

INQUIRY INTO THE RETIREMENT OF
THE FORMER COMMISSIONER OF POLICE

THIRD RESPONSIVE STATEMENT OF IAN MCGRAIL

I, IAN MCGRAIL of Personal Data Gibraltar say as follows:

- 1 The opening submissions filed on behalf of the three Operation Delhi defendants (“ODDs”) on the 27th of March 2024 contain a number of unsubstantiated slurs and innuendos which does not reflect the evidence filed by Mr. Perez, Mr. Cornelio, and Mr. Sanchez in January 2023.
 - 2 Whilst lacking substance, those submissions amount to an assortment of demonstrably false speculations and accusations, and it is for this reason I seek to file this corrective affidavit.
 - 3 The contents of this statement are true to the best of my knowledge information and belief.
- Background Summary**
- 4 The narrative concocted by the ODDs seeks to place me at the centre of what they seem to allege was an unwarranted malicious prosecution based on some notion of animus on my part against the ODDs and / or Hassans. Nothing could be further from the truth.
 - 5 It was only natural that as Commissioner of Police in Gibraltar I should take a particular interest in a matter that concerned not just an alleged fraud but also the alleged sabotage of an important national security system.
 - 6 At all times the investigation was in the hands of a highly experienced specialist police team supported by the Director of Public Prosecutions and his team of experienced Crown Counsel.
 - 7 The investigation continued after my departure from the RGP on the 9th June 2020. The ODDs were charged on the 15th September 2020 and when the Attorney-General filed the notice of discontinuance on the 26th January 2022, he made a public statement to the effect that he had advice from the DPP that there was sufficient evidence to take the cases to trial. Indeed, a trial was then imminent.
 - 8 In the circumstances, it is difficult to understand the ODDs’ approach, but the Inquiry should know that all three continue to have close connections with the Gibraltar Government; Mr. Sanchez is still a senior civil servant and I understand Messrs. Perez and Cornelio operate lucrative Government contracts.

Responses

- 9 I will respond to the ODD's submissions in order..
- 10 Para.8, ODD say that maybe "... *it was the Commissioner of Police himself who seized on a legally incoherent [underlined for emphasis] and obviously retaliatory allegation from James Gaggero and used it to put in motion a substantial criminal investigation.*" This bare and careless assumption ignores the facts that they were charged on the 15th September 2020 after I had left the RGP and their arraignment came later still. The case was ready to go to trial when in January 2022 the Attorney General entered a *nolle prosequi* which he was at pains to make clear in public was unrelated to sufficiency of evidence of the ODDs' criminality. The AG made a public statement to the effect that there was sufficient evidence to take the case to trial. Therefore, 20 months after my departure the investigation had progressed, charges had been proffered and the RGP, the AG and the DPP considered that there was sufficient evidence to convict the three of them.
- 11 In paragraph 9 they ask "*why Mr McGrail [did] this?*" is perhaps a question that the ODDs should really ask the DPP who, long after my departure was about to argue for their conviction and, given the seriousness of the charges, their potential imprisonment.
- 12 The illogical conclusion that follows in para.9 purporting to answer the seemingly rhetorical question is that I took up the investigation to protect my own position as Commissioner of Police, which they say had never been secure. As the evidence before the Inquiry shows my position was never at risk before the 12th May 2020. At no point prior to that had any of the Governor who appointed me, Lt. General Ed Davis, or the Gibraltar Police Authority, or the Chief Minister or the Attorney General or the Director of Public Prosecutions or the interim Governor Nick Pyle or any of the Ministers of Justice that I had worked with expressed any dissatisfaction with my work and all, and without exception were as supportive of me as I was of them.
- 13 The submissions at para. 9 also allude to there being a "*combination of credulity combined with an excess zeal.*" The Op Delhi investigating team were not credulous but rather worked rigorously with the evidence before them. In any event, the reason why I, as head of an organisation with responsibility to protect national security, took a particular view/interest in this case was precisely because it impacted on national security. As I have said before, Gibraltar is not immune from and is at risk of terrorist attack and the activities of organised crime. The instances referred to in my Third Affidavit @ para. 147 ii(e) page 67, serve as real examples of this.
- 14 I respond to the question posed at para.14: "*when did Mr McGrail become aware of the Hassans connection?*" Bland's Chairman James Gaggero had asked to see me on 27th September 2018. He told me that John Perez and Thomas Cornelio would be resigning from Bland Ltd and setting themselves up elsewhere and wanted to reassure me that the continuity of service of the NSCIS platform would remain unaffected. He also alluded to certain suspicions he had about the conduct of Mr. Perez and Mr. Cornelio. Mr. Gaggero said that they had formed a company called 36 North Limited with some involvement of Hassans.
- 15 On 22nd October 2018 I again met with Mr Gaggero at his request. He made serious allegations of unauthorised access to and the "*time bombing*" of the NSCIS platform. He

