

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

AFFIDAVIT OF JOHN CHRISTOPHER PEREZ MBE

I, JOHN CHRISTOPHER PEREZ MBE of [REDACTED]
[REDACTED], make oath and say as follows : —

1 I make this affidavit 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 Thomas Cornelio (‘TC’) 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, TC, CS and EA as the ‘Detainees’, and me, TC 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 TC 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 evidence which we could all give appear in my affidavit, from which it can be adopted by the other Detainees if appropriate.

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. In Part III, I set out the stages of our arrest and prosecution.

7 The purpose of Part IV is to present further relevant facts that I have learned since my arrest, principally through the material served in the criminal proceedings. Whilst some of this material was served as evidence by the prosecution, a substantial proportion was served as disclosable unused material, pursuant to Part 12 of the Criminal Evidence and Procedure Act 2011 ('CPEA 2011'). Section 256 of the 2011 Act imposes a prohibition, breach of which is a contempt of court, on use of and disclosure of information in documents served under Part 12 without permission of the court. My lawyers have considered the Inquiry's document policy dated 22 September 2022, along with section B(i) of Counsel to the Inquiry's submissions for the Second Preliminary Hearing, and have advised me that, unless I have also received the document from another source, I cannot provide documents served as disclosure in the criminal proceedings to the Inquiry or recount the information they contain in this affidavit without risk of committing a contempt of court.

8 Annexed to this affidavit is a schedule entitled 'Schedule of Documents Provided or Identified on behalf of the Op Delhi Defendants'. The documents listed in sections A and B will be provided to the Inquiry, because they were either served as evidence or have come into my possession separately to the criminal proceedings. I cannot provide the documents in sections C and D due to the prohibition in s256 CPEA 2011.

9 I should add that all of the documents in sections C and D have been created or supplied by the Royal Gibraltar Police. The RGP is now a core participant in the

Inquiry, and will no doubt either have provided these relevant materials to the Inquiry, or will do so in due course. If the documents in Sections C and D can be provided to me either by the Inquiry or by the RGP directly, then I can expand on my account in Part IV without breach of s256 CPEA 2011.

II. UNDERLYING FACTS

Employment with Bland: 2010-2018

10 My first career was as a soldier, serving 25 years as an officer in the British Armed Forces. I was engaged by Bland in March 2010, having recently retired from my post as Commanding Officer of the Royal Gibraltar Regiment with the rank of Lieutenant Colonel.

11 As Chief Executive Officer, I was granted substantial autonomy by the parent company, Bland Group Limited, to build Bland's business in Gibraltar. Financing was provided by way of loans from the parent company.

12 TC was engaged by Bland in 2012 as Head of Software Development. I was his line manager.

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

14 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.

15 The physical infrastructure of NSCIS changed as it was developed over the years. However, by the time of my and TC's resignation in July 2018 it comprised local hardware (at the land border, the airport, the sea port and elsewhere), virtual servers hosted on [REDACTED] service, as well as databases and web services also on [REDACTED]

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.

17 I left the technical side of NSCIS to TC and his team. My role was in maintaining and developing the relationship with the customer, HMGoG.

18 From the outset of the project, the principal customer contact for NSCIS in HMGoG was CS. He had been involved from the beginning, because the EU aspects of the FMP came under his remit as (then) Principal Secretary to the Deputy Chief Minister. He had led the negotiations that had resulted in HMGoG commissioning this system in 2013, though of course the eventual purchase had to be authorised by cabinet. Thereafter, CS had complete autonomy over FMP and then NSCIS for HMGoG, and was always vigilant in ensuring that the systems functioned as they should, diligently following up any reports of issues from users of the system. As data controller on behalf of HMGoG, he also carefully controlled access to NSCIS and its underlying data.

19 In addition to NSCIS, TC and his team 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 TC and his team, and TC (at my request) created email addresses and mailboxes to be used in connection Wavetecx.

20 Within Bland, I worked closely with TC. 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.

21 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

22 In early 2018, TC 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 would be TC himself, 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.

23 From the beginning, 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. He was therefore supportive, subject to approval of the Chief Minister ('CM'). On 30 January 2018, I met the CM, The Honourable Fabian Picardo KC and told him about our plans; he was encouraging and supportive and asked that I let him know before we tendered our resignations. I also informed the Financial Secretary, Albert Mena.

24 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 my and TC's obligations under our contracts of employment.

