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For the attention of Charles Simpson, Solicitor the Inquiry

28 January 2025

Dear Sirs,

**Re: Inquiry into the Retirement of the Former Commissioner of Police - Govt Parties
Application dated 25 November 2024 to reconvene the Inquiry (“the Application”)**

We refer to the submissions in response to the Application on behalf of Mr McGrail, Mr Richardson and the RGP (“**the Responses**”). In this letter, the Government Parties reply to the Responses in general terms.

1. All the issues have already been “extensively ventilated” – test not met (McGrail paras 6 and 7)

- 1.1. Mr McGrail submits that all issues have been extensively ventilated, and the parties have put their cases in great detail. This submission glosses over the obvious point that it has been done without the benefit of highly relevant evidence which, though now before the Inquiry, has not been tested in cross-examination or at all. The relevance of the evidence both sustains the Government Parties’ case and undermines the case advanced by other CPs.
- 1.2. Mr McGrail submits the test for reconvening (formulated by himself) is not met because there is no relevant material new evidence, the reasons “*must be that they raise new issues*”, or “*cast them in a new light*” and that “*the Government Parties do not claim they do*” (para 7).
- 1.3. The Government Parties do not agree that this is the correct test to apply. It suffices that there should be relevant evidence that the Inquiry (including CPs) has been deprived of the opportunity to receive and test in public in accordance with the applicable principles of open justice.

- 1.4. But even if the test were as advocated by Mr McGrail, it is met:
 - 1.4.1. There is new evidence (the previously undisclosed WhatsApp messages), which is clearly relevant, as appears by the fact that having reviewed it, the Inquiry itself disclosed it to other CPs. In any event, it is self-evidently relevant.
 - 1.4.2. The new evidence also casts existing evidence “in new light” (for the reasons set out in the Application), and contrary to what Mr McGrail strangely submits, the Government Parties do claim that this is the case. Indeed, that is the very basis of the Application.
 - 1.4.3. The new evidence has “the potential to significantly alter the core findings in the Report” since it goes to the key issue under inquiry, namely “the reasons and circumstances leading to Mr McGrail’s retirement”.
 - 1.4.4. Furthermore, the new disclosures (and their previous non-disclosure) go to the issue of credibility, which should also be tested in public and in the same fashion for all witnesses. Both fairness and transparency require that.
 - 1.4.5. The RGP-related witnesses (including Mr McGrail) are not entitled to make themselves an exception to that, especially not thereby benefitting from their own failure to make timely and spontaneous disclosure. Nor, for the same reasons, should they be allowed to pray in aid issues such as delay and public expenditure, which do not in any way prejudice them.
- 1.5. It is respectfully submitted that this new evidence is important in the Inquiry’s task of establishing the true facts, and that the giving and testing of that evidence should be done in public, not least to ensure public confidence in the Inquiry process and its findings. Witnesses who have made serious allegations in public should have their credibility tested in public.
- 1.6. Some of Mr McGrail’s submissions are based on factually incorrect premises (paras 16 and 17):
 - 1.6.1. The Application does make clear that the oral hearings should be re-opened to cross-examination “*about the substantive content of these WhatsApp messages*” (para 4.2 – PCC letter dated 25 November 2024), that the WhatsApps “*are obviously very relevant*” (para 5.1), that their non-disclosure “*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)*” (para 5.2(i)). Mr McGrail does not deny any of these things.

1.6.2. The meetings of 13, 15 and 20 May

Mr McGrail denies that the messages are relevant to the issue of the meetings of 13, 15 and 20 May, apparently overlooking the fact that in one of the messages, Mr McGrail tells Mr Ullger that he thought that the 15th May meeting (key to the “interference” allegations) had gone “goodish”. Hardly a description apt for a meeting at which the Attorney General and the DPP were supposed to have “pressurised and cajoled” and unlawfully and unconstitutionally “improperly interfered in a live RGP investigation”. This is key evidence in relation to one of the main issues under Inquiry. It sustains the Government parties’ case and undermines Mr McGrail’s and the RGP witnesses’ case.

