

**INQUIRY INTO THE RETIREMENT OF THE FORMER  
COMMISSIONER OF POLICE CONVENED BY A COMMISSION  
ISSUED BY HM GOVERNMENT OF GIBRALTAR ON THE 4<sup>TH</sup>  
FEBRUARY 2022 IN LEGAL NOTICE NO. 34 OF 2022 (“THE  
INQUIRY”)**

---

**WRITTEN SUBMISSIONS  
FOR THE RECONVENED HEARING ON 9-11 APRIL 2025  
ON BEHALF OF THE GOVERNMENT PARTIES<sup>1</sup>**

**Dated 18<sup>th</sup> March 2025**

---

---

<sup>1</sup> HM Government of Gibraltar  
The Hon Fabian Picardo KC MP, Chief Minister  
Nicholas Pyle OBE (at all material times, Governor)  
Michael Llamas CMG KC, HM Attorney General for Gibraltar

1. These are the written submissions of the Government Parties for the reconvened hearing of the Inquiry following the very late, non-spontaneous disclosure by the RGP of obviously relevant WhatsApp messages, including several hundred pages of messages between Mr McGrail and Mr Ullger (“**the RGP WhatsApp Chats**”) long after the end of the oral hearings.

## **PART A: NON-DISCLOSURE**

2. As the Inquiry is aware, on 14 July 2022 it formally requested Commissioner Ullger, Assistant Commissioner Yeats and Supt Wyan (collectively “the RGP”) and ex-Supt Richardson to disclose all documents including electronic documents such as WhatsApp messages relevant to the subject matter of the Inquiry.
3. The Inquiry also made the same request of ex-Commissioner Ian McGrail on 4 April 2022.
4. The oral hearings of the Inquiry ended on 9 May 2024. The RGP WhatsApp Chats were disclosed by the RGP in September and December 2024, that is long after the end of the oral hearings. For his part, Mr McGrail has never disclosed these WhatsApps, even though the key, most relevant ones were to or from him.
5. The RGP WhatsApp Chats were obviously relevant to the subject-matter of the Inquiry.
6. The effect and importance of the non-disclosure by the RGP before the oral hearings (and Mr McGrail at all), is threefold:
  - 6.1. First, RGP officers, Mr McGrail and Mr Richardson have been shielded from being cross-examined by CTI and other CPs about this material (much of it unhelpful to their case narrative).
  - 6.2. Second, it shines a bright light on the scale of the double standards deployed in this Inquiry on behalf of all of Mr McGrail, Mr Richardson and the RGP, in seeking to heap public criticism and ridicule on other witnesses as to the reasons they gave for not being able to disclose WhatsApp messages, which basically were the very same reasons that Mr McGrail and the RGP are now themselves

giving for their own non-disclosure, namely that they deleted the WhatsApps or lost access to them when transferring to new phones.

- 6.3. Third, it almost resulted in the concealment from the Inquiry of relevant information and material unhelpful to their case narrative and supportive of the Government Parties' case narrative.

#### **A.1 RGP's explanation for non-disclosure by RGP/Mr Ullger**

7. In their Written Opening Submissions (see para 22) the RGP said that it had made "*comprehensive disclosure*" to the Inquiry Team, despite not having disclosed or even pointed to the existence of the RGP WhatsApp Chats. The RGP has also said that it has made full, prompt and timely disclosure. It is the Government Parties' position that this is self-evidently not the case, and that criticism of the RGP for its very late (non-timely) disclosure and for the remaining gaps in its disclosure is entirely justified.

*The "bottom lines"*

8. The first 'bottom line'

The 'first bottom line' of the RGP's conduct is that, on its own case (which it offers as an explanation and justification for non-disclosure), *it and all* its most senior officers have succeeded in deleting or losing access to *all* WhatsApps between themselves in respect of relevant periods on *all* RGP mobile phones.

- 8.1. **For one reason or another** by the end of the oral hearings in May 2024 no RGP officer (except a few by Mr Richardson from his *personal* mobile phone) had disclosed any WhatsApp messages whatsoever (even though it is now clear that many relevant messages existed and were in the RGP's possession or control).