25 In early May 2018, whilst travelling back from a business trip to Marrakech, I told James Gaggero in general terms that I would be moving on from Bland and even identified a possible replacement for my role. On 28 May 2018, I informed Guy Stagnetto KC, a director of Bland, that I would be resigning. Around the same time, I informed Ian Mackie, the Finance Director, that TC and I would be leaving to start a new business. Ian Mackie was supportive and assisted me by drawing up cash flow forecasts for the new venture.

26 On the technical side, TC 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.

27 TC and I were delayed in formally tendering our resignations because I 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, I wrote to the CM in these terms:

Fabian, I hope this note finds you well. For info – please be aware that I will tomorrow inform James that both Tommy and I will be serving our notices. All is in place.

28 The 'James' I was referring to was of course James Gaggero, the chairman of Bland. I received the following reply:

Good luck for tomorrow my friend. Best wishes. Fabian.

Resignations — 09 July 2018

29 On 09 July 2018, TC and I tendered our resignations in person to James Gaggero and informed him that we had set up a company together. By a letter dated the same day, I confirmed my resignation in writing.

30 James Gaggero asked us to take 24 hours to reconsider; we took the time but did not change our minds. By a letter dated 10 July 2018, TC confirmed his resignation in writing.

31 Following the 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 (on my instructions) TC therefore deleted the Wavetecx mailboxes he had earlier created.

32 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 TC's notice period expired on 09 August 2018, James Gaggero requested that he continue to maintain and support NSCIS (and all other HMGoG platforms maintained by Bland) until direction was given by the CM. TC agreed to do this.

James Gaggero's stance hardens — August 2018

33 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.

34 On 21 August 2018 and 28 August 2018, there were two meetings between me and James Gaggero. These were held on a 'without prejudice' basis, but evidence about these meetings was provided to the prosecution by James Gaggero and served and filed in the Op Delhi criminal proceedings. In these meetings, James

Gaggero threatened litigation and attempted to extract a share in 36N and/or a cash payment for Bland in return for Bland's co-operation. In the first meeting, James Gaggero asked me to speak to my business partners and come back with a substantial offer, failing which he would issue proceedings. Following discussion with TC and James Levy CBE KC, I told him that I was prepared to consider a settlement in principle to avoid the cost and distraction of litigation; however, James Gaggero's demands were far too high.

35 TC felt unable to continue the working arrangements whilst James Gaggero was making widespread allegations of misconduct. On 30 August 2018, he notified James Gaggero that he was no longer prepared to support and maintain NSCIS, and would be ceasing to do so the following day. James Gaggero replied praising TC's work during this period.

36 Through July, August and September 2018, TC continued to develop the new platform, Phoenix. He was assisted in this by Joey Benrimoj and Marius Zalkauskas, once their notice periods with Bland had expired and they had joined 36N. Although I continued to leave technical matters to TC, I was aware that TC and his team were simultaneously working on the new platform, and modifying the software that was running so as to ensure a smooth transition from one platform to the other.

37 Notwithstanding his email to James Gaggero of 30 August 2018, TC continued to ensure that NSCIS (and other HMGoG platforms) remained operational at CS's request, and with the knowledge of the CM. He continued to do so even when travelling to London so that his daughter could have surgery.

No further access — 04 October 2018

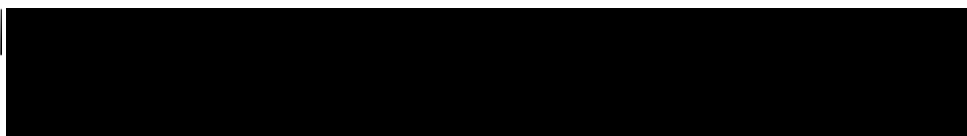
38 On 04 October 2018, the CM's Principal Private Secretary Peter Canessa instructed CS to hand over the maintenance and support of NSCIS to Bland; following the handover, TC was not to have access to the platform. At the time, I did not understand the rationale behind this decision, although later events have shed some light on this: I deal with this issue in Part III of this affidavit, below.

39 I was made aware by TC of a dispute concerning the provision of NSCIS source code. TC was frustrated that Bland (and in particular Jonathan Galliano) appeared to be incapable of compiling the source code he had made available for them, and were blaming him for issues caused by their own lack of skill and knowledge.

40 It now appears that Bland never attempted to use the source code that TC had provided, instead reverse-engineering (without consent from CS or TC) the software then in production that contained modifications and additions to which Bland had no claim.

41 From January to October 2018, the CIM was periodically updated as to progress with 36N, either by me directly, or through James Levy CBE KC, or by CS.

42 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.



