

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 4<sup>th</sup> February 2022 in Legal Notice No.34 of 2022

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**SECOND WITNESS STATEMENT OF  
SUPERINTENDENT MARK WYAN**

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**Introduction**

1. My name is Mark Wyan, and I am I a Superintendent of the Royal Gibraltar Police.
2. I write this statement in order to provide the Inquiry with documents that I referred to in my first witness statement of the 21<sup>st</sup> November 2022 and which are considered relevant to the "*Inquiry into the Retirement of the Former Commissioner of Police*", Mr. Ian McGrail.
3. In the second part of this statement I clarify certain matters expressed in the statements of other witnesses.

**Exhibits**

4. All references I make to numbered paragraphs in this section refer to paragraphs in my first witness statement dated the 21<sup>st</sup> November 2022.
5. At paragraph 10 I refer to "*an extensive report that I had drafted*" about Operation Delhi. The report was request for charging advice from the Director of Public Prosecutions. There were a number of iterations of the document ranging from the 24<sup>th</sup> March 2020 to the final report dated the 13<sup>th</sup> August 2020. I tender the final report as **Exhibit MW1**.

6. During the course of Operation Delhi I created a digital investigation log which was used to make notes. The log was redacted by the prosecutor and submitted as part of disclosure with a last modified date of 17/05/2021. I tender a non-redacted copy of this log as **Exhibit MW2**. Unless stated otherwise the exhibits referred to below are extracts from that log. In respect of some of the log entries I also made corresponding handwritten notes which have been disclosed to the Solicitors to the Inquiry.

Meeting with the Chief Minister

7. At paragraph 11, in respect of Operation Delhi, I refer to notes I made of a meeting with the Chief Minister, the Hon Fabian Picardo KC, on the 7<sup>th</sup> April 2021. I tender the notes as **Exhibit MW3**.

Meeting with the Financial Secretary

8. At paragraph 13, in respect of Operation Delhi, I refer to notes I made of a meeting with Albert Mena, the Financial Secretary, on the 17<sup>th</sup> July 2019. I tender the notes as **Exhibit MW4**.

Meetings with the Chief Secretary

9. At paragraph 16, in respect of Operation Delhi, I refer to notes I made of a meeting with Darren Grech, the Chief Secretary, on the 25<sup>th</sup> September 2019. I tender the notes as **Exhibit MW5**.
10. At paragraph 17, in respect of Operation Delhi, I refer to notes I made of a meeting with Darren Grech, the Chief Secretary, on the 30<sup>th</sup> April 2020. I tender the notes as **Exhibit MW6**.

Meetings with the Attorney General

11. At paragraph 18, in respect of Operation Delhi, I refer to notes I made of a meeting with Michael Llamas KC, the Attorney General, on the 15<sup>th</sup> May 2020. I tender the notes as **Exhibit MW7**.
12. At paragraph 19, in respect of Operation Delhi, I refer to notes I made of a meeting with Michael Llamas KC, the Attorney General, on the 20<sup>th</sup> May 2020. I tender the notes as **Exhibit MW8**.

Meetings with the Director of Public Prosecutions

13. At paragraph 20, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 4<sup>th</sup> September 2019. I tender the notes as **Exhibit MW9**.
14. At paragraph 21, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 17<sup>th</sup> January 2020. I tender the notes as **Exhibit MW10**.
15. At paragraph 22, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 3<sup>rd</sup> March 2020. I tender the notes as **Exhibit MW11**.
16. At paragraph 23, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 8<sup>th</sup> April 2020. I tender the notes as **Exhibit MW12**.
17. At paragraph 25, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 18<sup>th</sup> May 2020. I tender the notes as **Exhibit MW13**.
18. At paragraph 27, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 29<sup>th</sup> May 2020. I tender the notes as **Exhibit MW14**.
19. At paragraph 28, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 28<sup>th</sup> August 2020. I tender the notes as **Exhibit MW15**.
20. At paragraph 29, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 4<sup>th</sup> September 2020. I tender the notes as **Exhibit MW16**.
21. At paragraph 30, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 11<sup>th</sup> September 2020. I tender the notes as **Exhibit MW17**.
22. At paragraph 31, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 25<sup>th</sup> September 2020. I tender the notes as **Exhibit MW18**.

