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For the attention of Charles Simpson, Solicitor the Inquiry

25 November 2024

Dear Sirs,

Re: Inquiry into the Retirement of the Former Commissioner of Police

1. We refer to your email dated 4 November 2024 attaching disclosure received by you from the RGP comprising WhatsApp messages between the following (then) RGP officers:
 - (a) Mr Ian McGrail (then COP) and Mr Richard Ullger (then Assistant COP)
 - (b) Mr Wyan (then Inspector) and Mr Richardson (then Supt)
 - (c) Mr Yeats (then Superintendent) and Mr McGrail (then COP)

(“the RGP WhatsApp Chats”).
2. In the Inquiry’s email dated 4 November, Core Participants were given until 18 November 2024 (later extended at the request of the Government Parties until 25 November) to file any further submissions on the new disclosure.
3. For the reasons explained in this letter, the Government Parties do not consider that the opportunity to make further written submissions is sufficient to ensure open justice and fairness to the Government Parties in the face of this non-spontaneous and so very late disclosure of plainly highly relevant material.
4. Accordingly, by this letter, the Government Parties make application to the Chairman for an order that:
 - 4.1. the written submissions should be made orally at a reconvened, live-broadcast oral hearing of the Inquiry; and
 - 4.2. the oral evidence hearings should be re-opened to recall Mr McGrail and Mr Ullger and thus allow them to be cross-examined by CTI and other CPs about the substantive content of these WhatsApp messages, and their failure, in the case of

the RGP to disclose them sooner and, in the case of Mr McGrail, to disclose them at all, as Mr McGrail has had the opportunity to do and has done of Mr Picardo and others.

5. The reasons for the application are as follows:

- 5.1. The RGP WhatsApp Chats are obviously very relevant. Their disclosure by the RGP (late as it was, and after the end of oral hearings) was not spontaneous. The RGP had chosen to make no disclosure of any WhatsApp exchanges, despite specifically being asked to do so by the Inquiry. The RGP has still not provided any WhatsApp messages pre-dating 13 May 2020. In their Written Opening Submissions (see para 22) the RGP said that it had made “comprehensive disclosure” to the Inquiry Team.
- 5.2. For his part, Mr McGrail has not disclosed these WhatsApp messages (or any WhatsApp messages with RGP officers) at all, despite his intense criticism of others for allegedly not disclosing relevant WhatsApp messages. This is truly a case of a “dog that did not bark in the night”:
 - (i) The failure by the RGP to disclose the RGP WhatsApp Chats spontaneously and at the proper time (and in any event before the end of the oral hearings, the conclusion of Closing Oral Submissions and the deadline for Written Closing Submissions) and of Mr McGrail to disclose them at all, has deprived the Government Parties of the opportunity to cross-examine in relation to them and their obvious implications for the issues under inquiry (as well as the credibility of the case theory advanced by Mr McGrail (with the active coincidence of view and support of the RGP) and the credibility of Mr McGrail’s own evidence to the Inquiry).
 - (ii) These unexplained failures are all the more damning given their implications for the double-standards and posturing implicit in Mr McGrail’s own submissions against others for alleged non-disclosure of WhatsApp messages.
 - (iii) The Inquiry will no doubt recall the criticism of Mr Picardo by Mr McGrail for his alleged delay in the disclosure of certain WhatsApp messages, and for alleged non-disclosure of messages that he speculatively assumed (but did not know to) exist. This criticism was persistently and publicly levelled with the obvious intention of casting suspicions and aspersions on and inviting the opprobrium of the Chief Minister (and others for that matter) in the minds both of the Commissioner and public opinion.
 - (iv) Mr McGrail has throughout the Inquiry sought to exploit to his advantage the alleged failure by others to disclose relevant communications and other evidence, and, in doing so was implicitly asserting that he himself had done so.
 - (v) Mr McGrail and RGP officers sat apparently unperturbed listening to all these submissions and criticisms being made of others while being aware that he

himself and they themselves had failed to disclose relevant WhatsApp chats between Mr McGrail and Mr Ullger.

- (vi) Most recently, in Mr McGrail's submissions dated 15 July 2024 in response to Hassans' submissions (dated 21 June 2024), Mr McGrail argued that it was relevant to the Commissioner's consideration of Hassans' request to make written submissions (and characterised as "lack of openness") that they had not volunteered information "until much later in the Inquiry process" and the fact that this had supposedly triggered "Mr Picardo's (very late) disclosure of messages between himself and Mr Baglietto/Mr Llamas, is a matter upon which the Chairman would be entitled to draw inferences".
- 5.3. Clearly, Mr McGrail has had access to his WhatsApp account such as to have enabled him to disclose these, had he wanted to. His iPhone was not seized by the RGP until March 2023. Long before that he had disclosed to the Inquiry WhatsApp messages with many other people that he considered were helpful to his case narrative. He clearly thus had access to and exported the WhatsApp messages.
- 5.4. Furthermore, even if (which the Government Parties do not accept to be the case) Mr McGrail did not have access to these WhatsApp messages, nothing prevented him from disclosing their (to his certain knowledge) existence and pointing to or requesting the RGP to disclose them.
- 5.5. The Government Parties are therefore deeply concerned by the failure of the RGP to have disclosed them before the oral hearing and closing submissions ended, and still more concerned by the failure of Mr McGrail to have disclosed them at all. This has protected Mr McGrail and the RGP witnesses from being cross-examined about the content of these messages during the oral hearings last spring. At the same time, Mr McGrail has intensely and highly critically cross-examined other Core Participants and witnesses for their alleged failure to disclose WhatsApp communications.
- 5.6. The RGP WhatsApp Chats now disclosed by the RGP (particularly those between Mr McGrail and Mr Ullger) are plainly highly relevant to the issues under inquiry, indeed to one of the main issues, namely: why and how Mr McGrail chose to retire.
- 5.7. The WhatsApp messages between Mr McGrail and Mr Ullger sustain important parts of the Government Parties' case (and correspondingly, completely undermine, indeed contradict, the case advanced by Mr McGrail and the RGP) in several critical respects, including:
- (i) **The meetings of 13th, 15th and 20th May.** That the meetings on 13th, 15th and 20th May 2020 between the RGP, the Attorney General and the DPP were collaborative and consensual and not improper "interference" in a live criminal investigation;