explained the measures he had applied to “lock down” the platform to prevent further unauthorised access. Mr. Gaggero did not make a written complaint at that stage but my immediate concern was the possibility that Gibraltar’s national security may have been compromised and that grave concern was independent of any allegations of fraud. Thus, an investigation was required irrespective of whether a formal complaint was made. Clearly, any investigation would have required the co-operation from Bland Ltd particularly given the technical complexities that were engaged. Thus it was that the Op Delhi investigation was opened in October 2018 and we were expecting Mr. Gaggero to revert with evidence. This eventually came in the shape of a report titled “Project Bass”, a report produced by the highly regarded Price Waterhouse Cooper. Being alive and open minded to what Mr. Gaggero was alleging was important to the RGP as it informed the parameters of what required investigation. To describe this as “zeal” is simply wrong.

- 16 Para. 15 of the submissions ask whether I was aware about the Hassans connection as early as autumn 2018 (which I have answered above) and whether this influenced my approach to allegations brought by Mr. Gaggero. As I have said in my First Affidavit and Second Responsive Affidavit, I did not make any operational decisions on Op Delhi and do not understand what is meant by being influenced by knowing about the Hassans’ connection. The fact that there were people of influence involved did not make either me or the Op Delhi investigators deal with the case in a manner which was different to that of any other investigation.
- 17 It is claimed in para. 21 that I was operationally involved with Op Delhi when I have already explained my involvement, as indeed have the officers involved in the investigation. I did not take any operational decisions in this investigation, and this is supported by those involved in the investigating team. I now proceed to explain what the ODDs wrongly deem as operational activity on my part.
- (i) They claim I conducted a briefing on 4 January 2019. It is evident from the notes [C1657] that what I did at this meeting was impart to two members of the investigating team my knowledge from what Mr. Gaggero and Blands’ manager John Paul Payas had told me.
 - (ii) Nothing in the notes referred to in [C1659] suggest anything improper. Amongst the notes made there is reference to Mr. Gaggero having spoken to the Governor about the matter, that I informed Mr. Gaggero of the assignment of a senior investigating officer and a deputy and that the RGP forensic computer examiner was studying the “Project Bass” report commissioned by Blands. These were the very early stages of the investigation proper as can be seen from me assigning Paul Richardson as Senior Investigating Officer. The reference to engaging with Sir Peter Caruana KC “to clear the legal approach” was to my recollection due to avoiding any conflict with the intended civil action that Blands wanted to initiate and that this did not jeopardise the criminal investigation. I did not meet with Sir Peter Caruana KC or anyone from his Chambers on this or any other matter.
 - (iii) I do not recall the details of the meeting on 28th January 2019 cited in [C1676] but it would appear from Paul Richardson’s notes that the Bland Ltd employee, John Paul Payas came to see us to update the intelligence picture around John Perez and Thomas Cornelio. It is not clear from the notes who said what in that meeting

though it would appear that the points noted relate to the information Mr Payas was sharing.

- (iv) The ODDs have it completely wrong when they state that on 10th May 2020 I asked James Gaggero to call me - the 10th May being the day Mr Perez and Mr. Cornelio were arrested. They seem to be referring to a note made on 11th May 2020 (not the 10th) [C1733] at the foot of the page which says "*CoP had wanted me to call yesterday.*" My reading of these notes is that Mr Richardson was informing Mr Gaggero that I had asked Mr. Richardson to call Mr. Gaggero to advise him that arrests had been effected, - a perfectly normal request that I had asked PR to carry out which in no way suggests operational involvement on my part. In fact, as these notes suggest, Mr Gaggero came to know of the arrests not from Mr Richardson but from another employee of his. This shows that Mr. Richardson did not oblige to my request on 10th May but did so the following day, the 11th May 2020.
- (v) The meeting of the 13th May 2019 is well evidenced in the statements of many including those of the Chief Minister and Mr. Richardson. This meeting had been requested by me to brief Government on the developments of the investigation as it concerned the Principal Secretary to the Deputy Chief Minister Mr. Caine Sanchez. This can hardly be interpreted as an operational activity on my part.
- (vi) My contact with the then Chief Secretary Mr. Darren Grech on 15th May 2020 asking whether Mr. Sanchez had been interdicted following his arrest was purely to satisfy the investigating team that Mr. Sanchez was not able to return to his work station and potentially tamper with or remove any evidence whether digital or hard copy. I must have put this question to Mr. Grech at the request of the investigating officers.
- (vii) On the point where I contacted Mr Albert Mena, the then Financial Secretary [B5065] expressing surprise that Thomas Cornelio and John Perez were still engaged with government contracts despite being on police bail having been arrested for very serious offences, I did so after this was brought to my attention by the investigating officers who were concerned that the integrity of the investigation could be undermined much in the same way, to my understanding, that Puisne Judge Prescott had expressed surprise in open court that Caine Sanchez, who was indicted on a count of misconduct in public office, remained in active civil service duty. My exchange with Mr Mena is self-explanatory but I will include it here for the sake of completeness:

