

INQUIRY INTO THE RETIREMENT  
OF THE FORMER COMMISSIONER OF POLICE

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FORMER OP DELHI DEFENDANTS' SUBMISSIONS  
ON RECONVENTION OF INQUIRY

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**I. INTRODUCTION**

1 This document responds on behalf of the Former Op Delhi Defendants ('FDs') to the invitation to Core Participants ('CPs') to file written submissions on (1) the delays and gaps in the disclosures by the RGP and by their senior officers and (2) the contents of the material disclosed since the Main Inquiry Hearing, following the Chairman's Ruling on reconvention of the Inquiry of 10 February 2025 ('the Ruling'), and in preparation for the hearing listed for 08 to 11 April 2025 ('the New Hearing'). It necessarily repeats some of the points advanced in the FDs' submissions in support of the application that led to the reconvention of the Inquiry.

**II. OVERVIEW**

2 On 10 May 2019, as part of Operation Delhi, Thomas Cornelio and John Perez MBE were arrested by officers of the RGP. The senior investigating officer responsible was (then) Superintendent Paul Richardson, and the officer with day-to-day conduct was (then) Inspector Mark Wyan. Mr Cornelio and Mr Perez's mobile phones were seized on their arrest and retained by the RGP.

3 On 14 May 2020, Caine Sanchez was arrested as part of the same operation. His mobile phone was also seized.

4 The mobile phones seized from the FDs were then examined by specialist RGP officers. In the criminal proceedings that followed, thousands of messages from these phones were produced by the RGP and served on their behalf — either as evidence on which the prosecution would rely, or as material that undermined the prosecution case or assisted the defence.

5 The RGP and its officers cannot therefore claim that they were unaware of the importance of messaging evidence. When the context is the pursuit of a case against others, they are capable of retaining, examining, and producing this type of evidence. But when the context is the scrutiny of their own conduct, their

processes and procedures are (it is submitted) wholly inadequate, to the extent that it becomes impossible for any external inquiry to establish if all relevant material has been provided, or if some has been deliberately destroyed, concealed, or held back.

6 Any public body taking the RGP's sloppy approach to data retention would be fairly subject to some criticism, on the ground that its failure to retain potentially relevant material might stifle accountability. But the RGP is not just any public body. It is the organisation charged with investigating crime in Gibraltar, and an investigation by the RGP founds almost every criminal case in the Gibraltar courts.

7 In every one of these cases, the RGP is subject to a duty, under Part 12 of the Criminal Procedure and Evidence Act 2011 and at common law<sup>1</sup>, to disclose to the defendant any prosecution material which might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant.

8 In these circumstances the RGP's manifest failures are not just lamentable, but dangerous.

### III. DELAYS AND GAPS IN DISCLOSURE

9 In his Ruling, the Chairman invited submissions on the appropriateness of the RGP Mobile Devices Policy. He noted the lack of symmetry in this policy in respect of work and personal devices: whilst use of work devices for personal communication is prohibited, the use of personal devices for work communication is not.

10 It is submitted that this policy<sup>2</sup> is the reverse of what it should be. Although it is open to the RGP to impose a prohibition on the use of work devices for personal purposes, it is much more important to prohibit the use of personal devices for work purposes.

11 The reason has already been adverted to: the duty of disclosure in criminal proceedings, which will arise in every investigation conducted by the RGP that leads to a prosecution. Discharge of this duty requires the retention of material that may be relevant to the investigation<sup>3</sup>. Relevance is defined widely to include all

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<sup>1</sup> See *R (Nunn) v Chief Constable of Suffolk Police (JUSTICE intervening)* [2015] AC 225 (SC)

<sup>2</sup> Which was, as one might expect, approved (or 'endorsed') by Ian McGrail himself — see {E319}

<sup>3</sup> See paragraph 5.1 of the Code of Practice on the Recording, Retention and Disclosure of Material Obtained in a Criminal Investigation, parts of the Codes of Practice published under Part 29 of the Criminal Procedure and Evidence Act 2011, and annexed to Legal Notice 2012/183. The provisions of this Code are similar to those in the Code of Practice published under the UK Criminal Procedure and Investigations Act 1996.

material that “has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case”<sup>4</sup>.

12 It is inevitable that a substantial proportion of the messages exchanged between RGP officers for work purposes will be relevant to one case or to another. By failing to prohibit communication for work purposes on personal devices, the RGP has placed itself in a position where it will always difficult and frequently impossible to comply with its duties of disclosure.

13 The RGP’s difficulties in providing disclosure to this Inquiry have demonstrated how far out of its reach it has put any realistic prospect of achieving full compliance with its duty of disclosure.

