

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")

**FOURTH AFFIDAVIT OF
FABIAN PICARDO KC MP**

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

1. I swear this my Fourth Affidavit in answer to the request by the Inquiry for my evidence as set out in a letter dated 26 February 2024 ("the Inquiry Letter"), that I address questions raised in that letter about discussions and meetings with Lewis Baglietto KC and James Levy KC on dates referenced in the Inquiry Letter.

Discussions with Mr Levy KC and related documents or messages

2. In the Inquiry Letter, reference is made to paragraphs 6 to 7 of my Third Affidavit in which I stated as follows:

"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.”

3. I am now asked to confirm on affidavit whether such documents “did exist and have since been deleted or lost (as opposed to none ever being created in the first place)...with an explanation as to how and when the messages were deleted or lost.”
4. Without reference to any specific document or digital message that may suggest the contrary, (the existence of which I cannot recall) I cannot recall any such documents having been created or existing and subsequently lost or any relevant message having been deleted or lost).
5. I should, however add that I will have changed my phone (which is where my WhatsApp messages are principally created and stored) four or five times and deletions may have happened inadvertently or for technical reasons. Indeed, when dealing with “media” attached to messages, what I believe happens is that the data for such media will likely be on the hardware of the phone I would have been using at the time. There are no such old phones to which I continue to have access.
6. I do not believe I purposely deleted any message or media related to this matter in my exchanges with Mr Baglietto KC or Mr Levy KC. If any messages or media have been deleted or are not accessible for technical reasons, and these are otherwise available to the Inquiry, I shall be happy to address any such message or document which the Inquiry may refer to me, but I believe that there are none.
7. Additionally, I can also confirm that if WhatsApp messages have been deleted or lost (either automatically or manually), which I do not believe has been the case (other than possibly for the technical reasons set out above re media), I have already made all reasonable efforts to retrieve any such messages and the disclosure I have provided is the fruit of those said efforts.

Meetings with Mr Baglietto KC & Mr Levy KC

8. I am further asked, in the Inquiry Letter to clarify certain matters by affidavit, namely:
 - 8.1. whether meetings took place (whether via telephone or in person) between me and Mr Lewis Baglietto KC (either one-on-one or with others present) to discuss the RGP's actions in obtaining a search warrant against Mr James Levy KC; or Mr McGrail's position as Commissioner of Police and/or the decision to invite him to retire,
 - 8.2. in particular, whether meetings and/or telephone calls took place on 12 May 2020 (at approximately 15:57), 17 May 2020 (at approximately 09:44), 17 May 2020 (at approximately noon), as referenced in the WhatsApp messages in my Third Affidavit.
 - 8.3. what was stated in those meetings, whether anyone else was present at these meetings, and if so, who? In particular, I am asked to clarify whether Mr Levy KC was present at any of those meetings.
9. As can be seen from the WhatsApp messages disclosed, I met with Mr Baglietto KC on a number of occasions during that period. Those meetings occurred nearly four years ago and I cannot recall the detail of what was discussed.
10. I can, however, assisted by the references in the WhatsApp messages I have disclosed, recall the general tenor of the discussion. In those meetings, I believe that I shared with Mr Baglietto KC, who is, incidentally one of my closest personal friends, my outrage at the RGP, in my view improperly, obtaining a search warrant in respect of Mr Levy KC instead of a Production Order.
11. My view was that the mechanism employed to seek documents and information from Mr Levy had been inappropriate and a breach of his human rights, including his right to privacy under the Constitution, and a violation of his many clients' rights and expectations of privacy.

12. I spoke with Mr Baglietto KC repeatedly about this and about how let down I felt by Mr McGrail and about the fact that I would never be able to trust him again because I believed he had, as I have already stated in my earlier Affidavits, lied to me about the advice he had taken and received about the appropriateness of the execution of a search warrant as opposed to a Production Order.
13. Mr Baglietto KC and I discussed at length how best he should raise these issues in his representation of Mr Levy KC. We discussed whether Mr Levy KC should be advised to judicially review the RGP's actions in this respect.
14. In this context, I believe (though I have no precise recollection of the detail of the discussion) that I would have shared with Mr Baglietto KC also the fact that I was very open with the Gibraltar Police Authority and the then Governor that Mr McGrail no longer enjoyed my confidence and my views as to the mechanisms to see Mr McGrail removed and the consequences thereof.
15. I recall seeing Mr Levy KC also at this time on one occasion, with Mr Baglietto KC. I believe I saw him at my home (the security of which is, incidentally, provided by OSG, who have a live video feed of all comings and goings from my home).
16. I recall also that Mr Levy KC was, at this time, both incensed but also deeply embarrassed by the events of his home and office being searched.
17. At the meeting with Mr Levy KC I remember we discussed, again, how legally improper it had been, in our view, for the RGP to have proceeded by way of search warrant and not Production Order, how outraged I was by the fact that I believed that Mr McGrail had lied to me about the advice he'd had in that respect and my subsequent complete loss of confidence in him.
18. The key issue in that meeting, however, was that Mr Levy KC, as a result of the acute embarrassment he had felt, had wanted to see me to offer me his resignation as the Chairperson of Gibraltar Community Care Trust, a post he has held for over thirty years. I told Mr Levy KC in that meeting that I continued to have full confidence in him and his integrity and that I did not believe it was necessary for him to resign from the Chairmanship of Community Care Trust.

Personal Data

SWORN by the above-named deponent

at No 6 Convent Place)

Gibraltar)

this 18th day of March 2024)

Before me,

Personal Data

PAULA AZOPARDI
COMMISSIONER FOR OATHS
GIBRALTAR

Commissioner for Oaths

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