

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

AFFIRMATION OF CAINE DEREK SANCHEZ

I, CAINE DEREK SANCHEZ 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 Tommy Cornelio (‘TC’) 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, TC and EA as the ‘Detainees’, and to me, JP and TC 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 us 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 his statement under oath of the same or similar date as 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 thought that 'TC and JP had effectively stolen the intellectual property in NSCIS from Bland, with my connivance. He was obviously wrong, because HMGoG 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, and add some observations about the publicity surrounding my arrest.

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 and add some of my own.

II. UNDERLYING FACTS

Background

10 I joined HM Government of Gibraltar ('HMGoG') as an Administrative Officer in 1996. In 2011 I was appointed Personal Assistant to the Deputy Chief Minister and then, in 2013, I was appointed Principal Secretary to the Deputy Chief Minister. During this period, I reported directly to the Deputy Chief Minister and was involved in areas which formed part of his Ministerial portfolio, namely EU, Brexit, Civil Aviation and the National Archives. One of my roles in that post was as the data controller and designated 'super user' for the HMGoG suite of software that became known as NSCIS — the National Security Central Intelligence System.

11 The genesis of NSCIS was in 2012. In December of that year, or thereabouts, HMGoG, working with the OSG division of Bland, set up a website to monitor

frontier delays. From there developed the idea for the Frontier Monitoring Project ('FMP') which was to be used as a frontier reporting tool for the EU Commission providing up to date information on queue time, flow rates and camera imaging. The EU aspect to the system was the reason I became involved; OSG/Bland was to be the supplier.

12 The negotiations concerning FMP took place in mid-2013. I liaised with Nicholas Gaggero and JP, then the CEO of Bland. On 30 September 2013, HMGoG and Bland entered into an agreement for sale of the FMP system. The sale price for the FMP included the cost of the development of the system, and all hardware and software required. This was in accordance with HMGoG policy on ownership of software. The contract also provided for monthly maintenance of £5,390, which comprised £990 for the maintenance of three ANPR cameras and £4,400 for software maintenance and support.

13 The maintenance and support aspects of the agreement of 30 September 2013 expired after three years, on 30 September 2016. To the best of my knowledge the agreement was never renewed, but maintenance and support proceeded on an informal rolling basis.

14 Further modules were developed and sold by Bland to HMGoG between 2013 and 2018 as the system evolved to include a law enforcement side including the gathering of licence plates, Interpol passport scanners, Schengen processing and facial recognition. These modules were developed by Bland in close consultation with law enforcement agencies to cover their specific operational requirements and practices.

15 In or around 2015, JP approached me to discuss a draft Agreement which had been prepared by Bland to cover the projects they maintained for HMGoG. I recall that as part of the draft, Bland were seeking to retrospectively claim ownership of the projects they had developed for HMGoG and licence it back. I categorically told JP that my position had not changed: the FMP/NSCIS had already been sold to HMGoG and it was Government policy to own all software which it had paid to have developed. The issue of ownership was not raised with me again and I understood that Bland had accepted HMGoG's unequivocal position.

16 I would reiterate that from the inception of the system, I was the sole designated 'super user' of the NSCIS, with overall responsibility for access to the system. There were also three designated administrative users, one from each of the three law enforcement agencies: the RGP, HM Customs, and the Borders and

Coastguard Agency. As super user, it was my role to oversee system activity and exercise control over the administrative users; the three administrative users were limited to activity within their own law enforcement agencies. The effect of this setup was that no person could access the NSCIS platform, data or source code without my prior approval. In addition, I was also appointed data controller for all FMP/NSCIS related data generally; HM Customs and the RGP were data controllers for NSCIS images captured at the border.

17 Initially, TC was the only Bland employee who was authorised to run and work on the system. When the developers Joey Benrimoj and Marius Zalkauskas joined Bland, it was me who authorised their access, after the necessary checks had been carried out. No other Bland employee was authorised to access NSCIS source code or data. As part of their access, TC, Joey Benrimoj and Marius Zalkauskas had a general authority to run and work on the system as they considered was in the best interests of the system and they were not therefore required to seek authority for individual technical actions carried out. I do not have a technical background and I would not necessarily have known what technical actions were required to run the system or implement any particular functionality. At all times my utmost concern was that the system was kept running, and any planned works or system outages were therefore required to be brought to my attention.