III. ARREST AND PROSECUTION

Arrest and Pre-Charge Representations

44 On 10 May 2019, TC and I were arrested on suspicion of “a conspiracy to defraud the Bland Group by assuming the intellectual property rights for a system (NSCIS), which [TC] created whilst on contract in employment with Blands”. Search warrants were executed at our home addresses and 36N’s offices. All our personal and professional electronic devices were seized and retained, as were other devices that did not belong to us but to our family members.

45 On 14 May 2019, CS was arrested on suspicion of fraud by abuse of position, conspiracy to defraud Bland Limited and for allegedly allowing TC unauthorised access to the NSCIS. A search warrant was executed at his home address and at his office at No 6 Convent Place.

46 We Defendants were interviewed under caution as follows:

- (1) On 10 May 2019, TC and I were interviewed and provided prepared statements. I should note that the pre-interview disclosure that we were provided with by the RGP was specific in alleging that the object of our conspiracy had been to “defraud the Bland Group of their intellectual property rights in relation to the NSCIS Platform”.
- (2) On 14 May 2019, CS was interviewed and gave a prepared statement.

- (3) On 17 July 2019, CS was interviewed again. He provided a prepared statement, and also answered some questions.
- (4) On 23 June 2020 CS was interviewed for a third time and answered questions.
- (5) On 24 June 2020, I was interviewed again and provided a 6-page prepared statement.
- (6) 01 July 2020, TC was interviewed again and provided a 36-page prepared statement.

47 I should note that I understand that in England a failure to mention in interview a fact that is later relied on at trial can lead to adverse consequences. This is not the case in Gibraltar, where the right to silence in an interview under caution remains absolute. Our statements in interview were therefore voluntary in every sense.

48 On 10 Jun 2019, Caruana & Co (acting for Bland) sent a pre-action protocol letter to TC, JP, 36N and iCode Limited (a company owned by TC) threatening civil proceedings under a variety of causes of action, all based on the same allegations as brought in the criminal proceedings. These proceedings were commenced by a claim form issued on 20 August 2019, but then brought to an early conclusion four months later by a notice of discontinuance.

49 Throughout the period following our arrests, we Detainees, and lawyers acting for us, made repeated representations to the RGP and others identifying the flaws in the investigation and the fragility of the case against us, as follows:

- (1) On 05 Sept 2019, Messrs Phillips wrote on behalf of CS to (then) Chief Inspector Mark Wyan, then Commissioner Ian McGrail, the DPP Christian Rocca KC, the Chief Secretary Darren Grech, Aaron Chipol (CEO Borders & Coastguard Agency) and John Rodriguez (then Collector of Customs) reporting a number of data protection breaches committed by James Gaggero, Bland and others in respect of the NSCIS which had come to CS' attention.
- (2) On 24 January 2020, a 29-page complaint (with a schedule of documents amounting to a further 51 pages) was lodged with the RGP by TC, JP and EA in respect of the actions of James Gaggero and Bland. The complaint covered, amongst other things:

- (a) Making a false report to the RGP including wasteful employment of the RGP;
- (b) Unauthorised investigation by Bland, PwC and Infosec Consulting Systems Limited into the NSCIS as well as the platforms for the Department of Employment, Department of Social Security and Department of Education ('the HMGoG Platforms');
- (c) Unauthorised access by Bland to 36N servers and personal data held therein;
- (d) Unauthorised access to HMGoG Platforms by Bland;
- (e) Unauthorised disclosure of NSCIS access codes by James Gaggero and/or Blands to PwC and Insofec Consulting Limited (now Red Maple Technologies Ltd) contrary to s367 of the Crimes Act 2011;
- (f) Unauthorised access to computer material by or on behalf of James Gaggero and Bland contrary to s.362 of the Crimes Act 2011 from July 2018 to October 2018;
- (g) Unauthorised access with intent to commit or facilitate commission of further offences contrary to s363 of the Crimes Act 2011;
- (h) Unauthorised acts causing or creating risk of serious damage contrary to s366A of the Crimes Act 2011;
- (i) Unauthorised acts with intent to impair or with recklessness as to impairing, operation of computers etc. contrary to s.364 of the Crimes Act 2011; and
- (j) Fraudulent invoicing by Bland in respect of NSCIS during the period October 2018 to, at least, April 2019 when the NSCIS was underperforming and [REDACTED]

This complaint was sent directly to (then) Commissioner of Police Ian McGrail and to (then) Chief Inspector Mark Wyan by email.