I texted Mr Mena with "Good morning Albert - I'm in London attending meetings and I'm flying back today. Last night my people told me that Tommy Cornelio was doing some work in the Dept of Environment. I just thought I'd let you know in case you weren't aware. It looks a bit untidy and odd that we have CS interdicted and TC who is the main suspect working on GoG systems. My tuppence worth as in essence it isn't a call for me".

He replied with "Ian, thanks for the heads up. No I didn't know. Listen whilst people are innocent until proven guilty we really don't need to be exposing ourselves to this. Please let me look into this. Albert."

- (viii) The ODDs claim that I spoke with the DPP on two occasions regarding Op Delhi in January and February 2020. I have checked the WhatsApp chat log with the DPP [B749] and can confirm that only one conversation took place, it appears triggered by the following text messages:-

27/1/2020 1538hrs DPP to IM *"Ian, r u free for a quick chat regarding Delhi?"*

27/1/2020 1612hrs IM to DPP *"Yes I am"*

I do not recall what the DPP wanted to speak to me about but the fact that he refers to a "quick chat" suggests that it was not key matter warranting a more formal meeting. I can only think the DPP may have been bouncing off his train of thought with me on a particular matter but I cannot recall what this could have been.

There is no record of the DPP and me discussing Op Delhi in February 2020. I only had one communication via WhatsApp with the DPP in February and this was on 28th February 2020 as follows;

28/2/2020 1757hrs DPP to IM *"Hi Ian, can you speak for 5 mins. Thanks, Christian"*

28/2/2020 1800hrs IM to DPP *"Yes I can"*

28/2/2020 1801hrs DPP to IM *"Thanks will call u"*

There is no reference to Op Delhi in this exchange and therefore the ODDs' assertions on this point are purely speculative. I cannot remember what this conversation was about.

- (ix) The letter I sent to Mr Mena [B5050] was sent by me at the request of the investigating officers. It is even quite possible that Mr. Richardson or Mr. Wyan drafted it out for me as I would not have had details referred to in the letter at hand. Again, this is not to be regarded as operational activity on my part.
- (x) The same as above applies to the WhatsApp messages [B723-724] I sent to DG chasing him for his witness statement. I did this at the request of the investigating team.
- (xi) Similarly with my attendance at the meeting of 30th April 2020 [B3132 – C1787] with Darren Grech, Mark Wyan, Paul Richardson and then senior crown counsel Lloyd Devincenzi, I attended at the request of the investigative team.
- (xii) In my Second Responsive Affidavit I have covered what the telephone conference with Mr. Gaggero was about.

18 As I have previously stated and which is corroborated by the Op Delhi Investigating Officers, I only got involved at their request whenever they asked me to and this was certainly not in the operational sense. In the main this was to communicate with senior personnel in government and to officially approach the National Crime Agency for assistance – the reason being as, previously stated, to pitch these communications at senior level.

19 In para 27, the ODDs state that *"it appears that James Gaggero initially simply asserted to Mr McGrail and the RGP that the intellectual property in NSCIS belonged to Bland Ltd."* At the time this was the only evidence available to the RGP and once it became known that the Government held differing views on this point Bland Ltd produced legal advice by their

counsel Sir Peter Caruana KC to support their position. Even after this legal advice was received, the Government still failed to produce evidence to support what they were claiming. I believe this came later and after 12th May 2020. In any event, whilst I was aware that the team were initially trying to clarify the question of ownership, this position changed, and it was deemed no longer crucial (see para 56 of Mr. Wyan's second statement). To further support this is the fact that charges were indeed proffered in September 2020 despite the ownership dispute not being resolved.

