

INQUIRY INTO THE RETIREMENT OF  
THE FORMER COMMISSIONER OF POLICE  
(‘THE INQUIRY’)

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AFFIRMATION OF THOMAS JOHN CORNELIO

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I, THOMAS JOHN CORNELIO of [REDACTED]  
do solemnly and sincerely affirm : —

1 I make this affirmation in response to the request from solicitors to the Inquiry that I should produce a statement under oath on matters relevant to the subject matter of the Inquiry, and any relevant documents.

**I. INTRODUCTION**

2 Along with John Perez (‘JP’) and Caine Sanchez (‘CS’) I was one of the persons who was investigated, arrested, detained, and later charged as part of the investigation by the Royal Gibraltar Police known as Operation Delhi (‘Op Delhi’). Eddie Asquez MBE (‘EA’) was also investigated, arrested and detained as part of the same operation, though he was not charged. I will refer to me, JP, CS and EA as the ‘Detainees’, and to me, JP and CS as the ‘Defendants’.

3 We Detainees all have the benefit of orders made by the Commissioner of the Inquiry granting public funding for representation by a legal team including the lawyers who represented me and JP in the Op Delhi prosecution. We have all received similar letters from the solicitors to the Inquiry, and there is a significant degree of overlap between the evidence that we can provide. So that the Inquiry is not burdened with repetitive evidence, we have decided that the areas where our evidence overlaps should appear in JP’s affidavit, from which it can be adopted by we other Detainees if appropriate. Where I refer to ‘JP’s affidavit’ in this document, I mean the statement under oath of the same or similar date to this affirmation, which I have read in draft.

4 As might be expected, we Detainees have followed the progress of the Inquiry closely. Whilst we have not been supplied with unredacted copies of the statements made on behalf of Ian McGrail and the ‘Government Parties’, it is clear that facts concerning decisions in the course of Op Delhi and the subsequent prosecution may be in dispute between the core participants, and may become an important focus of the Inquiry.

5 As suspects and then (save for EA) defendants, we Detainees were obviously not privy to decisions made about the progress of the investigation at the time they we made, and have little direct evidence of the motivations of those who made them. However, we all firmly believe that Op Delhi would not have proceeded as it did without improper influence from James Gaggero at Bland. He believed that we had effectively stolen the intellectual property in NSCIS from Bland. He was obviously wrong, because Bland did not own this intellectual property. Whilst James Gaggero's annoyance at the loss of key employees is understandable, we feel strongly that the RGP should not have allowed James Gaggero to engage the resources of the state to prosecute Bland's grievances.

6 The reasons why we hold this belief should be apparent from the account of the underlying facts behind Op Delhi as I have set them out in Part II below.

7 In Part III, I adopt JP's account of the stages of our arrest and prosecution, with one significant addition concerning a meeting between me and (then) CI Mark Wyan on 08 March 2021.

8 I also adopt JP's Part IV. The purpose of this part is to present further relevant facts that I have learned since my arrest, principally through the material served in the criminal proceedings. For the reasons given in JP's affidavit, I am unable to supply all of the relevant documents due to the prohibition in s256 of the Criminal Procedure and Evidence Act 2011.

9 My conclusions in Part V adopt JP's conclusions, but add my own observations about the decision to charge me with computer misuse offences without any independent computer expert evidence.

## II. UNDERLYING FACTS


### *Employment with Bland: 2010-2018*



10 I was engaged by Bland in 2012 as Head of Software Development. Previously I had worked at GibTelecom. My line manager at Bland was (and remained) JP, the Chief Executive Officer.



11 Whilst employed by Bland, I developed, with some assistance from others, the software that began as the 'Frontier Monitoring Project' but became known as 'NSCIS' — the National Security Central Intelligence System.

12 Though it became a complex system, the basic premise of NSCIS was straightforward. Information was collected from a variety of hardware and third-party sources. It was fed into databases where it was processed. The information and the results of the processing could then be viewed through a web-based user interface. It was this interface that was in fact the only element properly named NSCIS — the remaining elements of the system had other names.

13 Though the basic premise of NSCIS was straightforward, there were a number of factors that added significant complexity:

- (1) As an information-collating system, NSCIS
  - (a) had interfaces to numerous different types of hardware, which could change with upgrades or be replaced, and
  - (b) had to be capable of passing files submitted by numerous third-parties in differing formats, which could change at the whim of the third party.
- (2) NSCIS was physically distributed, with elements in all parts of Gibraltar, as well as 'virtual' elements in the 'cloud'.
- (3) Other information outputs in addition to the NSCIS web interface were required: a Twitter feed; email and SMS alerts; the border hotline.
- (4) 
- (5) The information flow was not entirely one-way: for example, users of the web-based user interface could set up 'wanted lists' that would cause NSCIS to send an alert when a person matching the parameters in the wanted list was identified.