- (3) On 23 March 2020, Robert Fischel KC (acting on behalf of me, TC and EA) sent a 22-page letter to Her Majesty's Attorney General for Gibraltar ('HMAG'), copied to the DPP, setting out in considerable

detail the background to Op Delhi (including details on HMGoG ownership of the NSCIS, the commercial dispute with James Gaggero and Bland which preceded James Gaggero's complaint, and data protection breaches committed by Bland during the relevant period), a chronology post-arrest (including grievances with the RGP's handling of the investigation, submissions on the constitutionality of the extended period of time we had spent on police bail and the RGP's refusal to investigate reasonable lines of enquiry).

- (4) On 06 April 2020, Robert Fischel KC, acting on my behalf and on behalf of TC and EA, sent an email to (then) Chief Inspector Wyan, (then) Chief Inspector Brian Finlayson, the DPP and HMAG in which he questioned certain operational decisions made by the RGP and stated, *inter alia* 'I am copying in the Director of Public Prosecutions and Her Majesty's Attorney General for Gibraltar because this unilateral conduct is troubling me and I have to ask myself, given the identity, wealth and influence of the complainant, James Gaggero, whether or not undue pressure is being or has been placed on the RGP.'
- (5) On 30 April 2020, an 8-page letter (accompanied by supporting documents of 14 annexes containing a further 80 pages) was sent by Robert Fischel KC to then Commissioner Ian McGrail (copied to HMAG, DPP and Chief Inspector Wyan) querying the basis for HMGoG's ownership of the NSCIS. Ian McGrail acknowledged receipt of the letter but never replied.
- (6) On 05 July 2020, Robert Fischel KC wrote on my behalf and on behalf of TC to the RGP, with copies to the DPP and HMAG, expressing concern that the RGP was improperly forwarding information supplied by me and TC on to James Gaggero, and that James Gaggero appeared to be effectively directing the investigation.
- (7) On 05 August 2020, a 76-page further statement with 112 pages of annexes and exhibits was sent to the RGP on behalf of TC, and a 48-page further statement, with 62 pages of exhibits, sent to the RGP on my behalf.
- (8) On 11 Sept 2020 Robert Fischel KC wrote on my behalf and on behalf of TC to HMAG requesting a review of the charging decision by

independent UK Counsel to “allay any fears that anyone might have in respect of any undue influence being applied to members of the RGP.”

- (9) On 15 Sept 2020, there was a meeting between Robert Fischel KC, Andrew Cardona (then representing CS) and HMAG where the latter refused to intervene and commission an independent review of the charging decision.

Prosecution

50 On 15 Sept 2020, TC, CS and I were jointly charged with conspiracy to defraud Bland Limited by dishonestly doing acts “*intending or designed inter alia to undermine the ability of Bland Limited to perform its contractual agreement with HMGoG namely the maintenance agreement relating to the NSCIS and thereby obtain the benefit of that agreement for themselves and/or 36N*”. This was a change from the suspected offence on which we had been arrested, which particularised the ‘intellectual property rights in relation to the NSCIS platform’ where the charges had the ‘maintenance agreement relating to the NSCIS’. CS was charged with misconduct in public office, and TC was charged with 14 charges of computer misuse offences; CS was also charged with one computer misuse offence.

51 An indictment was later preferred which wrought a further change to the allegation of conspiracy to defraud: this alleged that the various acts were carried out by me, TC and CS “*intending or designed inter alia to undermine the ability of Bland Limited to perform its contractual agreement with HM Government of Gibraltar*.” The ‘contractual agreement’ was not particularised any further — no date, no indication of whether it had been made orally or in writing, no identification of its scope or terms.

52 At the first hearing in the Supreme Court, on 21 October 2020, counsel for TC and me indicated that he would be applying to dismiss the charges following service of evidence and disclosure. Evidence was served in tranches from 26 November 2020 to 10 March 2021; initial disclosure was not served until 17 May 2021. CS (who was then separately represented) filed an application to dismiss on 27 January 2021.

53 TC and I filed an application to dismiss on 25 June 2021, and a skeleton argument in support on 30 June 2021. The application relied principally on the following two facts:

- (1) There was no evidence of any contractual terms agreed between Bland and HMGoG in respect of either the intellectual property in NSCIS or its maintenance.
- (2) There was indisputable evidence that James Gaggero had, at least ostensibly, *agreed* that 36N should take over the maintenance and support of NSCIS.