14 Technical issues have contributed to this: it is questionable whether it is ever appropriate to use a proprietary messaging service such as WhatsApp for official communication, but if it is then it is obvious that proper provision should be taken for backup of messages and for transfer from one device to another<sup>5</sup>. But these information technology failings, embarrassing though they are, are not the root cause. The root cause is an approach to the formulation of policy that focuses on what is necessary to protect the RGP, and overlooks what is necessary to comply with the duties imposed by statute and by the common law to protect those investigated by the RGP, or affected by their investigations.

15 Particularly egregious is the routine ‘wiping’ of devices used by officers when they retire. Particularly relevant to the Inquiry are McGrail’s work phone and laptop, and Mr Richardson’s work phone, but the policy appears to apply to all officers who are issued with RGP devices; of particular concern to the FDs is Brian Finlayson, who served as Mr Richardson’s effective deputy in connection with Op Delhi. Should an officer retire between carrying out work on an investigation and the stage at which material is considered for disclosure, then a significant tranche of relevant and potentially disclosable material will have been lost. This is not acceptable and risks undermining the fairness of trials arising out of RGP investigations.

16 It is acknowledged that ACOP Cathal Yeats and his team have expended significant time and resources to trying to fill the gaps in disclosure. This diversion of publicly funded resources would not have been necessary, had the RGP

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<sup>4</sup> See paragraph 2.1(h) of the Code

<sup>5</sup> This is not difficult. WhatsApp (and similar services) can be used on a desktop or laptop computer as well as on a mobile phone. If these computers are backed up (and one would expect under all but the most casual IT arrangements) then the messages will be backed up as well.

adopted a proper approach to the retention of potentially disclosable material in the first place.

17 Despite the extensive efforts, the following disclosure gaps remain — and may well never be filled:

- (1) Messages between Ian McGrail's work (Samsung) phone and Paul Richardson's personal phone;
- (2) Messages between Ian McGrail's work (Samsung) phone and Paul Richardson's work phone;
- (3) Messages between Ian McGrail's work (Samsung) phone and Richard Ullger's personal phone;
- (4) Messages between Ian McGrail's work (Samsung) phone and Richard Ullger's work phone;
- (5) Messages between Ian McGrail's work (Samsung) phone and Cathal Yeats's personal phone;
- (6) Messages between Ian McGrail's work (Samsung) phone and Cathal Yeats's work phone;
- (7) Messages between Ian McGrail's work (Samsung) phone and Mark Wyan's work phone;
- (8) Messages between Ian McGrail's work (Samsung) phone and Mark Wyan's personal phone;
- (9) Messages from Ian McGrail's personal phone (\*4000) and Paul Richardson's work phone;
- (10) Messages from Ian McGrail's personal phone (\*4000) and Richard Ullger's work phone;
- (11) Messages from Ian McGrail's personal phone (\*4000) and Cathal Yeats's work phone;
- (12) Messages from Ian McGrail's personal phone (\*4000) and Mark Wyan's work phone;
- (13) Messages from Ian McGrail's personal phone (\*4000) and Mark Wyan's personal phone;
- (14) Messages from Ian McGrail's personal phone (\*4000) and James Gaggero;

- (15) Messages from Paul Richardson's personal phone and James Gaggero;
- (16) Messages to and from Paul Richardson's work phone, particularly messages with Mark Wyan<sup>6</sup>
- (17) Messages to and from Mark Wyan's work phone to Paul Richardson, Ian McGrail, Richard Ullger and/or Ian McGrail (if any); and
- (18) All but a small selection of messages from the RGP's SMT WhatsApp group – Ian McGrail, Richard Ullger, Paul Richardson and Cathal Yeats were all part of this group during the relevant period.

18 One further point on this issue is necessary. These delays and gaps in disclosure have emerged in the context of a public inquiry. If a public inquiry is misled by a failure in disclosure, then it may wrongly criticise some person in its report, and that criticism may be consequential. This is serious. But this pattern of non-disclosures may not be as serious as a failure in disclosure in the context of criminal proceedings, which may mislead a court into wrongly convicting a person, and then wrongly sentencing that person, potentially to imprisonment.

19 There is nothing about the RGP's disclosure failings that have led to these delays and gaps that is peculiar to the public inquiry context, and it is troubling to consider how many prosecutions must have been brought in circumstances where the RGP has rendered itself incapable of discharging its duty of disclosure, however hard it may try.