18 Further, TC, Joey Benrimoj and Marius Zalkauskas were at all times authorised to process and store NSCIS related data subject to such storage meeting certain security standards which was agreed between us in accordance with TC's professional recommendations. For example, in or around 2015 the Chief Minister ('CM') questioned why the system was hosted using [REDACTED] cloud service. At the time, TC provided me with his advice, namely because Azure was very secure and cost effective. In addition, ITLD (the HMGoG IT department) lacked the capacity to run the servers required as their database servers were outdated and had known vulnerabilities. I provided this information to the CM who was happy with the arrangement and it was never questioned again.

19 In early 2018, I became aware that TC and JP were considering resigning from Bland and would be setting up their own company with Hassans as an investor. My concern was (and remained) to ensure that HMGoG received the best possible service in respect of NSCIS. I knew that TC was the principle architect of the system, and had the most complete knowledge of how it functioned and how to maintain it, and I was concerned about the future management of the system

should Bland not have the necessary resources. I therefore contacted Hassans to check that any future venture would have the necessary financial backing and resources to run the system.

20 The new company that was established was 36 North Limited ('36N'). In the criminal proceedings, the prosecution suggested that I had some kind of financial interest in 36N. There was no evidence for this assertion and it was completely untrue.

21 On 23 July 2018 I learned that TC had handed in his resignation at Bland. TC then informed me that law enforcement had reported an issue with the system but that his access was restricted, and he was therefore unable to resolve the issue and maintain the NSCIS.

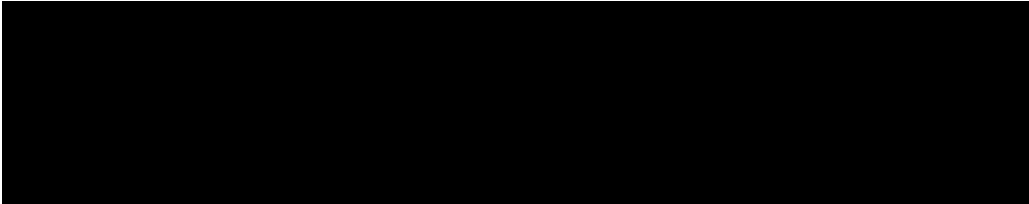
22 This was concerning news. Bland had not sought my authority to remove TC's access to the NSCIS, nor had they advised me who would be running the system in TC's absence. Neither Jonathan Galliano nor Krishan Benyunes, who formed part of Bland's IT Team, were authorised to run the NSCIS or access code or data.

23 I contacted Jonathan Galliano and asked him to reinstate TC's access. He assured me that the system was operational and that he would speak to James Gaggero, the chairman of Bland, about reinstating TC's access.

24 That evening, I spoke on the telephone to James Gaggero. It seemed that he accepted that there would be a transition to 36N, and wanted to discuss how this would be managed. He also mentioned the possibility of a claim against HMGoG for 'loss of earnings'.

25 I emailed the CM about this conversation early the following morning. It was apparent from his reply that he too had spoken to JG, who had proposed that HMGoG should buy the software rather than paying licence fees. I emailed the CM back to tell him that this was not necessary, since HMGoG had fully paid for the development of NSCIS and already owned it.





28 On 25 July 2018 I met with TC and Jonathan Galliano at my offices. We discussed that James Gaggero had agreed that there would be a transition of the NSCIS software from Bland to 36N. From my phone call with James Gaggero, I also understood that 36N would be subcontracting the hardware maintenance tasks back to Bland.

29 Following the meeting of 25 July 2018, I emailed a summary of what we had discussed to James Gaggero as follows:

I would like to thank you for your interest and actions throughout. This morning's meeting went well. I highlighted the importance of the resilience of the system to the Government and Gibraltar as a whole. We discussed the reputational risks as well as the way we will be working from now until the final transition. We have agreed that the three of us will have an open communications line where any works to the system, be it hardware or software, will be communicated via this line and approval for works to proceed will be sort through me, from both sides, prior to works being done. Access to the necessary systems as agreed in our meeting are going to be granted by either side ASAP.

30 Mr Gaggero replied stating, *inter alia*:

I am so pleased that you feel the meeting went well.

Johnathan expressed the same view and he, as indeed am I, are very grateful that Tommy was as helpful as possible.