1.6.3. Why and how Mr McGrail retired

- (i) Mr McGrail says that the messages are not new evidence because there is already evidence (upon which submissions have been made) “*which indicate that Mr McGrail was already considering retiring as early as 22 May 2020*” (PCC’s underlining for emphasis), that he was “considering” leaving his post, that he was “agonising over what decision to take” and that “the messages do not show that he had ‘resolved’ to retire”.
- (ii) These submissions are plainly incorrect and, indeed, make the case for the public testing of the new WhatsApp evidence in a reconvened oral hearing:
 - (a) The messages clearly show that by at the very latest the 29th May (but probably earlier) Mr McGrail (to Mr Ullger’s knowledge) had resolved to retire and his concern was that he may not be allowed to do so.
 - (b) Furthermore, that he did so because he knew he had lost the confidence of the Governor, the Chief Minister and the GPA, and not, as he has alleged during this Inquiry, because of improper interference by AG/DPP or CM in the Op Delhi criminal investigation.
 - (c) Furthermore still, there are no WhatsApp messages about this alleged interference (but some to contrary effect – as cited above).

1.6.4. Alleged protection of Mr Levy

- (i) Mr McGrail says that there “is almost no reference to this issue in the messages, but even if there was it is difficult to understand how these messages between the police officers could be probative of this issue in any case”.
- (ii) This also is a somewhat surprising submission. The messages clearly show that Mr McGrail and the RGP did not feel restricted in their ability to arrest Mr Levy should it become necessary to do so. This directly contradicts the case narrative constructed by them which attributed protecting Mr Levy (including from arrest) as a corrupt motive for the alleged interference in the Op Delhi criminal investigation.

1.6.5. HMIC Report

The point is not that “*Mr McGrail was undoubtedly conscious that he was being criticised for the HMIC Report*”. That much is self-evident. The point is that these messages show that he believed that he was being *justifiably* criticised, as is evident from the fact that they show him to ask Mr Ullger to accelerate remedial action.

1.6.6. Police Federation

Mr McGrail’s submission that the newly disclosed messages do not cast new light on the GPF issue is unsustainable. The messages clearly show the hostility and vitriol felt by Mr McGrail and Mr Ullger towards the GPF leadership, as reflected in what they said in the messages and the language in which they did so.

2. Public embarrassment is not a valid reason

- 2.1. By itself, a wish to embarrass a witness would plainly be an insufficient and inappropriate reason to reconvene a public inquiry. By the same token, the desire of a non-compliant witness to shield himself from the possibility of such embarrassment is not a reason for not doing so.
- 2.2. Mr McGrail says that he regrets the non-disclosure before the oral hearings, that it was inadvertent and the explanation given reasonable. The Government Parties do not accept that it was inadvertent or that the explanation given was reasonable. These are self-serving bald assertions by Mr McGrail. Both require to be tested publicly.
- 2.3. Furthermore, even if (which the Government Parties do not accept), it were the case that the non-disclosure was inadvertent, and the explanation given reasonable,

this would not provide an answer to the Application. It would not be a reason not to reconvene. The facts would remain that highly relevant evidence has not been given and tested in public, as it should be.

2.4. Contrary to what Mr McGrail submits (para 9) the issue is not whether an oral hearing will assist in concluding whether the explanations given are reasonable. But if that were the issue, an oral hearing and cross-examination would indeed assist in concluding whether explanations given are reasonable, given the coincidence and variety of reasons for non-disclosure by all relevant RGP officers. That itself requires testing.

2.5. The principal reason for the Application is not to embarrass Mr McGrail (or Mr Ullger or Richardson) but to test the relevant evidence and the reliability of previously given evidence in public as required by fairness, transparency and the application of the principle of open justice.

3. Mr McGrail has not sought to exploit non-disclosure by others (para 10)

3.1. Mr McGrail submits that it is a “misrepresentation” to say that he has “attempted to *“exploit to his advantage”* the non-disclosure by other parties of Whats App messages”. The Commissioner will make what he will of that surprising submission. The Government Parties do not accept it is true or correct.

3.2. Mr McGrail then submits that it *“would be reasonable for the Chairman to comment on this in his Report, if he sees fit, and he may also choose to comment on other witnesses’ disclosure, including Mr McGrail.”* Respectfully, this submission (correct as it is) misses the point, which is that it is necessary to test the meaning and purport of the substantive new evidence (as well as the fact of non-disclosure itself) in public.

3.3. Mr McGrail’s own use of other witness’ alleged non-disclosure related to WhatsApp message that he speculated should exist. In contrast, the WhatsApp with which the Application is concerned are relevant WhatsApp between key witnesses (including those that have made serious allegations against Government Parties) that are now known to exist (but which were withheld from the Inquiry). These are therefore not comparable circumstances.