#### **IV. CONTENTS OF THE NEWLY DISCLOSED MATERIAL**

##### *Involvement of Ian McGrail in Op Delhi*

20 It has been the FDs' case from the outset that Mr McGrail's involvement in Op Delhi was greater than he chose to admit:

- (1) The written opening on behalf of the FDs noted the unusual manner in which Op Delhi had commenced (a private meeting between Mr McGrail and James Gaggero) and referred to the passages in Mr McGrail's witness statements where he had claimed that after receiving James Gaggero's complaint he had "*passed the matter on to a team headed by Superintendent Richardson*" whereafter his

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<sup>6</sup> The following WhatsApp exchange {E856} is notable: [21/04/2020, 17:35:02] Mark Wyan: Nobody texts me using WhatsApp on the work phone!! [21/04/2020, 17:41:24] Paul Richardson: I DO. LOL;

involvement in Op Delhi had been limited to “*periodic briefings ... from Superintendent Richardson*” and “*requesting assistance from the ... National Crime Agency.*”<sup>7</sup>

- (2) In his oral opening, leading counsel for the FDs said, referring to Op Delhi<sup>8</sup>:

Mr McGrail's degree of involvement is another issue. Some allowance can be made for the fact that in a smaller jurisdiction with a relatively smaller police force, a Commissioner of Police may be more operationally involved than he would be in the Metropolitan Police by way of example, if he so chooses. But far from stepping back from Op Delhi as he suggests, we say the evidence shows that Mr McGrail continued to play an important role in it, driving it forward, particularly in terms of trying to persuade a reluctant Government to adopt his case theory, or should I say Mr Gaggero's case theory.

<sup>21</sup> Many of the messages disclosed since Mr McGrail gave his oral evidence during the main hearing have been relevant to this issue of his involvement. For example:

10 May 2019 Mr McGrail asks Mr Richardson to call James Gaggero to tell him that Tommy Cornelio, John Perez and Eddie Asquez have been arrested.<sup>9</sup>

09 May 2020 Mr McGrail forwards to Mr Ullger a message of praise from James Gaggero.<sup>10</sup>

14 May 2020 Mr McGrail asks Mr Richardson to let him know when he has “*felt [Caine Sanchez’s] collar*”.<sup>11</sup>

16 May 2020 Mr McGrail and Mr Ullger refer to the possibility that James Levy may “*force the issue*” such that he has to be arrested.<sup>12</sup>

16 Jun 2020 Mr Richardson and Mr McGrail discuss an email that Mr McGrail has received from James Gaggero.<sup>13</sup>

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<sup>7</sup> See witness statement bundle at {A4} and {A12}

<sup>8</sup> Day 02, 09 April 2024, p107

<sup>9</sup> {E248} — reproducing “Ian McGrail WhatsApp curated .pdf”, served by STI on CPs on 09 December 2024, p3. This message also appears in other sources.

<sup>10</sup> {E726} — reproducing “IM personal with RU personal redacted.pdf”, served by STI on CPs on 24 December 2024, p399.

<sup>11</sup> {E250} — reproducing “Ian McGrail WhatsApp curated .pdf”, served by STI on CPs on 09 December 2024, p5. This message also appears in other sources.

<sup>12</sup> {E745} — reproducing “IM personal with RU personal redacted.pdf”, served by STI on CPs on 24 December 2024, p418.

<sup>13</sup> {E835} item 15 et seq— reproducing “IM personal with “PR Pers\_redacted.pdf”, served by STI on 24 December 2024, p4. These messages also appear in other sources.

23 Jun 2020 Mr McGrail (post-retirement) asks Mr Richardson whether an interview under caution with Caine Sanchez conducted that day “went well”.<sup>14</sup>

22 Notable by their absence are messages between Mr McGrail and James Gaggero, the chairman of Blands. The Inquiry will recall that it was in a private meeting between Messrs McGrail and Gaggero on 27 September 2018 that the serious allegations against the FDs were first made<sup>15</sup>, but that no other officer of the RGP was informed of this until late December.

23 It is difficult to believe that James Gaggero, having brought such a serious matter to the desk of the then Commissioner of Police, would not have wanted to know what was being done to pursue his complaint.

24 The chances that there was in fact no contact whatsoever between Mr McGrail and Mr Gaggero during this period seem consequently slim. However, no evidence of any such contact has been disclosed.

25 It is submitted that this is an issue that the Inquiry should take up with Mr McGrail in his oral evidence at the New Hearing.

#### *Can Richard Ullger Properly Investigate Ian McGrail?*

26 In his Ruling, the Chairman observed that the “*recently disclosed exchanges between Mr McGrail and Mr Ullger show a much closer professional relationship and personal friendship – even closer than I had appreciated at the Main Hearing*”.

27 Though the language which Messrs Ullger and McGrail used to express their mutual affection may be surprisingly intense, there is nothing unusual about long-standing colleagues becoming personally close, and the FDs do not suggest that this relationship was necessarily improper *per se*.

28 What concerns the FDs (and may well concern the Inquiry) is the propriety of an investigation into the retention and destruction of evidence by Mr McGrail being carried on under the ultimate authority of Mr Ullger.

