

Commissions of Inquiry Act

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

**Convened by a Commission issued by His Majesty's Government of
Gibraltar on 4th February 2022 in Legal Notice No.34 of 2022**

WITNESS STATEMENT OF SUPERINTENDENT MARK WYAN

1. My name is Mark Wyan and I am a Superintendent of the Royal Gibraltar Police ("the RGP"). I joined the service in January 2002 and was promoted to my current rank in November 2021. This preliminary statement is prepared [on advice from my lawyers] without attaching the documents referred to, to avoid delay. The said documents are currently subject to a document review ("the Document Review") by the RGP and our lawyers in accordance with the Document Protocol and when concluded they will form part of a document bundle ("the RGP Bundle"). Where possible this statement will be updated by references to the RGP Bundle.
2. I write this statement in answer to the questions posed by Attias & Levy in their letter of the 14th July 2022 entitled "*Inquiry into the Retirement of the Former Commissioner of Police ("the Inquiry") – Mark Wyan.*"

1.a. At the time of or following Mr McGrail's appointment as Commissioner of Police, were any complaints made by or to you in respect of the efficiency, effectiveness, probity, integrity, or independence of Mr McGrail in the undertaking of his duties as Commissioner of Police?

3. To the best of my knowledge and belief no such complaints were made to me in respect of Mr McGrail, either at the time of or following his appointment as Commissioner of Police.

1.b During Mr McGrail's tenure as Commissioner of Police, were you aware of any allegations or complaints made by members of the Police Federation in respect of bullying and/or intimidation by Mr McGrail?

4. I was not aware of any allegations of bullying and/or intimidation made against Mr McGrail by members of the Police Federation.

1.c. In respect of Operation Delhi

i. What was your involvement in Operation Delhi?

5. On the 15th April 2019 former Superintendent Paul Richardson (“Supt Richardson”) briefed me about allegations made by Mr James Gaggero [on behalf of Bland Limited] in respect of the National Security Centralised Intelligence System (“NSCIS”). This followed a letter of complaint sent to the Commissioner of Police, dated the 18th December 2018, written by their lawyers. The investigation had been named “*Operation Delhi*.”
6. Supt Richardson was the Senior Investigating Officer (“SIO”) for the case. He had initially assigned DS Neil Zammit as the Officer in Charge of the Investigation (“OIC”). At that time I was a Police Inspector and I was tasked to prepare interview plans for two of the identified suspects.
7. On the 19th May 2019 officers of the RGP arrested three suspects and executed a number of search warrants under Operation Delhi. I conducted the pre-planned interviews. On the same date I was assigned as the new OIC by Supt Richardson.
8. I retained the function of OIC for Operation Delhi between the 19th May 2019 and the 21st January 2022 when a *nolle prosequi* was entered by the Attorney General.

ii. Did you provide briefings to Mr McGrail or former Superintendent Paul Richardson on the conduct of Operation Delhi?

9. I provided regular briefings to Supt Richardson in respect of Operation Delhi. These ranged from daily briefings to weekly briefings depending upon investigative developments.
10. I recall briefing Mr McGrail on a single occasion as part of a general update on the progress of the investigation. This followed an extensive report which I had drafted about the operation. This report is subject to the Document Review.

iii. Did you attend any meeting in respect of Operation Delhi with Mr McGrail and/or any of the following individuals:

1. The Chief Minister

11. I attended a meeting with the Chief Minister, the Hon Fabian Picardo KC (“the Chief Minister”) on the 7th April 2021 at No.6 Convent Place. Also present was the Assistant Commissioner, Mr Cathal Yeats, and the Principal Private Secretary to the Chief Minister, Mr Peter Canessa. The Chief Minister called the meeting in order to discuss the RGP request for a witness statement and questions sent to him in an email of the 24th November 2020. During the meeting he dictated his responses to the questions posed in the email. I took a note of the meeting which is subject to the Document Review.
12. On the 25th June 2021 and following a draft statement sent to him by email on the 26th April 2022, the Chief Minister invited me to attend No.6 Convent Place. He read over his finalised statement in my presence and then signed the document as true.