4. The Government Parties did not take the opportunity to question Mr McGrail about the missing WhatsApps (para 11)

4.1. The Government Parties did not “miss” the opportunity to cross-examine Mr McGrail about missing WhatsApps. Nor, as submitted by Mr McGrail, would it *“have been reasonable for the Government Parties to ask Mr McGrail about messages which were not, at the time of the oral hearing, in evidence (e.g., between him and Commissioner Ullger and Assistant Commissioner Yeats).”*

- 4.2. The initial evidence gathering letter by the Inquiry to Mr McGrail required him to disclose all documents including electronic documents such as WhatsApp messages relevant to the subject matter of the Inquiry.
- 4.3. On 26 Feb 2024 STI wrote to PC&Co that “*The Inquiry Team is finalising the process of requesting statements and documents, so as to ensure that the Inquiry is in possession of all relevant information in advance of the Main Inquiry Hearing which is scheduled to commence on 8 April 2024.*” This letter went on to make/repeat the request for each of our clients to disclose all relevant WhatsApp messages. We assumed that all other CPs would have received similar letters.
- 4.4. Mr McGrail exhibited to his affidavits many full unredacted WhatsApp logs with several people, even though they were largely irrelevant. He had repeatedly stated that he was concerned about relevant material being lost (hence his covert recordings and his copying of Delhi data when he left the RGP). For its part, the RGP submitted in Opening that it had given “comprehensive disclosure”, as per their “deep disclosure obligations”. Mr McGrail and Mr Richardson were challenging others for alleged non-disclosure of relevant WhatsApps.
- 4.5. Given that no RGP officer spontaneously disclosed WhatsApp messages (now disclosed) and that each such message would have been available to at least two current or ex-senior police officers, cross-examination by the Government Parties would have required an imputation of impropriety (on a speculative and unsupported by evidence basis) against multiple senior police and ex-police officers, which would have been undesirable and inappropriate on their part.
- 4.6. The Government Parties (wrongly as it now turns out) assumed that senior RGP officers understood and would comply with their disclosure obligations, and, unlike Mr McGrail and Mr Richardson, of others, were unwilling to cast aspersions on RGP officers on a speculative basis (unsupported by evidence) that they may not have done so. The Government Parties had no reason to believe (and therefore no justifiable basis to impugn) that relevant WhatsApps had not been disclosed.
- 4.7. Presumably, it is for these or similar reasons that CTI, having (unlike counsel for the Government Parties) much greater time available to conduct his cross-examination, did not do so either.
- 4.8. Even in the email dated 24 June 2024 to STI, the Government Parties did not allege non-disclosure of relevant messages. We noted that none had been provided and asked STI to confirm whether the Inquiry had sought disclosure of Relevant WhatsApps and, if so, what had been the response. It was an enquiry, not (as the RGP wrongly and repeatedly state in their submissions) a “disclosure request” (still less a “very late” one, or a request for “additional disclosure” - para 15 of RGP submission) by the Government Parties.

4.9. The position now is that the existence of these RGP undisclosed messages is known.

4.10. In any event, this submission is another red herring. These are not *inter partes* legal proceedings. The issue is not whether the Government Parties had and failed to take an opportunity to cross-examine, but the late disclosure of relevant evidence which requires, in the interest of fairness, transparency, open justice and public confidence in the Inquiry to be received and tested in public.

5. Alleged non-disclosure or late disclosure by others

5.1. Para 21 of Mr McGrail's submissions does not provide any logical basis to refuse the Application, nor indeed, any justification for recalling any of the persons mentioned there:

5.1.1. First, there is no application before the Inquiry to recall any of those persons.

5.1.2. Second, none of Mr Rocca, Mr Levy or Mr Baglietto are Core Participants in the Inquiry or persons that have made serious allegations (which are at the core of this Inquiry). The speculative issues mentioned by Mr McGrail are not comparable in importance to the forensic relevance of the WhatsApp messages the subject of the Application.

5.1.3. Third, in so far as concerns Mr Llamas, the timeline was a legally privileged document which he had no obligation to disclose. He nevertheless acceded to a request to do so put to him by counsel for Mr McGrail while he was being cross-examined in the witness box. Mr Llamas cannot be criticised in this respect.