29 As the Chairman noted in the Ruling, the RGP has thus far failed to locate Mr McGrail’s daybooks (save for three scanned pages) or the email he sent to himself on his laptop or his desktop. Though his laptop has been now been found,

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<sup>14</sup> {E255} — reproducing “WhatsApp chat between Ian McGrail NEW and Paul Richardson for period 1.1.20-30.6.20 .pdf”, served by CTI on CPs on 09 December 2024, p1

<sup>15</sup> See Ian McGrail’s evidence when questioned by CTI, Day 06, 15 April 2024, p126: “*The first visit we’re not going to touch on unless you want me to, but the second visit by Mr Gaggero confirmed that he had uncovered potential criminality, albeit in an oral format he did. A very complex and difficult to understand in terms of reading papers, and so forth, and no hard core evidence in front of me other than what Mr Gaggero suggested...*”

it has been wiped of all his data. His desktop computer is unaccounted for. And there remains the issue of the documents relating to Op Delhi admittedly removed by Mr McGrail from New Mole House when he retired, and which he later destroyed. The missing messages from McGrail's telephones and those of his close friends at the RGP have to be viewed against that backdrop.

30 (The Annex to these submissions contains a list of the deleted, destroyed or missing material and devices, together with the evidence that is relevant to each device.)

31 The Inquiry is already cognizant of the relevance and seriousness of these issues of loss and/or destruction of devices and data, and it would be difficult to dispute that they warrant thorough and independent investigation. Judging by recent statements submitted on behalf of the RGP, it is ACOP Cathal Yeats who has in large part borne this burden. But it is no criticism of Mr Yeats to observe that he is subject to the authority of the Commissioner of Police, Mr Ullger.

32 Does Mr Ullger recognise that his relationship with Mr McGrail should disqualify him from oversight of any investigation into his friend? What steps — if any — has he taken to take ensure the thoroughness and independence of this investigation? And what confidence can the Inquiry have in the results of an investigation carried on in these circumstances?

33 The Inquiry is invited to direct some of the questions to be asked in the New Hearing to these issues.

#### *OCPL and RGP*

34 In their written closing submissions to the Inquiry, the FDs observed that the relationship between the RGP and OCPL was dysfunctional. Disclosure provided by Paul Richardson to STI in June 2023, but not provided to CPs until February 2025, fleshes out some aspects of the relationship.

35 On 15 September 2020, all FDs were charged with an offence of conspiracy to defraud arising out of the Op Delhi investigation. At 08:36 that morning, Senior Investigating Officer Paul Richardson sent the DPP Christian Rocca KC a draft press release on the subject. Their discussion of the contents, conducted over WhatsApp, contains the following at 08:41<sup>16</sup>:

CR                      Thanks Paul - immediate thought: we might need to add that  
GOG was a complainant

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<sup>16</sup> {E845}



I say that because of some of the computer misuse Offences and misconduct Offences

PR Happy to include that.

CR I definitely think we should avoid any pitfalls going forward

36 Mr Rocca made his proposal to amend the press release after five minutes' consideration, and without consulting HMGoG. The amendment did not, as he had hoped, "*avoid pitfalls*", but effectively created them, because the press release that resulted cast HMGoG in a role that it felt it had not agreed to play<sup>17</sup>. Consequently, Chief Secretary Darren Grech felt compelled to write formally to CoP Richard Ullger<sup>18</sup>, and later instructed the law firm Isolas to act on his behalf in the dispute<sup>19</sup>. It is notable that, in the exchange of correspondence that follows, Mr Rocca does not allude to his own role in amending the press release.

37 The FDs have already observed that it will be dispiriting to any taxpayer to see one emanation of the state in Gibraltar instructing lawyers to write to another. The effect of Mr Rocca's decision was felt rather more directly by the FDs, because the amendment gave the unjustified impression that they had been accused of wrongdoing by their own government, and not merely by a commercial rival. The Inquiry will be unsurprised to hear that, in the small community of Gibraltar, this unjustified assertion had an immediate and profound effect on the FD's reputations and their ability to secure work.

38 The swift and summary nature of Mr Rocca's consequential decision to amend the press release may be relevant to the Inquiry when it comes to assess the issue of the relationship between the RGP and OCPL. It has already been observed that the short email that constituted the DPP's advice on charge<sup>20</sup> fell far below the standard necessary to ensure that a prosecution of the scale of Op Delhi was properly commenced — such that the principal offence that was charged was one which was, for the purposes of making a charging decision, not known to Gibraltar law<sup>21</sup>. This is another example of a casual approach having serious

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<sup>17</sup> See the evidence of the Chief Minister, Fabian Picardo KC, answering questions from CTI, Day 16, 06 May 2024: "Q. *The government was not a complainant at that stage. A. Certainly not at that stage. [...] In fact, I believe that there was a police press release at the time had suggested that the government was a complainant, to which the government took great umbrage and we sought that it be withdrawn.*"

<sup>18</sup> See the letter of 25 September 2020 at {B4677}

<sup>19</sup> See the letter of 06 November 2020 at {B4680}

<sup>20</sup> Dated 02 September 2020, at {D7379}. The email is four pages printed, and 'advises' on appropriate charges for six individuals in less than 1,000 words.