- 20 The startling suggestion in para. 29 that the RGP does not possess the necessary experience and expertise in major fraud investigations is belied by the very many successful major fraud prosecutions which have led to convictions, and these include prosecutions against bank officials, lawyers, insurance officials, and money launderers. In fact, I cannot recall any major RGP-led financial investigation which has not resulted in a conviction. Moreover, the prosecution against the ODDs was certified by the DPP and the AG who said that there was sufficient evidence to proceed to trial – the reasons for the subsequent *nolle prosequi* being entered had to my knowledge (and according to various statements by the DPP and the AG) nothing to do with the integrity of the evidence uncovered.
- 21 In para. 31 the ODDs criticise me for allegedly not following the AG's advice in respect of establishing the question of ownership of the NSCIS platform before proceeding with anything else, stating that "*it was sound advice from an experienced lawyer.*" The ODDs may not be aware that the AG, whilst a lawyer of standing, has never in his career practiced Criminal Law. As the evidence shows the AG told me on 15th May 2020 that he was learning Criminal Law "*on the hoof*" with the DPP as his tutor. Moreover, the fact that charges were proffered in consultation with the DPP without the ownership of the platform being established speaks for itself.
- 22 The attack on the qualities of those investigating Op Delhi is as unfair as it is inaccurate. I have known ex Superintendent Richardson professionally for 35 years. He was one of the founding members of the RGP's Fraud Squad (as it was known then) in the early 1990s. He was an exemplary and seasoned police officer who acquired qualifications in the field of financial crime. He was always meticulous and effective and I had no doubt whatsoever about his professional capabilities to lead Op Delhi. He was ably supported in Op Delhi by Detective Inspector Wyan who is a qualified barrister and other experienced officers, such as ex-DCI Brian Finlayson (an ex-banker) and DS Paul Clarke (an ex-officer with London's Metropolitan Police).
- 23 The ODDs' comments are therefore ill-informed and disrespectful to those individuals and RGP as a whole and denote the lack of care that they have exercised in their submissions. This suggestion by the ODDs does, however, chime with the comments which the Chief Minister expressed to me in a rage on the 12th May 2020 when he berated me regarding the execution of a warrant on James Levy KC and said that he was minded to call up the RGP's senior management team and tell us how inept we were at investigating white collar crime. Again, to my knowledge the Chief Minister has little if any experience in criminal law. Moreover, neither the DPP nor the AG ever expressed any concerns with the integrity of the investigation and this they confirmed very clearly at the meeting called by the AG on the 13th May 2020 to address the allegations raised by Lewis Baglietto KC, lawyer for Mr. Levy.
- 24 As to the question raised in para. 33 as to why the RGP did not obtain independent expert evidence until 2021, I can only answer from what my understanding was during my time

in office. I was aware that Messrs Richardson and Wyan did seek expert evidence from a firm in the UK. They were in discussions with this firm and they even travelled to the UK to meet face-to-face. I believe they were unsuccessful in securing an expert report from them but that it was work in progress. It is not something that I would have got involved with unless I was specifically asked to do so by Mr. Richardson. Certainly, I cannot comment about what happened after my departure from the RGP and until independent expert evidence was apparently finally obtained which allowed the DPP to press for trial.

- 25 At para. 34 they still insist that the question of the ownership of the NSCIS platform was crucial to the extent of referring to the hypothetical example raised by the AG when he asked me whether the RGP's position would change if Government had consented to the alleged hack. The AG quickly withdrew this bizarre suggestion and to my knowledge no such consent was ever given by the Government.
- 26 At para. 35 doubts seem to be cast on whether NCA officials ever said that "*the actus reus in this case was at a level of sophistication akin to what a foreign state actors could attempt in an attack on the UK's security apparatus.*" The NCA officers who we dealt with were named Mr Phil Larratt, Mr Paul Donnington Smith, Mr Dany Bosine, Ms Rosin Culles and Mr James Strachan. NCA officers had attended a briefing in Gibraltar with the RGP investigating team and out of courtesy Mr. Richardson brought a couple of them round to my office to introduce them to me. I recall the comment which is being doubted was made after I asked the NCA officers whether this type of investigation would be one that the NCA would take on board in the UK. I wanted to understand whether UK county police forces would embark on such a complex investigation or whether this would be referred to a body such as the NCA. It was then that the NCA officer came up with the comment including the hugely concerning words "foreign state actors." There has certainly not been an embellishment on my part to introduce this factual comment. By way of further background, the engaging of the NCA commenced long before I wrote off to the Director General. I had previously reached out to the NCA Manager of the Iberian Peninsula at the British Embassy in Madrid, Mr Martin Lennon, who I had worked with on other matters. He facilitated introductions with the NCA Cyber Crime Unit, and it was once we were in unofficial agreement that the NCA could assist on Op Delhi that I wrote officially to their Director General seeking their assistance.
- 27 As it concerns paras. 37 and 38, these relate to post my time in office and I have no knowledge of the decision made in this respect.

STATEMENT OF TRUTH

I believe that the facts stated in this Third Responsive Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Personal Data

Ian McGrail /

1st April 2024

Presented by Charles Gomez & Co, of 5 Secretary's Lane, Gibraltar, solicitors for Ian McGrail