23. At paragraph 32, in respect of Operation Delhi, I refer to notes I made of a meeting with Christian Rocca KC, the Director of Public Prosecutions, on the 24<sup>th</sup> March 2021. I tender the notes as **Exhibit MW19**.

Documents relied upon when applying for the search warrant

24. At paragraph 44, in respect of the search warrant appertaining to Mr. Levy KC, I refer to “a 38-page information document in support of the application.” I tender the document as **Exhibit MW20**.

Correspondence with the Court and/or any other parties in relation to the search warrants

25. At paragraph 47, in respect of the search warrant appertaining to Mr. Levy KC, I refer to “three items of correspondence in relation to the Schedule 1 search warrants.” I tender these letters as **Exhibit MW21**.

26. I have found additional email correspondence and attachments regarding the search warrants, which I tender as **Exhibit MW22 to MW54**.

Complaints made or concerns raised in respect of Mr. McGrail’s handling of Operation Delhi, including the decision to issue the search warrants

27. At paragraph 51, in respect of the search warrant appertaining to Mr. Levy KC, I refer to an “NDM document” (National Decision Model). I tender this document as **Exhibit MW55**.

28. In respect of the search warrants I also tender the Body Worn Camera footage, BWC transcript, my investigation log notes and my initial handwritten notes as **Exhibit MW56 to MW59**.

Amendment to First Witness Statement

29. I wish to correct an error at paragraphs 7 and 8 of my first statement, by amending the date from the 19<sup>th</sup> May 2019 to the 10<sup>th</sup> May 2019.

## Response to Statements

### Witness Statements of Messrs.Perez, Cornelio, Sanchez & Asquez

30. I note that the former detainees / defendants of Operation Delhi have provided witness statements in which they set out purported defences to their arrests and subsequent charges brought by the Crown.
31. In response to the matters raised by the former detainees / defendants I tender in evidence the prosecution docket in the case of R v Cornelio, Perez & Sanchez as **Exhibit MW60**.

### Witness Statement of the Chief Minister

32. At paragraph 32 of his statement, dated the 26<sup>th</sup> May 2022, the Chief Minister wrote that “*the RGP refused to provide the Government with the evidence that there was corruption so that we could be a complainant against the Civil Servant.*”
33. The RGP did not refuse to provide the Government with evidence of corruption so that they could be a complainant against the Civil Servant. That decision was made by the Director of Public Prosecutions.
34. In respect of HMGoG being a complainant for this matter, the RGP liaised principally with the Chief Secretary, as well as with the Director of Public Prosecutions. I tender correspondence regarding the complaint as **Exhibit MW61 to MW75**.
35. At paragraph 34 of his statement the Chief Minister referred to the request made by the RGP to provide a statement in respect of Operation Delhi. I tender the correspondence as **Exhibit MW76**.
36. At paragraph 45 of his statement the Chief Minister referred to concerns he raised with Mr. McGrail regarding legally privileged material. This issue had been considered by the investigating team prior to the searches taking place (*Exhibits MW26, MW27, MW55 and MW58 refer*).
37. With respect to paragraphs 46 and 48 of his statement I can confirm that to the best of my knowledge and belief the search warrants were signed by a Stipendiary Magistrate and not a Justice of the Peace. I tender stamped and signed copies of the warrants as **Exhibit MW77**.

Witness Statement of the Director of Public Prosecutions

38. At paragraphs 12 and 13 of his statement, dated the 21<sup>st</sup> June 2022, the Director of Public Prosecutions notes that “*Mr McGrail did not seek my advice in respect of the search and seizure of material from James Levy QC.*”
39. On the 1<sup>st</sup> March 2020, and in response to former Superintendent Richardson sending a copy of the NDM Assessment, Mr McGrail wrote, “*Given the complex nature of this investigation and the reputational risks at stake I would ask that you consult with the DPP to ensure our intended activity is legally supported.*” (*Exhibit MW23* refers).
40. On the 1<sup>st</sup> April 2020, former Superintendent Paul Richardson sent an email to the Director of Public Prosecutions, titled “*Operation Delhi –Pre-Charge Advice*”. Attached to the email was the NDM Assessment document (*Exhibit MW55* refers) and an earlier iteration of the charging report. I tender this email and the charging advice report dated the 24<sup>th</sup> March 2020 as **Exhibit MW78**.
41. The NDM document set out the intent of the RGP to execute warrants in respect of Mr Levy at both his work and place of residence.
42. On the 8<sup>th</sup> April 2020 a video conference was held with the Director of Public Prosecutions regarding “*advice sought on the basis of the report submitted by Supt Richardson on the 1/4/20.*” (*Exhibit MW12* refers). At a later date I was sent notes of the meeting by former Superintendent Richardson, which I tender as **Exhibit MW79**.