<sup>21</sup> The Chairman has described the law as "confused" — Day 02, 09 April 2024, p55. The FDs would respectfully agree. But confusion in criminal law is always to be resolved in favour of the accused.

consequences — for the taxpayer, but in particular for the three individuals maligned.

*Statement of James Levy CBE KC*

39 The Second Affidavit of Christian Rocca KC raises an issue concerning the statement that James Levy CBE KC provided to the RGP<sup>22</sup>.

40 In his Second Affidavit, Mr Rocca says the following at paragraph 7(i):

I believe that I have never seen the statement provided by [James Levy] to the RGP in its final form let alone: a draft version. The RGP determined of itself that that line of inquiry had been dealt with and [James Levy] was no longer a suspect;

41 This is baffling in one respect, since Mr Rocca later advised on the appropriate charges to be laid in Op Delhi. Although he may no longer have been a suspect, James Levy was known to have been involved in the incorporation of 36 North and to have been in frequent communication with at least two of the defendants. Any reasonable prosecutor would have wanted to know what he had to say before determining what charges, if any, were appropriate — Mr Levy's statement had been in the hands of the RGP for nearly three months at the time Mr Rocca was advising on charge.

42 In another respect Mr Rocca's statement is not so surprising. The statement of James Levy appeared on the first Schedule of Non-Sensitive Unused Material served by OCPL on the FDs, on 17 May 2021. It was marked non-disclosable, meaning that the OCPL lawyer who reviewed it considered that it could not reasonably be considered capable of undermining the prosecution case or assisting the case for the FDs. It is necessary to read only a few paragraphs of the statement to conclude that this is an obviously untenable position, and this error was later corrected — albeit on 14 September 2021, in response to a request for specific disclosure made over two months previously, and after the deadline for service of the skeleton arguments in the application to dismiss had passed.

43 Christian Rocca KC led personally for the Crown in the prosecution of the FDs, and it was he who signed the skeleton argument opposing their application to dismiss. No explanation has ever been given to the FDs by him or anyone else for this failure in disclosure. The Inquiry would be entitled to conclude that it is another example of the dangers implicit in the dysfunctional relationship between RGP and OGPL.

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<sup>22</sup> This statement appears at {B5229}. It is dated 09 June 2020 and according to Mark Wyan's log {B3414} was provided to the RGP the same day.

## V. CONCLUSION

44 In the sphere of criminal proceedings, a significant material disclosure failure by the prosecution will lead to stay of the proceedings on the grounds that they constitute an abuse of the process of the court.

45 That remedy is not available in a public inquiry. The only remedy is to scrutinise carefully the reasons for the failure in disclosure, and then draw any inferences that appear appropriate. The reasons here include a defective mobile phone policy. But they may not be limited to that, and the Inquiry will no doubt wish to consider why the RGP was content to maintain this policy, as well as the extent to which technical incompetence and accidental loss has been used (and continues to be used) as a shield for self-serving and deliberate failure to retain and/or disclose relevant material.

46 The Inquiry may also may make recommendations. The FDs would invite the Inquiry to recommend that the RGP should revise its mobile phones policy so as to at least make it possible to comply in the future with its duty of disclosure, whether that arises in some future public inquiry or in criminal proceedings.

BEN COOPER KC  
Doughty Street Chambers

20 March 2025

ELLIS SAREEN  
Foundry Chambers

INQUIRY INTO THE RETIREMENT  
OF THE FORMER COMMISSIONER OF POLICE

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ANNEX TO FDs' SUBMISSIONS OF 20 MARCH 2025  
SCHEDULE OF DELETED, DESTROYED OR MISSING  
MATERIAL AND/OR DEVICES

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MATERIAL / DEVICE	EXPLANATION PROVIDED	REFERENCE
<p>Ian McGrail's ("IM") daybooks and pocket books spanning his entire RGP career</p>	<p>"Mr McGrail informed Mr McVea and the other officers that he recalled having left his day books and old pocketbooks in a "Royal Caribbean Cruises" rucksack which was left in the Commissioner's office at New Mole House."</p> <p>"In his response of the 4<sup>th</sup> May 2024 Mr McGrail stated that at the time of his retirement his daybooks had been left in his office in a rucksack. He said that he had corresponded with, and asked SIO McVea to locate the daybooks in relation to another matter. I have asked SIO McVea for the result of that search and he has informed me that the daybooks were not found."</p> <p>"I am not able to provide any more assistance as to the whereabouts of my day-books."</p> <p>"That the RGP were unable to find the day-books leading up to my criminal trial in June last year and have still been unable to find them is not as a result of any actions of mine."</p> <p>"In May 2024 and as a result of matters that arose in the Inquiry Hearing a Pocket Notebook &amp; Day Book policy was created. The policy was endorsed by the Gibraltar Police Authority on the 3rd of November 2024. The policy requires all pocket notebook and day books to be handed in to the Information Management and Vetting Unit (IMVU). An exercise to collect all pocket notebooks and day books was conducted and used pocket notebooks and day books are note stored with the IMVU."</p>	<p>Letter from Charles Gomez &amp; Company dated 4 May 2024 served 20 June 2024 with Cathal Yeats' 4<sup>th</sup> Witness Statement E91</p> <p>Fourth Witness Statement of Cathal Yeats dated 20 June 2024 E1</p> <p>Para 6 of Eighth Affidavit of IM dated 20 June 2024</p> <p>Para 11 of Eighth Affidavit of IM dated 20 June 2024</p> <p>Para 6 of Sixth Witness Statement of Cathal Yeats dated 11 March 2025</p>