5.1.4. Fourth, in so far as concerns Mr Picardo, the situations are not comparable. Mr McGrail does not know there to be any relevant undisclosed WhatsApps. His submission is therefore grounded in mere speculation. In contrast, the undisclosed WhatsApps the subject of the Application are a reality. In any event, Mr Picardo was in fact cross-examined at length about the absence of WhatsApp messages alleged and supposed to exist, the very process from which Mr McGrail now seeks to shield himself.

5.1.5. Fifth, in so far as concerns Ms Sacramento, Mr McGrail's submissions appear to be disingenuous. The messages clearly show that Ms Sacramento had not been recruited by Mr Ullger (on Mr McGrail's behalf) to attempt "*to resolve the conflict between Mr Picardo and Mr McGrail*", but to ensure that he be allowed to retire on the most favourable possible financial terms.

6. The RGP's submission that it has complied

- 6.1. The essence of the RGP's submission is that they have given full and timely disclosure because on 20 December 2024 they provided the disclosures requested of them in June 2024. The RGP therefore describes the Government Parties' suggestion to the contrary as "uninformed and incorrect".
- 6.2. With respect, this submission misses the point. The RGP's disclosure obligations did not arise from STI's email dated 27 June 2024 to them, but dates to STI's letter dated 14 July 2022 (and was a continuing obligation thereafter).
- 6.3. As confirmed to PCC by STI (by letter dated 21 November 2024) Mr McGrail and the senior RGP officers had all been asked in the 14 July 2022 letter to provide any relevant messages:

"We can confirm that the Inquiry's requests for evidence dated 14 July 2022 to Mr Ullger, Mr Yeats, Mr Wyan, and Mr Richardson required them to disclose all documents including electronic documents such as WhatsApp messages relevant to the subject matter of the Inquiry. These letters were addressed to individual officers (including Mr Ullger as COP) rather than the RGP as an organisation, although as you are aware the RGP subsequently conducted the disclosure review."

- 6.4. The RGP (including Mr Ullger and Mr Richardson) failed to disclose any of the WhatsApp messages to which the Application relates in response to their obligations under the 14 July 2022 letter, nor at any time thereafter until now. The Government parties cannot therefore accept their submission (para 16) that it did not fail "in its disclosure obligations, nor in the timeliness of its disclosure."
- 6.5. Not only did the RGP and the specified individual officers not do so in respect of the WhatsApp messages to which the Application relates but:

6.5.1. As between Mr McGrail and Mr Richardson:

- (i) There are no messages at all between 30 April 2020 and 22 May 2020 (during which time, all of the search warrant, the angry meeting with the CM and the alleged interference by the AG/DPP was supposedly perpetrated). This information was not known to the Government Parties until well after both Mr McGrail and Mr Richardson had given evidence (24 Apr 2024, when STI disclosed PR's chat log with IM);
- (ii) A comparison of (a) the chat log disclosed by Mr Richardson at Exhibit 1 to his 4th statement and (b) the chat log disclosed by the RGP from the 'image' of Mr McGrail's phone (which we understand purports to relate to the same period of time as the Richardson disclosure) appears to suggest that Mr McGrail, at some point prior

to the seizure of his phone by SIO McVea in March 2023, had deleted all of his WhatsApp messages with Mr Richardson prior to 5 June 2020 (the document itself admits to the deletion of 88 messages -see first page). This information has only been revealed by the 24 December 2024 disclosure.

6.5.2. As between Mr Ullger and Mr McGrail:

There is only one (redacted) message by Mr Ullger to Mr McGrail on 12 May 2020. Similarly, there is only one (redacted) message by Mr Ullger to Mr McGrail on 13 May 2020 (first meeting with AG/DPP).

6.5.3. SMT Group Chats:

- (i) No SMT Group Chat WhatsApps have been disclosed in response to the Inquiry's disclosure letters dated July 2022 despite the fact that the Inquiry knows that such a group exists (or existed in 2017) and contains messages relevant to the Inquiry viz. in relation to the Airfield Incident (McGrail 4, paras 3-4) [C757].
- (ii) In STI's email dated 27 June 2024 to Cruzlaw LLP, the Inquiry again requested all relevant communications between Mr McGrail and members of the SMT team, including any RGP SMT group chat. Still, no such messages have been disclosed, and the position has not been addressed in evidence. Mr Yeats Fifth witness statement is silent as to the or any SMT Chat Group.
- (iii) Given the emergence of the undisclosed relevant messages to which the Application relates, if the RGP is, by silence, asserting that there are no messages relevant to the Inquiry (despite the ones disclosed by Mr McGrail - in screenshot form - in relation to the Airfield Incident) contained in "the" or "any" (by whatever name) SMT group chat, it is respectfully submitted that the RGP should (like Mr Picardo in relation to his messages with Mr Levy) be requested to file a sworn statement to that effect.