I appreciate yesterday was a most unnerving and difficult day for all concerned especially given all that is at stake.

I reaffirm my total commitment through you to our Government and the unwavering support necessary to manage the transition resulting from Tommy and John's decision to gain their independence. I am of course very grateful to you personally for your support and understanding over the last 48 hours and I truly hope we are now through the worst of it.

Your acknowledgment of the risks we too are exposed to, as this is most appreciated too.

31 In late July or early August 2018, I attended a meeting with James Gaggero and the CM at No. 6 Convent Place. The emphasis of this meeting was on ownership of the NSCIS. Mr Gaggero alleged that Bland owned the NSCIS on the basis of a draft Software Development agreement and also relied on the fact that the NSCIS was not hosted on a Government server. I refuted his claims as, to the best of my knowledge and belief, the draft Software Development agreement was never approved or signed by HMGoG. I also explained to Mr Gaggero that the NSCIS was

not hosted on Government servers as ITLD servers did not have the necessary capacity. Through the monthly maintenance payments HMGoG reimbursed Bland for all hosting fees.

32 The CM agreed with my position that the NSCIS was owned by HMGoG. Discussions then turned to the maintenance of the NSCIS which Mr Gaggero had agreed would transition to 36N. James Gaggero proposed that TC continue running the system during the transition period until matters surrounding the ownership of the system had been clarified, and asked that I liaise with TC in this regard.

33 Accordingly, following the end of his employment with Bland, TC continued to run the NSCIS on a consultancy basis following the request by James Gaggero. As far as I was concerned, TC's authority had not changed since the end of his employment. Similarly, Joey Benrimoj and Marius Zalkauskas continued to have my authority to run the system during this period. Jonathan Galliano had the authority to maintain NSCIS hardware but not to access NSCIS code or data.

34 On 10 August 2018, TC brought to my attention a request from James Gaggero to provide Jonathan Galliano with access NSCIS code and data. I replied to all parties reiterating what I had said at the meeting of the 25th July: I would not be approving access to any server or platform where anyone, other than those that already had access, could view Government data or the code.

35 There were two reasons why I did not authorise Jonathan Galliano to access NSCIS code or data. First, I was aware that he was not a software developer and he had not worked on any NSCIS code or had been involved in the management of NSCIS data. I did not therefore consider he had the necessary qualifications or skills [REDACTED]

[REDACTED] Secondly, I was also concerned that Bland could hold HMGoG to ransom on services and data to resolve the ownership situation in their favour. This was a risk I was not prepared to take.

36 On 14 August 2018, TC sent me a proposal for 36N's new proposed border management system, Phoenix. James Gaggero had agreed to transition the maintenance of the NSCIS to 36N but continued to insist on Bland's ownership of NSCIS. I began to look at alternatives in case the arrangements fell through and we needed something in place quickly, particularly as Bland had not employed replacement software engineers to run the system. An entirely new system therefore appeared to be the best solution to a growing problem.

37 Of course, I did not myself have authority to either accept 36N's proposal or enter into any contractual arrangements in this regard. My role was limited to making recommendations based on my near six years as system administrator. My eventual recommendation, which I had discussed with the Financial Secretary, was that this would need to go through a tender process. The Phoenix proposal would therefore have been just one of the alternatives that would be considered as part of the process.

38 At around this time, James Gaggero made a complaint to the CM that I had disclosed confidential information to JP of our meeting in late July/early August. This was a false allegation, and I believe its purpose was to cut me out of the chain of communication and remove what Mr Gaggero saw as an impediment to his bid to obtain royalties for NSCIS. If this was the intention, it was successful, because the CM thereafter excluded me from all his meetings with James Gaggero.

39 On 31 August 2018 I was informed that TC had ended his consultancy agreement with Bland effective as from 01 September 2018. Upon receipt of TC's termination email, James Gaggero rang me and asked that I liaise with TC so that he would continue to run the system. As requested by Mr Gaggero, I subsequently spoke to TC who was quite hesitant to continue running the system due to the breakdown in their relationship. TC ultimately agreed to continue running the system so that there would be no loss of service or data.

40 The system was therefore kept running by TC and the 36N development team during September 2018 whilst Bland continued maintaining all NSCIS hardware. The same access arrangements for TC, Marius Zalkauskas, Joey Benrimoj and Jonathan Galliano continued in place.