- 8.2. The RGP's explanation now (two years after their disclosure obligation arose) for this is that for one reason or another access to all WhatsApps have been lost by *all* relevant senior RGP officers in respect of all RGP mobile phones that would have contained such WhatsApps because either:

- (i) The RGP itself “wiped” clean the relevant RGP mobile phones, including Mr McGrail’s and Mr Ricardson’s; or
- (ii) The WhatsApps were “lost” by all of Mr Ullger, Mr Richardson and Mr Yeats when they all transferred to a new mobile telephone in November/December 2020.
- (iii) It is remarkable that the RGP should have undertaken these “wipes” and mobile phone changes without first preserving the data, and thereby lost the WhatsApps (and presumably other potentially relevant data), especially at a time when:
  - (a) the Inquiry had long since been announced; and/or
  - (b) the then on going Operational Delhi criminal prosecution was proceeding towards the disclosure stage, making those WhatsApps in relation to that investigation all the more sensitive and important to retain safely.
- (iv) The SMT Chat Group
  - (a) The WhatsApp Chats deleted and lost in these ways included all messages in the Senior Management Team (SMT) collective chat group.
  - (b) According to the RGP’s explanation (discovered and given for the first time in February 2025) the transfer to newly issued mobile phones in November/December 2020 also caused all members of the RGP Senior Management Team (“SMT”) to ‘lose’ all messages between them on the SMT Chat Group prior to November/December 2020.
  - (c) According to Assistant Commissioner Yeats:

- In the summer of 2019, the RGP issued RGP work mobile phones to all SMT members and the SMT Chat Group was moved to those mobile phones from personal mobile phones.
- Its members of most interest to this Inquiry, Mr Ullger, Mr Richardson and Mr Yeats, were apparently all issued with a new RGP iPhone in November/December 2020, and access to all the WhatsApps on the SMT Chat Group was ‘lost’ by all three of them in the migration from their previous RGP Samsung phones to their new RGP iPhones.

8.3. The RGP has been unable to recover any of these WhatsApp messages despite having been backed up to the cloud (on Gmail accounts). In this respect, the Inquiry will recall Mr Gibbs KC’s “*studied scepticism*” of Mr Levy when Mr Levy gave evidence that his WhatsApps had gone not just from his phones but “*from the Cloud as well*”!

*Q. Does Hassans have a Cloud facility for backing up messages that might be significant for the work done by its partners and employees?*

*A. I believe so.*

*Q. Notwithstanding that the original telephone and the replacement telephone and the replacement, replacement telephone may not be able to provide the information that the Inquiry is interested in, the Cloud should?*

*A. I asked them and they said that it was not --- that they did not have it.*

*Q. It was gone from the Cloud as well?* (delivered, as noted by the Chairman, with “studied scepticism”)

[Transcript Day 8 pp 203-204]

8.4. Commissioner Ullger also gives the same explanation for his inability to disclose WhatsApp messages from his *private* mobile phone as well, that is that he lost those too when he changed his personal phone.

9. The second 'bottom line'

The second 'bottom line' in relation to the RGP WhatsApp Chats is that there is not a single reference, in any of the RGP WhatsApp Chats between any officers, to the alleged interference in the Op Delhi live criminal investigation, including between Mr McGrail and Mr Richardson (notwithstanding that he was the Senior Investigating Officer) or between Mr McGrail and Mr Ullger (notwithstanding that he was the Assistant Commissioner and Mr McGrail's very close friend). If any RGP officer had perceived any interference in a live criminal investigation, it is completely implausible that there should not have been any WhatsApp communications about it. This really is a case of the dog that did not bark in the night.

10. The third 'bottom line'

The third 'bottom line' in relation to the RGP WhatsApp Chats is that not a single WhatsApp message appears to have been exchanged between Mr McGrail and Mr Richardson, on any matter, during the period 30 April to 22 May 2020. It is completely implausible that they were sending each other WhatsApp messages regularly before this period and immediately after, but not during it.

11. The Inquiry is respectfully reminded of the oral closing submissions by Mr Gibbs KC on behalf of Mr Richardson (with reference to Mr Levy and Mr Picardo) to the effect that, if WhatsApp messages had not been "carefully retained because of their obvious relevance to an ongoing police investigation" nor "secured and copied in case there be a perfectly proper judicial review challenge to the warrants" nor carefully stored once the Inquiry had been called for because of their obvious relevance to the Inquiry, it might lend support to the view "that even very powerful people, even people with very powerful reputations may be tempted in extremis to suppress information" that could embarrass them (Transcript Day 20, p.20-21).

12. In summary, the RGP claim to have "lost" access to relevant WhatsApps relating to key times (including but not limited to the SMT Chat Group), and to have done so for reasons which in some instances are the same as, and in others bear a striking similarity to, those

for which Mr Levy and Mr Baglietto were so heavily criticised and for which it was sought to impugn their credibility and heap opprobrium on them.