MATERIAL / DEVICE	EXPLANATION PROVIDED	REFERENCE
<p>Hard copy documents retained by IM relating to Op Delhi post his retirement. These documents were subsequently destroyed by IM</p>	<p>“Q. Mr McGrail said in evidence that he had retained some papers that he had taken from New Mole House before the RGP had attended his premises and that he destroyed some of those paper documents. Has the RGP ascertained what those documents which were destroyed were? Not that I know of, no.”</p> <p>“A. I did not destroy any documents other than under the direction and request of the RGP.”</p>	<p>Richard Ullger Transcript Day 13 p137-139</p> <p>Para 12 of 8<sup>th</sup> Affidavit of IM dated 20 June 2024</p>
<p>RGP issued phone (and data contained therein) used by IM up until retirement</p>	<p>“When I retired on 9<sup>th</sup> June 2020 I left the Samsung device together with the work laptop behind at New Mole House. I did not retain any data pertaining to this phone.”</p> <p>“An analysis of both phones has revealed that neither of the phones now believed to have been in the possession of Mr McGrail, and in the possession of Mr Richardson, were in fact in use by them at the time. It is possible that the phones in use by both Mr McGrail and Mr Richardson remain in use within the RGP but with different telephone numbers. A forensic examination of every phone in the RGP would be required to determine whether the RGP has messages in its possession or control from Mr McGrail and Mr Richardson’s work phones in 2020.”</p> <p>“I believe that both the work phone in use by Mr McGrail and that in use by Supt Wayne Tunbridge (he retired on in February 2021 after a period of absence), during the period from January 2020 to June 2020, would have been treated in this way, i.e. re-purposed.”</p> <p>“The [RGP Mobile Device] policy is silent on and does not dictate whether the devices should be backed up or how to retain data. In the context of this statement this is only relevant to the use of the WhatsApp application as RGP emails (although accessible on the mobile phones) reside on the email server managed by ITLD. Emails are therefore retained regardless of whether the phone is wiped, and all data is removed.”</p>	<p>Para 8 9<sup>th</sup> Statement of IM dated 2 December 2024 E258</p> <p>Para 18 of Cathal Yeats’ 5<sup>th</sup> Witness Statement E278</p> <p>Para 17 of Cathal Yeats’ 6<sup>th</sup> Witness Statement E878</p> <p>Para 19 of Cathal Yeats’ 6<sup>th</sup> Witness Statement E879</p>
<p>RGP issued phone (and data contained therein) used by PR during the relevant period</p>	<p>“Sometime before commencing pre-retirement leave in May 2021, I returned my work issued mobile iPhone and SIM card with subscriber number [...]. Individual users did not have access to an Apple ID for managing their work phones which were wiped once they were returned. The only phone I was able to search for messages to disclose to STI was my personal phone.”</p>	<p>Para 4 of Paul Richardson’s 4<sup>th</sup> Witness Statement dated 3 December 2024 E261</p>