41 During this period, James Gaggero met with the Chief Minister several times and I was never briefed on the outcome of the meetings or instructed to act on a decision. I therefore continued to safeguard the operational output of the NSCIS together with its data as I considered best.

42 On 4 October 2018 I received two emails from Peter Canessa, the CM's Principal Private Secretary. The first stated:

The Chief Minister has instructed that access to our Azure system be given to Jonathan Galliano at Blands/OSG immediately. He has also instructed that arrangements be made for any member of that company who will be dealing with HMGoG matters relating to security sign the Official Secrets Act if they haven't already done so.

43 The subsequent email stated:

Further to my email below and following further discussion with the CM and to avoid any ambiguity, the instructions from the CM are that Bland Limited is to be provided full control of management, maintenance and support of the NSCIS platform. Please do all the necessary to ensure that Tommy Cornelio fully cooperates in handing over to Jonathan Galliano of Bland Limited access and control of all services which make up the NSCIS platform immediately. Once the handover process is completed Tommy Cornelio nor any third party are to have access to the platform.

44 These emails came as a surprise and went against the transitional arrangements that had already been in place over the past few months. Nonetheless, I complied with this instruction and informed TC to commence handover to Bland on 05 October 2018 despite my clear reservations on Jonathan Galliano's ability to run the platform.

45 I met with TC on 9 October 2018 to discuss the handover process. I asked Mr Cornelio to contact Jonathan Galliano to inform him which version of the code to use as he had advised me that he was experiencing issues with [REDACTED] the online code repository. TC informed me that Bland had the copies of the code in his, Joey Benrimoj and Marius Zalkauskas's computers in Bland's offices. Afterward I conveyed this information to Jonathan Galliano.

46 On 18 October 2019, two weeks after the system had been handed over to Bland, TC told me that he had been informed that Bland had commissioned a forensic review of the NSCIS and that a third party was accessing the system. At the time, I continued to be the sole system controller and the data controller of all NSCIS related data together with the RGP and HM Customs. I had not authorised a third party to access the system and/or its data and to the best of my knowledge neither had HM Customs or the RGP. I therefore called Jonathan Galliano to confirm the position. He informed me that my understanding was incorrect. I now know that this was not true and can only think that this was a deliberate deception.

47 I would reiterate that I was the only person who could have authorised a forensic review of the NSCIS. I have since been informed that Bland commissioned forensic investigations of the NSCIS by no less than three different UK companies without my authority. These investigations were also carried out in clear breach of the CM's recent instructions through Peter Canessa that no third party should have access to the system.

[REDACTED]



50 In a further bid to discredit me, Bland went over my head and contacted the Financial Secretary to see if they could secure settlement of outstanding invoices in full, [REDACTED] I understand that the Financial Secretary agreed with my position that payments should only be made [REDACTED] It would have been completely irresponsible to pay Bland £66,000 per month of public money [REDACTED] We therefore agreed on a reduced monthly fee for the remainder of the financial year being October 2018 to March 2019. Importantly, however, James Gaggero and/or Bland employees had again accused me of bias in an attempt to discredit me and effectively exclude me from all NSCIS related matters.

51 In February 2019 I attended a meeting with the Financial Secretary and members of law enforcement agencies, namely Aaron Chipol, Paul Chipolina and John Rodriguez and/or his deputy. At this meeting, the Financial Secretary informed us that Bland had prepared a repor [REDACTED]



[REDACTED] and the Financial Secretary indicated that he would ask EY to prepare a report. Despite the Financial Secretary's indication, nothing came from this

meeting and EY were not approached [REDACTED]
[REDACTED]

[REDACTED]

54 I provided TC with my access credentials for the purpose of accessing the system and preparing a report. These credentials were “read only” and it would not have been possible for TC to make any modifications to the system. Once TC provided me with his report, I personally verified his findings, [REDACTED]
[REDACTED] I then sent it to Albert Mena.

