

**In the Matter of the Commissions of Inquiry Act**

**-and-**

**In the Matter of an Inquiry into the retirement of the former Commissioner of Police convened by a Commission issued by HM Government of Gibraltar on 4 February 2022 in Legal Notice No 34 of 2022 ("the Inquiry")**

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**THIRD AFFIDAVIT OF  
FABIAN PICARDO KC MP**

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I, **Fabian Picardo**, Chief Minister of No. 6 Convent Place, Gibraltar **MAKE OATH** and say as follows:

1. I swear this my Third Affidavit in answer to the request by the Inquiry for my evidence as set out in a letter, of 25<sup>th</sup> September 2023, from the solicitors to the Inquiry, Messrs Triay, to my solicitors, Messrs Peter Caruana & Co. I will deal with the issues set out in the numbered questions in that letter in turn.

**THE MEETING OF 13 MAY 2019**

2. I have already provided the Inquiry, in my First Affidavit, with such detail as I am able to recall of what was discussed at this meeting.
3. I do believe, however, that my comment about contact with the senior partner of Hassans, James Levy KC, was to suggest that the RGP should establish that contact in order to ensure that they were engaging on the issues that were relevant to Hassans and which they were raising in that meeting.

4. I am reinforced in that view by the evidence of retired Superintendent Paul Richardson who states, in his third statement, at paragraph 60, that his notes of the meeting show that his own recollection is as follows:

*“60. The CM told us that we would need to speak to the Senior Partner of Hassans not that he would.”*

#### **CONTACT WITH JAMES LEVY ON HIS BEING A PERSON OF INTEREST**

5. I recall that I discussed with Mr James Levy KC on a very large number of occasions the fact that the RGP had suggested that he might be a person of interest in the investigation. He raised this with me constantly when I spoke to him on other matters. I consistently replied to him that I was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law. In fact, this was also the conclusion reached by the Police when they made the decisions about who to charge in consequence of their Op Delhi investigation.
6. There are no notes of these discussions between Mr Levy and me as this was an issue that was raised with him on the occasions when I spoke to him, which, more often than not, was during informal telephone conversations.
7. Any document or other communication recorded in documentary format which relates to any such discussion would already have been disclosed in the context of the disclosure of documentation that I have already provided, and no additional records exist in this respect, as far as I am aware.

#### **CONTACT WITH JAMES LEVY ON THE WARRANTS ISSUED BY THE COURT**

8. I have frequently discussed with Mr Levy KC the issue of a Search Warrants in respect of him. As the Inquiry will now be aware from evidence that is common ground between relevant CPs, I have considered from the first moment I was informed of it, that a search warrant in respect of Mr Levy's home and offices were unnecessary and inappropriate. I was (and remain) entitled to that view and to express it to the Commissioner of Police, to

Mr Levy and to whomever else I pleased, and I did so, in the terms that I (as was also my right) considered appropriate.

9. The evidence before the Inquiry, in particular of retired Superintendent Richardson in his third statement, demonstrates that Superintendent Richardson agreed that Mr Levy KC's status as suspect was borderline, especially in the view of the DPP. Additionally, the statement discloses that no careful consideration appears to have been given to whether the threshold for obtaining a Search Warrant instead of a Production Order had been met. The only reference is to a conversation between them (Mr Richardson and Mr McGrail) about what might happen if Mr Levy KC got up and left if requested, in conversation, to provide his phone for analysis, not about how Mr Levy KC, one of his Majesty's (most senior) Counsel in Gibraltar, would react to an Order of the Court to produce relevant documentation.
10. I was, and remain, very concerned that the Police should fail to give proper consideration to the test for obtaining a Search Warrant as opposed to a Production Order in respect of any individual. That concern is magnified in respect of Mr Levy (as it would be in respect of anyone in his position), not because of my long standing, continuing and much-valued personal, political and professional relationship with him, but because of his standing in the community and the effect on Gibraltar's international reputation as a finance centre of the ill-considered taking of such decisions in respect of a leading professional in our finance centre and Gibraltar's foremost law firm.
11. My frequent conversations with Mr Levy KC about the search warrants were mostly telephonic and, as I have already said, there is no record beyond those already disclosed. There is no breakdown of the number or dates or times of these conversations, as there were and still are many of them. There were no meetings in my office such as may have resulted in a note of it.

**CONTACT WITH JAMES LEVY ON 12th MAY 2020 BETWEEN 12:20 & 1300hrs**

12. I recall (because the date is noteworthy by virtue of these events) that I spoke to Mr Levy on the telephone on the 12th of May. I do not recall the time at which I spoke to him. I expressed to Mr Levy my consternation at how the Police had acted in executing a Search Warrant at his home. I do not recall the precise method by which we spoke. I may have

been able to reach him on his home number [Personal Data] or on the office number (200 79000) as Mr Levy KC has an office extension at his home.

13. I also recall speaking to Mr Levy KC (in addition to the warrants) about his position and concerns (as leader of the Jewish Community) on access places of worship (which was then a thorny issue in the context of lock-down). I cannot now recall the order in which these issues were discussed between us on that day or the times at which we did so.
14. Gibtelecom have provided me with their log record of my outgoing mobile telephone traffic on that day. I can confirm that none were to James Levy, nor were there any calls during the period 12:20 – 13:00 hrs. In so far as concerns incoming calls, I am advised by my private secretary that Gibtelecom has informed him that they have no such information available to provide because this has long-since been deleted by them in consequence of their data retention policy in accordance with their obligations under the Data Protection Act. I am however entirely content to confirm, as I have done above, that such calls occurred.
15. In so far as concerns the No.6 Convent Place landlines, I am informed by my staff that Gibtelecom have informed my office that this information is no longer available due to their data retention policy in accordance with their obligations under the Data Protection Regulation.
16. In so far as concerns WhatsApp calls, these are no longer available to me on the app in respect of the dates in question. I can also confirm that I have never used Signal in order to make calls.
17. Finally, I wish to say that I do not share Mr McGrail's exaggerated and self-serving view and descriptions of my having spoken and expressed my views to Mr Levy KC on the day the Search Warrant had been executed in his home. I do not consider that it was 'inappropriate behaviour' to do so. To the contrary, I believed and continue to believe that it was entirely proper, natural and appropriate, not least given my very close friendship and relationship with him. The high office that I held (and continue to hold) does not disqualify me from doing so, still less does it require me to engage in an unnatural omission to do so to avoid the speculative and reckless suspicions of Mr McGrail or anyone else.

18. Finally, I take this opportunity to provide to the Inquiry a number of WhatsApp messages from my chat logs (as previously requested of me by the Inquiry). There is now produced and shown to me marked Exhibit FP3 copies of these messages between me and the following persons:

- 18.1. Michael Llamas;
- 18.2. Lewis Baglietto;
- 18.3. Albert Mena;
- 18.4. Darren Grech;
- 18.5. Ian McGrail;
- 18.6. Joey Britto;
- 18.7. Nick Pyle (chat named Deputy Governor);
- 18.8. Richard Ullger.

19. On each occasion that a chat log refers to 'media omitted', the WhatsApp application informs me that the media can no longer be downloaded or viewed, presumably because of its age.

SWORN by the above-named deponent  
at *No.6 Convent Place* )  
Gibraltar )  
this *15* day of November 2023 )

**Personal Data**

Before me,

**Personal Data**

Commissioner for Oaths

JAMES P. HAMMOND  
COMMISSIONER FOR OATHS  
GIBRALTAR

This Affidavit is filed by Messrs Peter Caruana & Co of Suite 933, Europort, Gibraltar, solicitors for Mr Fabian Picardo KC MP.