2. Albert Mena, Financial Secretary

13. On the 17th July 2019, DS Paul Clarke and I met with the Financial Secretary, Mr Albert Mena, at No.6 Convent Place. Also present was his legal advisor. During the meeting we set out the nature of the investigation and Mr Mena explained his involvement in the NSCIS platform. He was asked to supply a witness statement for the investigation. I took a note of the meeting which is subject to the Document Review.

3. Neil Costa, former Minister for Justice

14. I did not meet with the former Minister for Justice, Mr Neil Costa, in relation to Operation Delhi.

4. Dr Josph Garcia, Deputy Chief Minister

15. I did not meet with the Deputy Chief Minister, Dr Josph Garcia, in relation to Operation Delhi.

5. Darren Grech, Chief Secretary

16. On the 25th September 2019, former DCI Brian Finlayson, DS Clarke and I met with Chief Secretary, Mr Darren Grech, and HMGoG Senior Crown Counsel Mr Lloyd DeVincenzi (“SCC DeVincenzi”) at No.6 Convent Place. The meeting related to one of the suspects who had been arrested and who was a civil servant. I took a note of the meeting which is subject to the Document Review.

17. On the 30th April 2020, Mr McGrail, Supt Richardson and I met with Mr Grech at No. 6 Convent Place. Also present was SCC DeVincenzi. The meeting related to the ownership of the NSCIS platform and the civil servant who had been arrested. I took a note of the meeting which is subject to the Document Review.

6. Michael Llamas KC, Attorney General ('the Attorney General')

18. On the 15th May 2020, Mr McGrail, Supt Richardson and I met with the Attorney General, Mr Michael Llamas KC ("the Attorney General"). Also present was the Director of Public Prosecutions, Mr Christian Rocca KC ("the DPP"). The meeting was held at the Government Law Offices and concerned the execution of warrants in respect of Mr Levy KC pursuant to Schedule 1 of the Criminal Procedure and Evidence Act 2011 ("Schedule 1"). I took a note of the meeting which is subject to the Document Review.

19. On the 20th May 2020, Mr McGrail, Supt Richardson and I again met with the Attorney General and the DPP. The meeting was held at the Government Law Offices and concerned a letter from Hassans International Law Firm ("Hassans") (dated the 20th May 2020) relating to the Schedule 1 search warrants in relation to Mr Levy KC. I took a note of the meeting which is subject to the Document Review.

7. Christian Rocca KC, Director of Public Prosecutions ('the DPP')

20. On the 4th September 2019, former CI Brian Finlayson, DS Paul Clarke and I met with the DPP for legal advice in relation to Operation Delhi. I took a note of the meeting which is subject to the Document Review.

21. On the 17th January 2020 DS Clarke and I met with the DPP for legal advice including the formulation of charges in relation to Operation Delhi. I took a note of the meeting which is subject to the Document Review.

22. On the 3rd March 2020, Supt Richardson and I met with the DPP for legal advice regarding the involvement of Mr Levy KC. I took a note of the meeting which is subject to the Document Review.

23. On the 8th April 2020, Supt Richardson and I had a video conference with the DPP for legal advice, specifically whether there was a realistic prospect of conviction in respect of the suspects. I took a note of the meeting which is subject to the Document Review.