Witness Statement of the Financial Secretary

43. On the 22<sup>nd</sup> October 2019, I emailed the Financial Secretary enquiring whether he wished to assert ownership on behalf of HMGoG. He declined to do so for the reasons explained in his email. I tender this exchange as **Exhibit MW80**.
44. At paragraph 26 of his statement dated the 15<sup>th</sup> September 2022, the Financial Secretary referred to correspondence with Mr. McGrail on the 8<sup>th</sup> April 2020, in relation to ownership of the NSCIS platform. I tender this exchange as **Exhibit MW81**.
45. On the same date the Chief Secretary wrote to Mr. McGrail confirming that the ownership of the platform was contested and asserting ownership on behalf of HMGoG. I tender this correspondence as **Exhibit MW82**.

46. Following further correspondence and a meeting of the 30<sup>th</sup> April 2020 (*Exhibit MW6* refers) the Chief Secretary formally asserted ownership on the 4<sup>th</sup> May 2020. I tender this correspondence as **Exhibit MW83**.

*Witness Statement of the Attorney General*

47. At paragraph 25 of his statement dated the 24<sup>th</sup> June 2022, the Attorney General wrote, “... *the fact that the RGP were now, eleven months later, proceeding in this very delicate matter without resolving the issue of ownership of the security platform, and on the basis of a manifestly excessive list of charges, was of considerable concern to both the DPP and me.*”

48. The issue of ownership had been live since it was raised by the former detainees / defendants as early as July 2019. Bland Limited had asserted ownership of the platform since the inception of the investigation. Despite my email to the Financial Secretary on the 22<sup>nd</sup> October, the matter of ownership remained unsettled. (See paragraphs 43 to 46 above).

49. In light of the situation at that time, in November 2019 I proposed that the matter could be resolved by reconsidering the conspiracy from the perspective of an intention to deprive Bland Limited of their maintenance contract rather than the NSCIS platform. I made a note which I tender as **Exhibit MW84**.

50. The proposal had the effect of eliminating any requirement to prove ownership of the NSCIS platform but allowed the offence of conspiracy to defraud to remain a charging possibility. (See also paragraph 32 of *Exhibit MW78*).

51. On the 13<sup>th</sup> January 2020 I carried out a review of (at that time) 51 identified offences. I noted, “*To be selected based upon the advice of the DPP.*” I tender this note as **Exhibit MW85**. On the 17<sup>th</sup> January 2020 I had a meeting with the DPP regarding, “*formulation of charges, summary and jury.*” (*Exhibit MW10* refers).

52. Following instructions from former Superintendent Richardson, on the 24<sup>th</sup> March 2020, I concluded the first iteration of the charging advice report (*Exhibit MW78* refers). Within this document I set out seventy-six charges for consideration by the DPP. As explained in paragraphs 3 and 5, it was intended that the DPP should consider which charges were appropriate. I tender notes reflecting this intent as **Exhibit MW86**.

53. The proposed charges related to Messrs. Cornelio, Perez, Sanchez, Chipol and Levy KC. Specific legal advice was requested regarding whether the threshold of suspicion had been met for Mr. Levy KC.
54. Seventy-two of the seventy-six potential charges related to computer misuse offences (61 instances) and fraud offences (11 instances) by Mr. Cornelio. Only four charges were proposed in respect of the other four suspects. (Paragraph 5 of *Exhibit MW78* refers).
55. The ownership of NSCIS predominantly had a bearing on Mr. Cornelio, but only regarding acts carried out within a specific window of time. It was consequently also capable of impacting upon the misconduct charge proffered in respect of Mr. Chipol.
56. The ownership of the platform had no bearing on charges / offences proposed in respect of Messrs. Perez, Sanchez or Levy KC.
57. In September 2020, and following consultation with the Director of Public Prosecutions, charges were preferred against Messrs. Perez, Cornelio and Sanchez. The issue of ownership had not been resolved.

**STATEMENT OF TRUTH**

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

**Personal  
Data** ....

**NAME: Mark WYAN**

**DATE: 27<sup>th</sup> July 2023**