- (ii) **Why and how Mr McGrail retired.** That Mr McGrail did not choose to retire because of any interference by anyone in the Operation Delhi criminal investigation, but rather because he knew and accepted that he had lost the confidence of key persons and authorities, namely the Governor, the Chief Minister and the Gibraltar Police Authority;
- (iii) **Alleged protection of James Levy.** That the CM, AG and DPP did not interfere with or restrict the RGP's right to proceed as they pleased in the Op Delhi investigation, including by arresting James Levy if that is what they wanted to do.
- (iv) **HMIC Report.** That Mr McGrail did not make sufficient progress in the implementation of the HMIC Report recommendations, and he was conscious of this.
- (v) Since (as these WhatsApp messages now show) Mr McGrail had, at least by 29 May, resolved to retire and thereafter worked to ensure that he would be allowed to do so on the best financial terms, nothing that occurred after that date could have been the reason for him doing so.

5.8 **Double standards.** The failure by the RGP to disclose these WhatsApps spontaneously and in a timely manner, and the failure of Mr McGrail to disclose them at all, is all the more concerning given Mr McGrail's persistent and intense criticism of Mr Picardo (and others) for his alleged delay in the disclosure of certain WhatsApps, and for alleged non-disclosure of messages that Mr McGrail speculatively assumes (but does not know to) exist. It is clear that Mr McGrail has had access to his WhatsApp account such as to have enabled him to disclose these, had he wanted to.

5.9 **Open Justice.**

- (i) Mr McGrail has strenuously argued throughout the Inquiry that the principle of open justice required the proceedings of the Inquiry to be held in public, and indeed broadcast live, arguing that it was important that the public could see and hear for themselves the evidence and the witnesses. The Government agreed. The Commissioner so decided.
 - (a) Mr McGrail has argued throughout the Inquiry that the principle of open justice required (among other things) that all hearings should be live-streamed (see paras 52 and 53 McGrail Written Submissions dated 20 June 2022 and para 27 dated 6 July 2022).
 - (b) In Written submissions dated 20 July 2022 (para 7), Mr McGrail argued that "the public airing of allegations is an important part of the inquiry process".
 - (c) In his judgment dated 17 August (amended on 25 August) 2022, the Commissioner expressed the view that it is "plainly in the public interest that the evidence is disclosed, heard and challenged, in public."

- (d) On 19 July 2023, the Commissioner acceded (subject to certain safeguards to be reflected in a protocol) to a request by GBC to live-stream broadcast the Inquiry proceedings because “the principles of open justice strongly favour the broadcasting of inquiry hearings”.
 - (ii) In consequence of the above, Mr McGrail’s submissions and narrative about late and alleged non-disclosure of WhatsApps by the Chief Minister and other Core Participants and witnesses have been deployed, exploited and heard in public. Mr McGrail has been able to make live-broadcast oral submissions and to cross-examine witnesses about their alleged failure to disclose relevant communications (including WhatsApp messages), to make submissions about the inferences to be drawn from that and to impugn the credibility of witnesses and invite public opprobrium of them for their alleged failure to do so. He has also been able to (publicly and live-broadcast) impute improper motives to other Core Participants’ and witnesses’ for their alleged withholding of disclosure of WhatsApp messages.
 - (iii) It is the Government Parties’ strongly held view and submission that the same principles of open justice, and indeed fairness and equality of treatment require that the Government Parties now be given the same nature of opportunity, in the same forum and with the same degree of publicity in respect of the RGP WhatsApp Chats now, so belatedly, disclosed by the RGP (and not disclosed at all by Mr McGrail).
 - (iv) If the Government Parties’ application is not acceded to, Mr McGrail will no doubt, true to form, seek to respond to the Government Parties’ written submissions with responsive submissions or yet another additional affidavit, thereby seeking, as appears to be his practice, to have the last sworn (but untested) word.
6. The Government Parties further submit and apply that their written submissions in relation to this matter, which will be provided under separate cover of even date, should not be provided to any other Core Participant until such time as the Commissioner has ruled on this application, and then only if he rules against it.

Yours faithfully,



Peter Caruana & Co.