MATERIAL / DEVICE	EXPLANATION PROVIDED	REFERENCE
	<p>“An analysis of both phones has revealed that neither of the phones now believed to have been in the possession of Mr McGrail, and in the possession of Mr Richardson, were in fact in use by them at the time. It is possible that the phones in use by both Mr McGrail and Mr Richardson remain in use within the RGP but with different telephone numbers. A forensic examination of every phone in the RGP would be required to determine whether the RGP has messages in its possession or control from Mr McGrail and Mr Richardson’s work phones in 2020.”</p> <p>“In November of 2020 a small number of telephones were changed to Apple devices. This included telephones for Commissioner Ullger, Superintendent Richardson and I. The phones were again setup by RGP officers...A search for the Samsung devices bearing these serial numbers has located two of them. Both are in use by officers, one is the Crown Sergeant’s phone and in use in the Control Room and the other was in use with the Victim Support Unit. Both phones are now with our Digital Forensics Unit, (DFU) for forensic examination.”</p> <p>“I now realise having reviewed all disclosure matters, that neither the RGP nor Mr Ullger, Mr Richardson or I have had access to any WhatsApps held on RGP devices since November 2020. This includes the SMT Chat. This is because when the change of phones occurred from the Samsungs to the iPhones different email accounts were used to setup the phones. As I said in paragraph 11, 12 and 13 the relevance is that any WhatsApp backups on the Samsung devices would have backed up to the associated Google gmail email account. Therefore, when the iPhones were first setup with the Apple icloud email account, the WhatsApp application was unable to restore any messages. This is because WhatsApp backups are stored in the associated email account linked to the phone.”</p> <p>“It is now clear that by the time letters requesting evidence and disclosure from the then STI were received in July of 2022, that neither the RGP, nor its senior officers with Apple devices, had access to the SMT Chat or other WhatsApp messages on the RGP mobile phones, for the relevant period (1st of January 2020 to the 30<sup>th</sup> June 2020).”</p>	<p>Para 18 of Cathal Yeats’ 5<sup>th</sup> Witness Statement E278</p> <p>Para 12 of Cathal Yeats’ 6<sup>th</sup> Witness Statement E877</p> <p>Para 26 of Cathal Yeats’ 6<sup>th</sup> Witness Statement E880</p> <p>Para 28 of Cathal Yeats’ 6<sup>th</sup> Witness Statement E881</p>
<p>RGP issued laptop (and data contained therein) in use by IM up until retirement</p>	<p>“The RGP does not have a policy to image the hard drives of desktop or laptop computers when officers who use them retire or leave the service...”</p> <p>“DC Alfred Garcia examined the laptop [found in retired Inspector Paul Barker’s office] to</p>	<p>Para 8 of Cathal Yeats’ 4<sup>th</sup> Witness Statement dated 20 June 2024 E2</p>

MATERIAL / DEVICE	EXPLANATION PROVIDED	REFERENCE
	<p>determine whether it was in use by Mr McGrail at the time of his retirement and whether the draft of the email of the 12<sup>th</sup> May 2020 was contained within. DC Garcia has confirmed that the laptop was in use by Mr McGrail in May 2020 but has been unable to find the email of 12<sup>th</sup> May 2020.”</p> <p>“During his oral evidence, on 30<sup>th</sup> April 2024, Commissioner Richard Ullger stated that he was unable to identify the whereabouts of my official RGP desktop computer and laptop. I see from Mr Yeats’ statement of yesterday’s date that the laptop has been found but not the desktop computer; there is a suggestion in Mr Yeats’ email to Mr Wyan of the 28<sup>th</sup> April 2024 at 7:08pm that it is possible that the Government’s Information Technology &amp; Logistics Department (“ITLD”) may have taken it (see Exhibit CY/WS4/14). I can confirm that I did not keep the desktop computer or the laptop. I left both the desktop computer and the laptop in the Commissioner’s office at New Mole House police station before my departure from the police on 9<sup>th</sup> June 2020.”</p>	<p>Para 17 of Cathal Yeats’ 4<sup>th</sup> Witness Statement dated 20 June 2024 E4</p> <p>Para 5 8<sup>th</sup> Affidavit of IM dated 20 June 2024</p>
<p>RGP issued desktop computer (and data contained therein) used by IM up until retirement</p>	<p>“During his oral evidence, on 30<sup>th</sup> April 2024, Commissioner Richard Ullger stated that he was unable to identify the whereabouts of my official RGP desktop computer and laptop. I see from Mr Yeats’ statement of yesterday’s date that the laptop has been found but not the desktop computer; there is a suggestion in Mr Yeats’ email to Mr Wyan of the 28<sup>th</sup> April 2024 at 7:08pm that it is possible that the Government’s Information Technology &amp; Logistics Department (“ITLD”) may have taken it (see Exhibit CY/WS4/14). I can confirm that I did not keep the desktop computer or the laptop. I left both the desktop computer and the laptop in the Commissioner’s office at New Mole House police station before my departure from the police on 9<sup>th</sup> June 2020.”</p>	<p>Para 5 8<sup>th</sup> Affidavit of IM dated 20 June 2024</p>
<p>Richard Ullger’s (“RU”) messages from his personal phone during the relevant period</p>	<p>“For reasons he does not understand but suspects is as a result of him purchasing a new phone in June 2020 (refer to email 28 June 2024 timed at 13:05 contained in Exhibit CY/WS5/1) Commissioner Ullger has not been able to retrieve messages from the relevant period from his personal phone, (this includes other persons with whom he regularly corresponds).”</p> <p>“In November of 2020 a small number of telephones were changed to Apple devices. This included telephones for Commissioner Ullger, Superintendent Richardson and I. The phones were again setup by RGP officers...A search for the Samsung devices bearing these serial numbers has located two of them. Both are in use by officers, one is the Crown Sergeant’s phone and in use in the Control Room and the other was in use with the Victim Support Unit.</p>	<p>Paragraph 5 of Cathal Yeats’ Fifth Witness Statement dated 20 December 2024 E276</p> <p>Para 12 of Cathal Yeats’ 6<sup>th</sup> Witness Statement E877</p>