14 The physical infrastructure of NSCIS changed as it was developed over the years. However, by July 2018 it comprised local hardware (at the land border, the airport, the sea port and elsewhere), virtual servers hosted on  service, as well as databases and web services also on .

15 The  account used for NSCIS was registered by me using my personal email address. It was ultimately paid for by HMGoG. 

[REDACTED] used for development was an account that I had obtained prior to commencing employment with Bland.

16 NSCIS was developed incrementally, with modules being produced, tested, and brought into production according to the needs and wishes of HM Government of Gibraltar ('HMGoG'). The modules were purchased by HMGoG as they were developed, which also paid monthly fees for maintenance and support. No written contract was ever concluded for either the sale and purchase of the modules or for maintenance and support. My understanding throughout was that HMGoG had fully received what it had paid for, and that the intellectual property in NSCIS resided with HMGoG.

17 From the outset of the project, the principal customer contact for NSCIS in HMGoG was CS. He had complete autonomy over NSCIS for HMGoG, and was always vigilant in ensuring that the system functioned as it should, diligently following up any reports of issues from users of the system. He also carefully controlled access to NSCIS and its underlying data. He did not, however, have authority to enter into substantial contracts on behalf of HMGoG.

18 In addition to NSCIS, my team and I built other software for HMGoG, including systems for Department of Education, the Employment Training Board, and the Department of Social Security. In January 2017, Bland registered the business name 'Wavetecx' to be used as a trading style for marketing the work of me and my team, and at JP's request I created email addresses and mailboxes to be used in connection Wavetecx.

19 Within Bland, I worked closely with JP. The businesses that we built for Bland were highly successful, such that by 2018 Bland had paid back all the loans that been granted to it by its parent company.

20 Bland's most senior executive was its chairman, James Gaggero. He was rarely seen in Bland's Gibraltar offices, residing in the UK.

#### *Planning an exit — 2017/18*

21 In early 2018, JP and I began to plan an exit from Bland. Our intention was to start a business that would, in part, compete with Wavetecx and establish itself by winning the business that HMGoG was then conferring on Bland for the maintenance and support of NSCIS. Its main competitive advantage over Bland was me, because I was the principal author of NSCIS and the person best qualified

to support and maintain it. We discussed our plans with James Levy CBE KC, who indicated that Hassans would support the business by taking shares in a new company and offering a loan to cover start-up costs.

22 From the beginning, JP and I ensured that HMGoG was aware of our plans. CS was informed: his primary concern was to ensure that HMGoG received the best service possible, that the reliability of NSCIS was not impacted, and that the data in NSCIS should be safeguarded through any transition, if that was the decision that the ministers took. I was aware that JP was also making sure that the Chief Minister, The Honourable Fabian Picardo KC ('CM') and others within HMGoG were kept up-to-date. As far as I knew, all those within HMGoG who knew of our plans were supportive.

23 The new company was incorporated on 23 April 2018, as 36 North Limited ("36N"). Under the supervision and with the advice of consultant solicitor David Weber of Hassans, documents were drafted with a view to preventing any breach of our obligations under our contracts of employment.

24 On the technical side, I began planning how maintenance and support of NSCIS might be transferred to 36N, and how it might thereafter be replaced by a new system (known as 'Phoenix'), without disruption to users and to HMGoG, and without loss of service or data. This was an issue that was important to CS and was discussed between me and CS. Following discussions with CS, I started to make modifications that would facilitate this smooth transition.

25 We were delayed in formally tendering our resignations because JP wanted to do this to James Gaggero in person, and the opportunity to do so did not arise until early July 2018. On the evening of 08 July 2018, JP sent a message to the CM telling him that he and I would be resigning the following day; the CM replied wishing us luck.

26 On 09 July 2018, we both tendered our resignations in person to JG, and informed him that we had set up a company together. By a letter dated the same day, JP confirmed his resignation in writing.

27 James Gaggero asked us to take 24 hours to reconsider, and also made me an offer of a substantial increase in remuneration if I stayed. We took the time to consider the matter, but did not change our minds. By a letter dated 10 July 2018, I confirmed my resignation in writing.

28 Following our resignations, James Gaggero indicated that he did not want Bland to retain the business of maintenance and support of NSCIS, or the other software developed for HMGoG: Bland, 36N and HMGoG would come to an arrangement to transition this to 36N. This remained James Gaggero's outward position throughout July and into August: provided only that HMGoG agreed, 36N would take over the maintenance and support of NSCIS and the other HMGoG platforms from Bland. A consequence of this approach was that Wavetecx would be disbanded, and I therefore deleted the Wavetecx mailboxes I had earlier created.