54 On 02 July 2021, at essentially the same time that they served their skeleton argument in response, the Crown served further evidence. Three days later, on 05 July 2021, they served as unused material a witness statement from the CM dated 25 June 2021, along with six exhibited documents. This set out the CM's view on the nature of the arrangements between HMGoG and Bland respecting NSCIS, and also gave a detailed account, supported to some degree by contemporaneous notes, of contact between him and James Gaggero on the subject of NSCIS. As matters stand I cannot further describe the contents of this statement and exhibits without risk of breach of s256 CPEA 2011.

55 On 14 September 2021, the Crown served further unused material. This included a statement of James Levy CBE KC bearing a date (09 June 2020) over a year prior to the date of service. In this statement he set out his understanding of the nature of the arrangements between HMGoG and Bland respecting NSCIS, and also gave a full account of his role in the genesis of 36N. Again, I cannot further describe the contents of this statement without risk of breach of s256 CPEA 2011.

56 The unused material served on 14 September 2021 also included an expert report of Dr Paul Hunton, a Fellow of the British Computer Society who worked for over twenty years in law enforcement. I should note that, prior to this, the Crown had not served either as evidence or unused material any statement or report from an expert witness, in the sense of a witness who not only professed an expertise in a relevant field but who also acted under a primary duty to the court. Whilst I cannot provide a copy of this document due to s256 CPEA 2011, I can note what it did *not* contain — which was an opinion that any of TC's alleged acts had been an act of malicious interference with NSCIS or sabotage.

57 I believe it would assist the Inquiry to have the written arguments filed in the application to dismiss by counsel for me and TC (a skeleton argument, and a reply to the Crown's skeleton argument), counsel for CS (a skeleton argument), and Crown counsel (a skeleton argument). We also filed a factual summary, which might be of assistance — this was necessary because the Crown never served an

opening note, relying throughout on a case summary produced by the RGP before charge. However, since these documents refer extensively to (and summarise and quote from) material to which the prohibition in s256 CPEA 2011 applies, I cannot provide these at this stage.

58 At a hearing on 19 October 2021, the Court ordered the prosecution to produce a document setting out its case on the computer misuse offences, and the evidence on which it intended to rely on those counts.

Nolle Prosequi

59 On 21 January 2022, HMAG issued a written *nolle prosequi*, bringing proceedings on this indictment to an end. As of this date, the application to dismiss was listed for hearing from 01 March 2022, but the prosecution had not served the document ordered on 19 October 2021. The news of the *nolle prosequi* was communicated to the Defendants' representatives by a letter from the DPP, who stated that the *nolle prosequi* had been filed '*on the basis of matters that are out of my remit and of which I would have no detailed or direct knowledge.*'

60 On 24 February 2022, TC, CS and I applied for the costs of the discontinued criminal proceedings pursuant to sections 588 and 589(2) of the Criminal Proceedings and Evidence Act 2011 on the basis that the charges were '*not made in good faith*'. On 31 October 2022, we applied for directions requiring the Crown to disclose relevant documents, including:

- (1) Any document recording or discussing the reasons for charging me, TC, and/or CS.
- (2) Any document relating to the questions of:
 - (a) the status of HMGoG as a complainant in Op Delhi and the subsequent prosecution;
 - (b) the degree to which HMGoG (or members thereof) supported or did not support Op Delhi and the subsequent prosecution.
- (3) Any documents that tend to show a connection between Op Delhi and the subsequent prosecution and the early retirement of Ian McGrail as Commissioner of Police.
- (4) Any document relating to the attempts to obtain a statement from the Honourable Fabian Picardo KC, Chief Minister.

- (5) Any document relating to the delay between the receipt of the statement of James Levy CBE KC and its disclosure.
- (6) Any document relating to the decision to approach James Levy CBE KC to be a prosecution witness.
- (7) Any notes or observations made by former Commissioner of Police Ian McGrail, whether in the day book made by him or elsewhere, relating to the decision to investigate and/or the decision to prosecute.
- (8) Any document which indicates why the decision was taken to terminate the prosecution.
- (9) Any document comprising or recording communication between the Royal Gibraltar Police or the Respondent (on the one hand) and James Gaggero or any other executive of a Bland Group company or subsidiary (on the other) in relation to the investigation into and prosecution of the Applicants.
- (10) Any document showing the reasons for the entering of a *nolle prosequi*
- (11) All correspondence or notes of any meetings relating to the retirement of the former Commissioner of Police Ian McGrail which raise the issue of Op Delhi and the subsequent prosecution, including:
 - (a) Any record of complaints made by the Chief Minister and/or Acting Governor in May 2020,
 - (b) Any minutes of meetings between the Acting Governor, the Chairman of the Gibraltar Police Authority, and the Chief Minister in 18 May 2020,
 - (c) Any minutes of Gibraltar Police Authority meetings in May and June 2020.