MATERIAL / DEVICE	EXPLANATION PROVIDED	REFERENCE
	<p>Both phones are now with our Digital Forensics Unit, (DFU) for forensic examination.”</p> <p>“I now realise having reviewed all disclosure matters, that neither the RGP nor Mr Ullger, Mr Richardson or I have had access to any WhatsApps held on RGP devices since November 2020. This includes the SMT Chat. This is because when the change of phones occurred from the Samsungs to the iPhones different email accounts were used to setup the phones. As I said in paragraph 11, 12 and 13 the relevance is that any WhatsApp backups on the Samsung devices would have backed up to the associated Google gmail email account. Therefore, when the iPhones were first setup with the Apple icloud email account, the WhatsApp application was unable to restore any messages. This is because WhatsApp backups are stored in the associated email account linked to the phone.”</p> <p>“It is now clear that by the time letters requesting evidence and disclosure from the then STI were received in July of 2022, that neither the RGP, nor its senior officers with Apple devices, had access to the SMT Chat or other WhatsApp messages on the RGP mobile phones, for the relevant period (1st of January 2020 to the 30th June 2020).”</p>	<p>Para 26 of Cathal Yeats' 6th Witness Statement E880</p> <p>Para 28 of Cathal Yeats' 6th Witness Statement E881</p>
<p>Mark Wyan's ("MW") messages from his RGP issued phone during the relevant period</p>	<p>“It is now clear that by the time letters requesting evidence and disclosure from the then STI were received in July of 2022, that neither the RGP, nor its senior officers with Apple devices, had access to the SMT Chat or other WhatsApp messages on the RGP mobile phones, for the relevant period (1st of January 2020 to the 30th June 2020).”</p>	<p>Para 28 of Cathal Yeats' 6th Witness Statement E881</p>
<p>Cathal Yeats' messages from his RGP issued phone during the relevant period</p>	<p>“In November of 2020 a small number of telephones were changed to Apple devices. This included telephones for Commissioner Ullger, Superintendent Richardson and I. The phones were again setup by RGP officers...A search for the Samsung devices bearing these serial numbers has located two of them. Both are in use by officers, one is the Crown Sergeant's phone and in use in the Control Room and the other was in use with the Victim Support Unit. Both phones are now with our Digital Forensics Unit, (DFU) for forensic examination.”</p> <p>“I now realise having reviewed all disclosure matters, that neither the RGP nor Mr Ullger, Mr Richardson or I have had access to any WhatsApps held on RGP devices since November 2020. This includes the SMT Chat. This is because when the change of phones occurred from the Samsungs to the iPhones different email accounts were used to setup the phones. As I said in paragraph 11, 12 and 13 the relevance is that any WhatsApp backups on</p>	<p>Para 12 of Cathal Yeats' 6th Witness Statement E877</p> <p>Para 26 of Cathal Yeats' 6th Witness Statement E880</p>



MATERIAL / DEVICE	EXPLANATION PROVIDED	REFERENCE
	<p>the Samsung devices would have backed up to the associated Google gmail email account. Therefore, when the iPhones were first setup with the Apple icloud email account, the WhatsApp application was unable to restore any messages. This is because WhatsApp backups are stored in the associated email account linked to the phone.”</p> <p>“It is now clear that by the time letters requesting evidence and disclosure from the then STI were received in July of 2022, that neither the RGP, nor its senior officers with Apple devices, had access to the SMT Chat or other WhatsApp messages on the RGP mobile phones, for the relevant period (1st of January 2020 to the 30" June 2020).”</p>	<p>Para 28 of Cathal Yeats' 6th Witness Statement E881</p>
<p>All but a small selection of messages from the RGP's Senior Management Team ("SMT") WhatsApp group</p>	<p>“I now realise having reviewed all disclosure matters, that neither the RGP nor Mr Ullger, Mr Richardson or I have had access to any WhatsApps held on RGP devices since November 2020. This includes the SMT Chat. This is because when the change of phones occurred from the Samsungs to the iPhones different email accounts were used to setup the phones. As I said in paragraph 1 1 , 12 and 13 the relevance is that any WhatsApp backups on the Samsung devices would have backed up to the associated Google gmail email account. Therefore, when the iPhones were first setup with the Apple icloud email account, the WhatsApp application was unable to restore any messages. This is because WhatsApp backups are stored in the associated email account linked to the phone.”</p> <p>“It is now clear that by the time letters requesting evidence and disclosure from the then STI were received in July of 2022, that neither the RGP, nor its senior officers with Apple devices, had access to the SMT Chat or other WhatsApp messages on the RGP mobile phones, for the relevant period (1st of January 2020 to the 30" June 2020).”</p>	<p>Para 26 of Cathal Yeats' 6th Witness Statement E880</p> <p>Para 28 of Cathal Yeats' 6th Witness Statement E881</p>

20 March 2025