29 However, at the same time that James Gaggero was outwardly maintaining that he would support a transition to 36N, he was privately making accusations of misconduct. Nonetheless, when my notice period expired on 09 August 2018, James Gaggero requested that I continue to maintain and support NSCIS (and all other HMGoG platforms maintained by Bland) until direction was given by the CM. I agreed to do this.

30 Through August 2018, James Gaggero's stance appeared to harden as he realised that HMGoG did not accept that Bland retained the intellectual property in NSCIS, and therefore that a transition to 36N would result in the loss of all income with no royalties paid to Bland. He began to make more widespread accusations of misconduct, including of sabotage to NSCIS.

31 I could not continue to support NSCIS, nominally as a sub-contractor to Bland, whilst James Gaggero was actively trying to tarnish my reputation and that of JP and 36N. On 30 August 2018, I notified James Gaggero that I was no longer prepared to support and maintain NSCIS, and would be ceasing to do so the following day. JG replied praising my work during this period.

32 Through July, August and September 2018, I continued to develop the new platform, Phoenix. I was assisted in this by former Bland developers Joey Benrimoj and Marius Zalkauskas, once their notice periods with Bland had expired and they had joined 36N. With my team I also made changes to the software in production — i.e., the version of NSCIS actually running on the local hardware and the virtual servers. The purpose of making these changes was to smooth a transition to 36N, and to allow me to continue to maintain the system during the transition period. As a result, the production software (and the source code that was used to compile it) became a hybrid.

33 Whilst the root of this hybrid was code developed by me (with others) whilst I was employed with Bland, grafted onto it were modifications and additions developed by me (and others) on behalf of 36N.

34 On 06 September 2018, I provided NSCIS source code to Bland. I did so by copying source code from my own Microsoft Team Foundation Server source code repository to another repository, and granting access to this repository to Bland. The source code provided was the source code of NSCIS as developed for Bland; it did not contain the modifications and additions that I and my team had added whilst working for 36N, and therefore did not match the software then in production.

35 Notwithstanding my email to James Gaggero of 30 August 2018, I continued to ensure that NSCIS (and other HMGoG platforms) remained operational at CS's request, and for no remuneration. During this period, I worked directly with law enforcement and department heads on a daily basis. The CM, through James Levy CBE KC and CS, was also aware that I continued maintaining the platforms.

36 On 19 September 2018, I attended a meeting with James Gaggero and others from Bland. James Gaggero attempted to split me from JP and woo me back to Bland. When I refused, James Gaggero's tone changed, and he promised to make an example of us. On 20 September 2018, I travelled with my family to London so that my daughter could have surgery. I nonetheless continued to support NSCIS (and other HMGoG platforms) whilst I was in the UK.

37 On 04 October 2018, the CM's Principal Private Secretary Peter Canessa instructed CS to hand over the maintenance and support of NSCIS to Bland; following the handover, I was not to have access to the platform. CS informed me of this by telephone the following day. At the time I did not understand why this decision had been made; however, after reading the evidence served in the criminal proceedings, I now know that it came after James Gaggero had met the CM and made allegations of misconduct against me. Further details on this are in Part III of JP's affidavit, which I adopt below.

38 I attended a meeting on 09 October 2018 with CS, where I was asked to ensure that Bland had the source code to NSCIS. I told Bland that an alternative location for the source code was on my Bland workstation, and those of Marius Zalkauskas and Joey Benrimoj. This source code was the final version of NSCIS as developed by me whilst at Bland, prior to the modifications and additions made whilst I was working for 36N.

39 It appears that Bland never attempted to use the source code that I had provided, instead reverse-engineering (without consent from me or, as far as I am aware, CS) the software then in production that contained modifications and additions to which Bland had no claim.

40 Following 04 October 2018, I did access NSCIS, but only in order to assist with the handover to Bland.

41 From October 2018, 36N continued to develop and improve Phoenix, giving demonstrations of the new platform to Aaron Chipol and Joseph Molinari of the Borders and Coastguard Agency, and Cathal Yeats of the RGP.

42 I remained in close contact with users of NSCIS, in particular Aaron Chipol, who I would assist and encourage to report issues with NSCIS to CS. JP and I remained initially optimistic that HMGoG would see the merits of moving to a new platform, supported by its principal author.