24. On the 15th May 2020 I attended a meeting with the DPP, the AG, Mr McGrail and Mr Richardson as set out above in paragraph 18.
25. On the 18th May 2020, Supt Richardson and I met the DPP at the Offices of Criminal Prosecution and Litigation (“the OCPL”). Also present was Crown Counsel Cecile Gomez (“CC Gomez”). The meeting related to a submission made by Hassans. I took a note of the meeting which is subject to the Document Review.
26. On the 20th May 2020 I attended a meeting with the DPP, the AG, Mr McGrail and Supt Richardson as set out above in paragraph 19.
27. On the 29th May 2020 Supt Richardson and I met the DPP at the OCPL. Also present was CC Gomez. The meeting related to further submissions made by Hassans. I took a note of the meeting which is subject to the Document Review.
28. On the 28th August 2020, Supt Richardson and I met with the DPP and Crown Counsel Mark Zammit (“CC Zammit”). The meeting followed the submission of large quantities of material to the OCPL and a request for charging advice. I took a note of the meeting which is subject to the Document Review.
29. On the 4th September 2020, DS Clarke and I met with the DPP and CC Zammit. The meeting related to the drafting of charges. I took a note of the meeting which is subject to the Document Review.
30. On the 11th September 2020, DS Clarke and I met with the DPP to further discuss charges. I took a note of the meeting which is subject to the Document Review.
31. On the 25th September 2020, DS Paul Clarke and I met with the DPP and CC Zammit to discuss the disclosure exercise. I took a note of the meeting which is subject to the Document Review.
32. On the 24th March 2021, Supt Richardson and I met with the DPP and CC Zammit to discuss the progress of the disclosure exercise. I took a note of the meeting which is subject to the Document Review.

8. *Nicholas Pyle*

33. I did not meet the Deputy Governor, Mr Nicholas Pyle, in relation to Operation Delhi.

9. Dr Joseph Britto, Chairman of the Gibraltar Police Authority

34. I did not meet the Chairman of the Gibraltar Police Authority, Dr Joseph Britto, in relation to Operation Delhi.

10. Lloyd Devincenzi, former Senior Crown Counsel

35. SCC DeVincenzi was a party to the meetings held with the Chief Secretary, Mr Darren Grech, on the 25th September 2019 and the 30th April 2020, and referred to above at paragraphs 16 and 17.

11. Superintendent John Field

36. I did not meet with Superintendent John Field in relation to Operation Delhi.

12. Paul Richardson, former Superintendent

37. As he was the SIO of Operation Delhi, I had very regular meetings with Supt Richardson. My input was generally to provide him with operational updates whilst his was to provide strategic direction to the investigation.

13. Hassans International Law Firm

38. Save for during the execution of the Schedule 1 search warrant, I did not meet with any representative of Hassans in relation to Operation Delhi.

iv. ***What was the process by which it was decided to seek and enforce search warrants (as opposed to production orders) in respect of Mr James Levy KC?***

39. The process required to obtain a production order or search warrant is set out in the Criminal Procedure and Evidence Act 2011 (“the CPEA”). The material sought in respect of Mr Levy KC consisted of special procedure material defined by section 18 of the CPEA. The process of obtaining access to such material is set out in Schedule 1.

40. Paragraph 4 of Schedule 1 permits a judge or magistrate to give an order for the person to provide the information to a police officer within a specified period of time or to provide access to it. This is commonly referred to as a production order.

41. Paragraph 12 of Schedule 1 states that where additional conditions are satisfied a judge or magistrate may [rather than issuing a production order] issue a

warrant authorising a police officer to enter and search a premises. The further conditions are set out in paragraph 14.

42. Whilst I did not apply for the search warrant myself, Mr Levy KC was a suspect at that stage of the investigation. Based upon the evidence available at the time it was determined that additional conditions required to obtain a search warrant pursuant to paragraph 14 of Schedule 1 were satisfied. The application was made by DS Clarke.

v. *What was the process by which the search warrants in respect of Mr Levy KC were applied for, obtained and enforced? In particular:*

1. *How many court hearings took place?*

43. I did not take part in the application and am therefore unable to answer this question.

2. *What documents (including applications, witness statements, exhibits, correspondence and written submissions) were relied on when applying for the search warrants?*

44. I did not take part in the application however, based upon documents in my possession, I note that DS Clarke produced a 38-page information document in support of the application which is subject to the Document Review.