61 Both the application for costs and the application for directions are resisted by the Crown. The application for directions is listed to be heard by the Chief Justice on 21 and 22 March 2023; no date has yet been set for the substantive hearing in the costs application.

IV. FURTHER RELEVANT INFORMATION

No approach to HMGoG until April 2020

62 We Detainees were arrested in connection with an investigation into software created for IIMGoG. I am now aware that at no point prior to our arrests did the RGP seek to independently verify that the NSCIS was in fact the intellectual property of Bland or confirm who had authority to grant access to the NSCIS. It was not until February 2020 (fourteen months after the complaint was first presented to Ian McGrail and nine months after our arrests) that the RGP began to query NSCIS ownership, and it was not until April 2020 that RGP approached HMGoG to find out what they had to say on this issue. When Chief Secretary Darren Grech on behalf of HMGoG gave the unequivocal response that NSCIS belonged to HMGoG, the RGP changed its tack to charge a conspiracy to deprive Bland of the benefit of the maintenance agreement.

63 From my perspective, it seemed (and still seems) extraordinary that an investigation centring on a suite of software written for and used by HMGoG could be carried on in this way. Where an allegation is made of improper obtaining of intellectual property, the first step in an investigation of that allegation should surely be to ascertain whether the person who claims that the property was obtained from them ever had it in the first place.

Failure to obtain proper consent from HMGoG as complainant

64 A related issue is the failure of the RGP and the DPP to secure consent in a timely manner from HMGoG to act as a complainant in the prosecution. This has led to a dispute between the Chief Secretary Darren Grech and the DPP of such seriousness that the Chief Secretary saw fit to instruct the Honourable Neil Costa of Isolas LPP to act for him. My knowledge of the details of this issue derives to a large extent from material served as disclosure in the criminal proceedings, and some of the facts are disputed between the DPP and the Chief Secretary, but I know from other sources that one highly contentious issue is a press release issued by the RGP on 15 September 2020 (the day we were charged) which in Darren Grech's view materially mis-represented the position, such that a reader might conclude that the prosecution enjoyed a level of support from HMGoG that it did not. I can also note that in a GBC interview on 28 January 2022 the CM confirmed that HMGoG was not a complainant in the Op Delhi prosecution.

Meetings between Bland and the RGP

65 I am aware that, during the period in which the RGP were failing to pursue the obvious course of making enquiries with HMGoG, senior officers including Ian McGrail were having multiple meetings and phone calls with James Gaggero and other representatives of Bland, including Sir Peter Caruana KC in his capacity as James Gaggero's and/or Bland's counsel. Since my knowledge of these meetings derives in part from material served as disclosure in the criminal proceedings (principally notes and logs made by CI Mark Wyan and Det Supt Paul Richardson) I will not at this stage set out any further detail, save to note that there is nothing to displace the submissions made prior to disclosure being served that James Gaggero appeared to be effectively directing the investigation, and that the RGP were accommodating him.

Reasons behind the CM's Decision of 04 October 2018

66 I have already observed that when the CM ordered, on 04 October 2018, that the running of NSCIS should revert to Bland, I did not understand why he made the decision. Evidence served in the criminal proceedings has shed light on this.

67 I am now aware that in meetings with the CM in August and September 2018 (from which I understand CS was excluded) James Gaggero alleged that TC had sabotaged NSCIS [REDACTED] [This was a nonsensical allegation at the time: since a transition to 36N then seemed overwhelmingly likely (not least because James Gaggero had ostensibly agreed to it) any deliberate infliction of damage on NSCIS would have been effectively an act of self-harm. It is also a theory that has not been supported by the expert evidence gathered by the RGP and OCPL: whilst TC undoubtedly made modifications to NSCIS, he did so to smooth a transition to 36N, not to impair or sabotage the running system.

68 It appears that, by making this baseless allegation of sabotage, James Gaggero succeeded in causing the CM to believe that there was risk in permitting the expected transition to complete, and consequently to order that the running of NSCIS should revert to Bland.

69 I can understand why, when dealing with a system as sensitive as NSCIS, the CM would exercise caution, and might take such an allegation at its highest. But it was and remains extremely frustrating to me and TC that this decision was taken solely on the basis of James Gaggero's uncorroborated allegations without our being given an opportunity to rebut these false claims.