43 [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] Obviously anyone other than me would have found it more challenging to maintain NSCIS than I did: because I had written most of the code, I had an intimate understanding of how the system worked. However, with sufficient time, a suitably experienced software developer could have got to grips with the system. Bland did not have such a person, and struggled on with input from Jonathan Galliano (experienced, but in a different field) and Krishan Benyunes (who had more relevant skills, but lacked experience).  
[REDACTED]  
[REDACTED]

44 CS remained the person in HMGoG with overall responsibility for NSCIS. In April 2019, he contacted me and requested that I assist him in compiling a report on the functioning of NSCIS. CS provided his own credentials to me so that I could do so: these credentials gave access to NSCIS through the user interface, but did not give me access to the local hardware, the virtual services, or the databases or web services. Over 11 and 12 April 2019 I complied with CS's request and produced a report [REDACTED]  
[REDACTED]



### **III. ARREST AND PROSECUTION**

45 I adopt the account of the arrests in Op Delhi and subsequent prosecution contained within Part III of JP's affidavit.

46 I need to add to that an account of a meeting that I had with (then) CI Mark Wyan on 08 March 2021, so some six months after charge. On this day I attended New Mole House to hand over 300 pages of illegible documents from the docket in the criminal proceedings. I met Mark Wyan and he took me to a communal kitchen, where he closed the door and windows which connected with the common areas within New Mole House. We discussed the criminal proceedings for over an hour; the conversation did not take place under caution and there was no-one else present.

47 During this meeting, I aired various grievances with the RGP's handling of the investigation and Mark Wyan apologetically repeated that "I have my superiors and do not necessarily agree with all the decisions which have been taken." I believe that when he referred to his superiors, he was referring to Ian McGrail and (then) Det Superintendent Paul Richardson. He also expressed a hope that he could "sit down with [us] after all this was over so that [he] could explain matters."

48 Whilst this meeting was an odd occurrence, I am not suggesting that Mark Wyan was trying to put improper pressure on me to plead guilty, or was trying to obtain a confession from me, or even that he told me anything that he should not have. What was very obvious, however, was that there was a split of opinion amongst those responsible for the progression of the case arising out of Op Delhi. Mark Wyan clearly wanted to get something off his chest, but felt that he could not do so at that time.

### **IV. FURTHER RELEVANT INFORMATION**

49 I adopt Part IV of JP's affidavit, which deals with further relevant information.

### **V. CONCLUSION**

50 I agree with JP's conclusions, as set out in Part V of his affidavit.

51 I should add that I am particularly aggrieved that Op Delhi and the resulting prosecution proceeded as far as they did without any expert computer evidence.

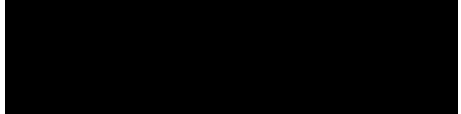
The computer misuse charges against me were complex, but they were also serious. Whilst some of them posed relatively narrow questions of whether certain authorisations had been revoked, others alleged a deliberate intent to sabotage NSCIS and/or recklessness concerning the security of Gibraltar.

52 I was especially shocked to be charged with these offences. It was as though all the hours I had worked to keep NSCIS functioning, for no remuneration at some points, had been turned against me. Whilst I was happy (though not at all surprised) when I learned that the prosecution's chosen expert witness could not offer an opinion to support these charges, I was at the same time angry that the RGP and OCPL had waited until long after charge before obtaining this opinion, but had proceeded essentially on the say-so of James Gaggero and other Bland employees.

53 These charges were reported extensively in the local media and, together with the RGP's press release which misrepresented HMGoG as complainants, effectively portrayed me as a terrorist who had compromised, or had sought to compromise, Gibraltar's national security. In such a small jurisdiction, this has caused irreversible damage to my reputation and has curtailed my career as a software engineer.

54 It must have been obvious to every investigating officer that Bland had every reason to discredit me, given the commercial dispute, and therefore could not be relied upon to offer an unbiased assessment of my actions. I therefore cannot accept that pursuit of these charges against me on such slender grounds was merely the result of mistake or naivety.

AFFIRMED by  
THOMAS JOHN CORNELIO

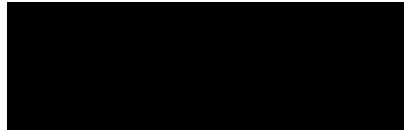


(signature)

at 292 Main street  
(place)

on 24/01/23  
(date)

Before me:



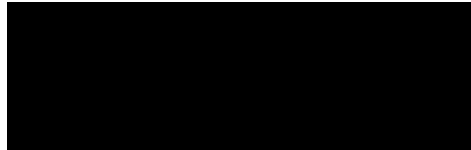
JUSTIN PHILLIPS  
COMMISSIONER FOR OATHS  
GIBRALTAR

(signature of witness)

Justin Phillips  
(full name of witness)

Barrister  
(qualification of witness)

of



(address of witness)