III. ARREST AND PROSECUTION

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

56 I would add that I was arrested at the air terminal in Gibraltar having been recalled from a business trip to the UK by an email from the Chief Secretary with no explanation given. I then had to wait with RGP officers outside my house whilst they attempted to arrange access — I had not taken my house keys with me on my trip. Immediately following my arrest, my name was made public on social media. Even if was necessary to arrest me (which I dispute) this could have been done far

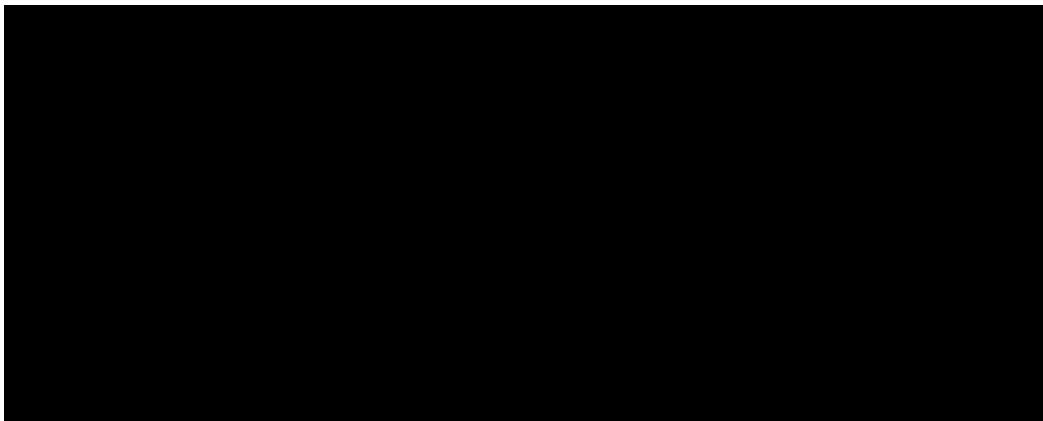
more discreetly, and I cannot help but think that some of the publicity may have been deliberate.

57 A further mis-step was the RGP's inaccurate press statement on the day that we were charged, 15 September 2020. This stated that the Op Delhi investigation had been brought about by a criminal complaint from both Bland and HMGoG. This was incorrect: HMGoG's support (later withdrawn) was not given until the investigation had been running for nearly two years. This false statement was reported faithfully in the press; no doubt many readers who would have been sceptical about a complaint solely from Bland felt differently when they read that HMGoG, my employer, had also caused an investigation to be commenced.

IV. FURTHER RELEVANT INFORMATION

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

59 I should add that I find it extraordinary that the RGP and OCPL should have pursued me for offences against HMGoG without clear and unequivocal support from HMGoG. It is particularly extreme that I should be prosecuted for the offence of misconduct in public office when I have been permitted to continue working as a senior public servant and have not faced any internal disciplinary proceedings.



61 I wrote at length to the Chief Secretary Darren Grech, the RGP, Borders & Coastguard Agency and HM Customs on this issue on 14 April 2021, but I fear that it has not yet been satisfactorily resolved.

V. CONCLUSION

62 I agree with JP's conclusions, as set out in Part V of his affidavit. In particular I agree on the role that has been played by James Gaggero. He plainly believed that

Bland was entitled to an income stream from HMGoG and set out to use his charm, wealth and his influence to ensure that Bland got what he felt it deserved. Regrettably, this strategy has worked.

63 In terms of my role, there have been two fundamental misapprehensions. The first is that I had any power of disposal — to decide whether HMGoG should pick 36N or Bland. This is incorrect: on a decision of that nature, my job was to make recommendations, which would inevitably be that a project of that size needed to be put out to tender. The second misapprehension has been to fail to appreciate that I had a duty to act in the best interests of Gibraltar. To state the obvious, these interests are not always the same as the interests of Bland Limited. Whilst I was indeed friendly with JP and (particularly) TC, having worked closely together for many years, my recommendation that HMGoG should sanction a transition to 36N was based on my assessment of what I thought was best for HMGoG and Gibraltar. It seemed obvious to me that the better course was to follow the person who had written the software and who understood how it worked [REDACTED]

[REDACTED]

AFFIRMED by
CAINE DEREK SANCHEZ

[REDACTED]
.....
(signature)

at 292 Main Street
.....
(place)

on 24/01/23
.....
(date)

Before me:

JUSTIN PHILLIPS
COMMISSIONER FOR OATHS
[REDACTED] AR

[REDACTED]
.....
(signature of witness)

Justin Phillips
.....
(full name of witness)

Barrister
.....
(qualification of witness)

of [REDACTED]
.....
(address of witness)