Delay in Obtaining Evidence from the CM

70 On 05 July 2021, the prosecution in the criminal proceedings served as disclosable unused material a statement dated 25 June 2021 from the CM, accompanied by six exhibits, one of which was contemporaneous notes of a telephone call with James Gaggero on the subject of NSCLIS and 36N. Though I cannot recount the contents of the statement due to s256 CPEA 2011, I can say that its contents were very helpful to me, TC and CS, and were relied on heavily in our reply to the Crown's skeleton argument in the application to dismiss. (The statement was served *after* we had served our skeleton argument.)

71 Whilst I was grateful to eventually receive the CM's statement, I do not understand why it was not obtained until some 18 months after the investigation had commenced and nine months after we had been charged. It had been fully understood all along by the RGP that the CM's involvement in the events of the summer of 2018 was critical. To move to a charging decision without having his account of events is difficult to justify, and I am driven to the conclusion that this was a deliberate decision.

Devices

72 As I have noted above, the computers, phones and electronic devices of all Detainees and our families were seized, retained and examined by the RGP. We were left without access to the majority of these devices (and the data contained within them) for the duration of the investigation and the prosecution. As might be expected this significantly hindered our ability to defend the proceedings, as well as making it very difficult to progress 36N's commercial interests.

73 I am now aware that no such action had been taken in respect of any of James Gaggero's devices, or Bland's systems, either at the time of our arrest or when we made our complaint to the RGP. The result was that Bland was able to pursue by proxy its case against us without becoming subject to a duty of disclosure. This contrasted starkly with what would have occurred had they not discontinued their civil claim, where they would have almost certainly been obliged to comply with an order for standard disclosure.

74 I cannot believe that the RGP would routinely take such a one-sided approach to an investigation of a what was at heart a commercial dispute. This reinforces my belief that some officers, at least, were improperly influenced by or on behalf of James Gaggero and Bland.

Computer Evidence

75 The evidence relied upon by the RGP in reaching its charging decision on the computer misuse offence fell into the following categories:

- (1) Statements from Bland employees Jonathan Galliano and Krishan Benyunes.
- (2) Statements from InfoSec Consulting Services Ltd directors Steven Mason and Robert Stemp. This company was engaged by Bland. It is now known as Red Maple Technologies Ltd and is part-owned by Bland Technologies Limited; one of its directors is now Nicholas Gaggero.
- (3) A statement from Rik Hepworth, director of Black Marble Ltd. This company was sub-contracted by Infosec Consulting Services Ltd, and therefore indirectly engaged by Bland.
- (4) A report dated 14 December 2018 by PwC, commissioned by Bland.
- (5) Statements from NCA officer Roisin Cullen, who reviewed some of Jonathan Galliano's work at the instigation of the RGP.

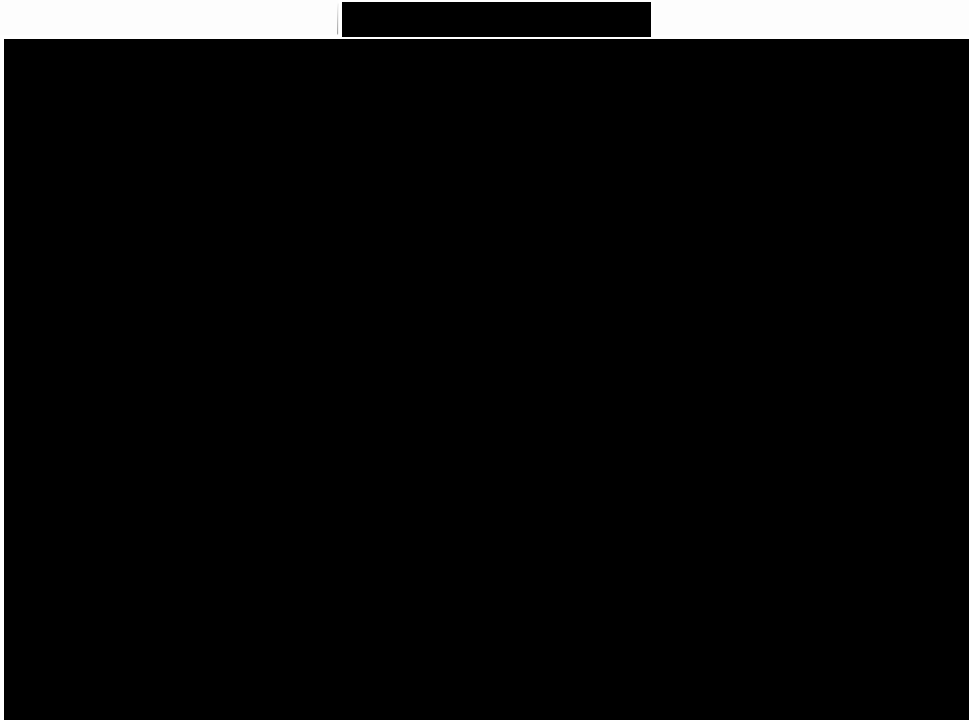
76 Whilst all of the individuals and companies listed above had some degree of technical skill, none of them put themselves forward as an expert witness. Consequently, none of them could give admissible evidence on crucial issues. The decision to charge me, TC and CS was therefore made without any admissible expert evidence. When expert evidence was obtained by the RGP post-charge, it was served not as evidence but as unused material, because it substantially undermined the prosecution case. The contents of Dr Hunton's report were relied on heavily in our reply to the Crown's skeleton argument in the application to dismiss. (The expert report was also served *after* we had served our skeleton argument.)