3. *Was Crown Counsel (whether from Gibraltar or the UK) instructed to make submissions to the Court when seeking the search warrants? If so, who was instructed and how were they chosen?*

45. I did not take part in the application and am therefore unable to answer this question.

4. *Were submissions made to the Court in writing and/or orally when seeking the search warrants? If oral submissions were made how long did the oral submissions take?*

46. I did not take part in the application and am therefore unable to answer this question.

5. *What correspondence was there with the Court and/or any other parties in relation to the search warrants, either before or after the application and enforcement took place?*

47. I have searched my records and have found three items of correspondence in relation to the Schedule 1 search warrants. These are subject to the Document Review.:

- Letter from Ian McGrail to Lewis Baglietto QC dated the 14th May 2020;
- Letter from Lewis Baglietto QC to the AG dated the 15th May 2020;
- Letter from Mr McGrail to Lewis Baglietto QC dated the 21st May 2020.

6. Did you communicate with Mr McGrail as to the execution of the search warrants?

48. To the best of my knowledge and belief I did not communicate with Mr McGrail as to the execution of the search warrants.

7. Did you communicate with Mr James Gaggero, Chairman of Bland Ltd, as to the execution of the search warrants?

49. I did not communicate with Mr James Gaggero as to the execution of the search warrants.

vi. Were you privy to any correspondence with Hassans International Law Firm and/or Caruana & Co regarding the search warrants and the identification of Mr Levy QC as a person of interest in respect of Operation Delhi?

50. The correspondence I was privy to has been referred to in the above paragraph 47.

vii. Were any complaints made or concerns raised to you in respect of Mr McGrail's handling of Operation Delhi, including the decision to issue the search warrants?

51. No complaints were made to me that specifically related to concerns about how Mr McGrail handled Operation Delhi. However, to the best of my knowledge and belief he did not make any decisions in respect of Operation Delhi, including the decision to issue the search warrants. The SIO of the investigation was Supt Richardson. His rationale for executing a search warrant was set out in an NDM document which is subject to the Document Review.

Operation Kram

1d. At present we do not understand that you were involved in Operation Kram. However, if that understanding is incorrect, in respect of Operation Kram – the incident at sea on 8 March 2020:

i. What was your involvement in Operation Kram?

52. I was involved in a number of administrative tasks related only to the Operation Kram disciplinary investigation that was initiated pursuant to the Police (Discipline) Regulations 1991. This investigation succeeded the criminal investigation undertaken by the Metropolitan Police Service and their subsequent recommendations.

Runway Incident

1.e. To what extent were you involved in the following matters and, if you were involved, what were your dealings with Mr. McGrail and/or the individuals referred to at paragraph 1(c)(iii) above:

i. The runway incident involving the detention by the RGP of senior MOD personnel in Gibraltar?

53. I had no involvement in the runway incident.

The HMICFRS Report 2020

ii. The findings of the 2020 Report by her Majesty's Inspectorate of Constabulary and Fire and Rescue Services?

54. I had no involvement leading up to the findings of the HMICFRS 2020 report. However, following promotion to the rank of Chief Inspector in July 2020 I was assigned as the head of the Corporate Services Department, which oversaw the RGP response to the HMICFRS 2020 report under the direction of Commissioner Ullger and Assistant Commissioner Yeats.

Briefings with Mr McGrail

1.f. Were you involved in any meetings or briefings with Mr. McGrail and/or the RGP Command Team in the month or so leading up to Mr McGrail's retirement in June 2022?

55. Save for the meetings referred to above, to the best of my knowledge and belief I was not involved in any briefings with Mr McGrail and/or the RGP Command Team in the month or so leading up to Mr McGrail's retirement in June 2022.

STATEMENT OF TRUTH

I believe the contents of this witness statement to be true.

**Personal
Data**

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NAME: MARK WYAN

DATE: 21.11.2022