exchange for information that could be used against him in the Inquiry. Specific allegations are that Mr Levy:

**Allegation 6(a)** – [That I] “Offered assurances to two police officers who were subject to investigation for corrupt/improper practices and who were sick leave and that they would not go onto half pay and would be given jobs at the Environmental Protection Agency in exchange for giving information (whether true or not) about Mr McGrail to maliciously try to tarnish his



*reputation before or during the Inquiry. Both officers since commenced roles at the Environmental Protection Agency.” [McGrail 3 para 155].*

### **Response**

11. This is completely untrue. I did not give any such assurances and Mr McGrail, unsurprisingly, does not provide any supporting evidence, merely relying on the fact that Commissioner Ullger allegedly told him this. If, nevertheless, Mr McGrail has any complaint to make of alleged improper conduct by me towards him post-dating his retirement, he should pursue those complaints through proper legal channels and support them with evidence. I would respectfully suggest that they do not appear to me to be relevant to the Inquiry’s Terms of Reference, and therefore wholly outside the scope of this Inquiry. Such alleged conduct subsequent to Mr McGrail’s dismissal cannot logically form part of the reasons for his dismissal. This allegation is simply an unfair attempt to attack my integrity.

**Allegation 6(b)** - *[That I] “Offered a cash reward to an ex-Inspector (now also working in the Environmental Protection Agency), who had left the RGP after being arrested for domestic violence and rehabilitation for cocaine addiction in exchange for information that could be used against Mr McGrail. The cash reward did not materialise, and the Inspector later complained that he had been assured promotion to Executive Officer or Higher Executive Officer in lieu of the cash rewards as this easier to mask in the circumstances.” [McGrail 3 para 159].*

### **Response**

11.1 This allegation that I offered cash to former officers as an inducement to provide information that could be used against Mr McGrail, is false and scandalous. In any event, it is irrelevant to and, I would respectfully suggest, therefore outside the Terms of Reference of this Inquiry for the same reasons as I give at Paragraph 11 above. Instead, Mr McGrail should, if so advised, pursue such an allegation with the pertinent authorities. Quite apart from that, his affidavit fails to depose to his alleged source of

information in this regard. For that additional reason, his purported evidence on this is inadmissible before the Inquiry, in my respectful view.

12. Finally, I should say that the fact that Mr McGrail has made these allegations casting doubt on my integrity, referring to alleged matters which post-date or are otherwise irrelevant to the scope of this Inquiry, is regrettable. I can only regard this as an attempt to unfairly tarnish my integrity in this Inquiry and prejudice me in the eyes of the public.

**SWORN** by the above-named Haim Judah Michael Levy.

Personal Data

at 13/15 Giro's Passage, GIBRALTAR

This 27th day of MARCH 2024

Before me,

Personal Data

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**COMMISSIONER FOR OATHS**

**Jenssen Paul Ellul**  
**Commissioner for Oaths**  
13/15 Giro's Passage, Gibraltar