77 Again, I do not understand why the RGP and the DPP felt it was proper to charge me, CS and (especially) TC without an essential ingredient of a sustainable case for computer misuse offences and a conspiracy to defraud said to have been furthered by those offences. In the context of the pressure being consistently applied by James Gaggero to move to a prosecution, it is difficult to believe that this was a matter of oversight.

Delay in Disclosure Re James Levy CBE KC

78 James Levy CBE KC was interviewed by the RGP on 12 May 2020. On 09 June 2020 he signed a witness statement dealing with the subject matter of Op Delhi. The statement was clearly drafted to be supplied to the RGP officers in Op Delhi and I have no reason to believe that it was not provided to the RGP shortly after it was signed. In any event, this statement was listed on a schedule of non-sensitive unused material dated 17 May 2021, but at that stage it was marked as non-disclosable. However, on 14 September 2021 — some 15 months after the date of signature and after the service of our skeleton argument in the application to dismiss the charges — this decision was changed and James Levy CBE KC's statement was served as disclosable unused material.

79 Given that the obtaining of search warrants against James Levy CBE KC is specifically identified in the Inquiry's provisional list of issues, I have no doubt that this statement will be provided to the Inquiry by a person who is free of any constraint imposed by s256 CPEA 2011. Suffice it to say that this statement was of great assistance to we Defendants in the criminal proceedings, and was heavily relied on in our reply to the Crown's skeleton argument in the application to dismiss.





V. CONCLUSION

82 I understand that some core participants to the Inquiry will contend that the prosecution arising from Op Delhi was a meritorious case improperly brought to end through political interference.

83 This is not correct. We Detainees (and in particular, we Defendants) were the victims of James Gaggero's desire to revenge himself for what he saw as a betrayal of Bland. I do not know exactly how he managed to embroil the RGP in his campaign, but I do not believe that a person less influential than James Gaggero would have accomplished what he did, and I suspect that a desire in some quarters to embarrass the CM and/or James Levy CBE KC or tarnish their reputations may have played an important part. Whilst I agree with the contention that improper pressure was brought to bear on the Op Delhi investigation, the pressure was not to drop or restrain the investigation, but to continue it, and develop it into a prosecution, notwithstanding the equivocal (at best) evidence.

84 I am aware of no steps taken by the CM to pressurise the RGP or the DPP into discontinuing the case. For some time we Defendants felt that he could do more to help us than he did — not by interfering politically, but by giving an account of the facts as a material witness. When he did, belatedly, provide a witness statement, it was a factual account, supported by contemporaneous notes, and cannot be construed as interference.

85 In respect of HMAG, since he is the sole person empowered in Gibraltar to issue a *nolle prosequi*, it is he who brought the prosecution to an end. But I cannot see how this could be described as interference, since it was an exercise of a statutory power, and in any event amply justified by the weakness of the prosecution case and the likelihood that the case would be dismissed.

SWORN by
JOHN CHRISTOPHER PEREZ MBE



(signature)

at 292 Main Street
(place)

on 24/01/23
(date)

Before me:

JUSTIN PHILLIPS
COMMISSIONER FOR OATHS
GIBRALTAR

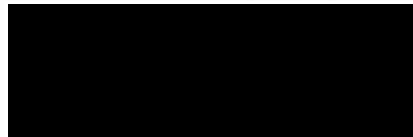


(signature of witness)

Justin Phillips
(full name of witness)

Barrister
(qualification of witness)

of



(address of witness)