6.6. Alleged guidance on compliance by STI

6.6.1. Contrary to the impression apparently sought to be given by the RGP's submissions (paras 17-23), STI did not direct or agree the manner, and therefore the non-disclosure of the WhatsApps by the RGP.

6.6.2. In Section 1.1 of Attias & Levy's letter to Cruzlaw LLP dated 4 November 2022, the then STI correctly (though it should not have been necessary to do so) set out the "Test of Relevance" for disclosure. STI added: "*It is difficult for the Inquiry to give further guidance on documents that are likely*

to be relevant in the abstract, and we are concerned that doing so could lead to important documents not being disclosed.” Finally, it offered to express a view as to relevance of any specific documents or categories of documents of which Cruzlaw LLP may have doubts. The WhatsApp messages were not so referred to STI.

- 6.7. None of the above is altered by Mr Yeats’ Fifth Witness Statement. Indeed, in the light of the content of the exchange of correspondence between STI and Cruzlaw, Mr Yeats’ suggestion (at paras 3 and 4) that disclosure (or rather non-disclosure) reflected a relevance test agreed with STI is not accepted and warrants testing in cross-examination. Even if that were true of Mr Yeats’ own WhatsApp messages, his Witness Statement purports to be on behalf of the whole RGP.
- 6.8. In summary, all of Mr McGrail, Mr Ullger and Mr Richardson claim to have “lost” access to WhatsApp or other messages relating to key issues and key times.
- 6.9. Mr Ullger does not himself put in sworn evidence the explanation for his loss of and alleged inability to disclose messages. Mr Yeats does so on the basis of: *“For reasons that he does not understand but suspects is as a result of purchasing a new phone..... Commissioner Ullger has not been able to retrieve messages...”*. Nor does Mr Yeats purport to explain why Mr Ullger could not have had recourse to Mr McVea before the oral hearings (as he later did in June 2024). Nor is it clear that, since Mr McVea was a seconded RGP officer, Mr Ullger (as Commissioner of Police) did not have control of whatever Mr McVea had.
- 6.10. Even if (implausibly) the RGP initially thought that the WhatsApps were not relevant, it must have become apparent to them during the hearing that they were relevant and should then have been disclosed pursuant to their continuing disclosure obligation.
- 6.11. It is not a satisfactory or sufficient answer for the RGP to now say *“I, nor the RGP as an organisation believe that I, or the RGP, have failed in our disclosure obligations. We have interpreted our counsel’s advice on relevance (when required) as we have understood them following his discussions with the past and the current STI.”*
- 6.12. It is difficult to comprehend and accept that (save those disclosed by Mr Richardson to the Inquiry in June 2023 (and not provided to other CPs by STI until after both Mr McGrail and Mr Richardson had given oral evidence)) no exchange of messages between any two current or ex RGP officers (including Mr McGrail) were assessed by them to be relevant to this Inquiry.

6.13. These matters all militate in favour of reconvening for the purposes of giving this evidence orally and testing it in cross-examination, both publicly in accordance with the Open Justice principle.

7. Mr Richardson

7.1. The case for recalling Mr Richardson is not limited to “rebuilding the theatre”, although that is an interesting and amusing submission on the lips of his counsel. His evidence in his untested Fourth Witness Statement dated 3 December 2024 as to his explanation for the absence of the 12 May message warrants testing in public.

7.2. The complete absence of messages between Mr McGrail and Mr Richardson during the key relevant period of 1-21 May 2020 inclusive is unexplained.

7.3. His status as a retired police officer is not a relevant consideration.

8. The principle of open justice (para 15)

8.1. Mr McGrail submits that the principle of open justice does not require a further hearing because the WhatsApp messages and submissions relating to them can be placed on the Inquiry’s website.

8.2. This is of course an unattractive and self-serving reversal of the position previously adopted by Mr McGrail (when he wished to achieve maximum publicity for his allegations against the Government Parties). The reason that he now proffers would have been equally applicable to the whole of the Inquiry, from the outset of it. It was he who urged upon the Inquiry the view that transparency and open justice required evidence to be tested in full public gaze through live broadcasting. He cannot plausibly now resile from that view when it suits him to do so.

Yours faithfully,



Peter Caruana & Co.