13. The RGP as an organisation, and its senior officers in particular, are highly trained in the identification of forensically relevant evidence and in the preservation and custody of such evidence and other potentially valuable information and records. They have criticised others (especially Mr Baglietto) for not doing so, while manifestly failing to do it themselves.
14. In the case of Mr McGrail's personal phone the RGP WhatsApp Chats are said by Mr McGrail to have become inaccessible to him following an inspection of his mobile phone by the RGP. It is remarkable that no confirmation nor explanation of this has been proffered by the RGP, despite all of the Commissioner, Assistant Commissioner, a Superintendent and the RGP's certified digital forensics officer (DC Garcia) having provided statements subsequent to Mr McGrail's statement (in his 8<sup>th</sup> affidavit dated 20 June 2024) that when his phone was returned by the RGP the WhatsApp account was inaccessible.

*The RGP's disclosure has not been full and timely or spontaneous*

15. The RGP's position is that they have given full *and* timely disclosure because in September/December 2024 they disclosed the RGP WhatsApp Chats that they say was requested of them in June 2024 following what the RGP incorrectly describe as a disclosure request by the Government Parties on 24 June 2024. Indeed, in his 6<sup>th</sup> witness statement dated 11 March 2025 and to highlight the RGP's error in this respect, Mr Yeats inaccurately and inappropriately defines Peter Caruana & Co's email dated 24 June 2024 to STI as "GOG June Disclosure Requests" [E875]. The RGP therefore describes the Government Parties' suggestion to the contrary as "uninformed and incorrect".
16. The RGP's position is based on a false premise and is therefore misconceived because-
  - 16.1. The RGP were not first requested to provide the WhatsApps in June 2024. They were requested to provide them by the Inquiry in July 2022.

- 16.2. Therefore, the obligation of *Mr Ullger, Mr Yeats, Mr Wyan, and Mr Richardson* to disclose the RGP WhatsApp Chats did not arise from STI's email dated 27 June 2024 to them, nor from any supposed request in 2024 by the Government Parties (indeed, there was no such request for disclosure by the Government Parties).
- 16.3. The RGP's disclosure obligation therefore arose from and has existed since STI's letter dated 14 July 2022 to each of them personally requesting that they disclose relevant WhatsApp messages (and that was a *continuing* obligation thereafter).
- 16.4. The RGP's attempt to assess and characterise the fullness and timeliness of their disclosure by reference to a supposed obligation that arose upon a request in June 2024 is therefore a red herring and self-serving construction that disguises the fact that it could and should have done so before the hearings. The RGP's compliance is to be assessed by reference to the request in July 2022.
- 16.5. On that basis, the RGP had been fully able to access and disclose the WhatsApps between Mr McGrail and Mr Ullger well before the oral hearing:
- (i) Even if, in accordance with its very belated explanation, the RGP and Mr Ullger had lost access to his WhatsApps with Mr McGrail because of Mr Ullger's change of mobile telephone, Mr Ullger could have had recourse to the image of Mr McGrail's phone taken by Mr McVea before the oral hearings, as he later did in July and December 2024, after the oral hearings had ended. He had a continuing obligation to disclose them
  - (ii) Furthermore, since Mr McVea was a seconded RGP officer and seized Mr McGrail's mobile phone in March 2023 as part of an RGP criminal investigation conducted by him as an RGP officer, Mr Ullger (as Commissioner of Police) and the RGP had possession and control of the image of the Ullger/McGrail WhatsApps as of that date i.e., well before (a year) the oral hearings in this Inquiry.



- (iii) Accordingly, para 39 of Mr Yeats' 6<sup>th</sup> witness statement in which he says that "*Commissioner Ullger could have filed a witness statement to say that he had no messages, nor any devices in his control with any messages*" [E883] is not accepted by the Government Parties.
- (iv) The alleged need to obtain Mr McGrail's consent to disclose it is also a red herring. The Government Parties do not concede there was any impediment to disclosure and production of the relevant messages contained on the image of Mr McGrail's iPhone because of the circumstances in which it had been obtained, namely the criminal investigation against Mr McGrail. Just as the RGP disclosed and produced the entire Op Delhi docket which included many WhatsApp messages from mobile phones seized by the police in that criminal investigation, presumably without the consent of the Op Delhi Defendants and other persons that were party to those messages.
- (v) Even if, contrary to the above position, there was an impediment to production, there would have been no such impediment to disclosure of the existence of the image of the messages between Mr McGrail and Mr Ullger.

17. So, when the RGP did eventually disclose the RGP WhatsApp Chats in September/December 2024) that was not spontaneous. It required a specific query by the Inquiry, itself prompted by a query by the Government Parties by email to the Inquiry on 24 June 2024.
18. Contrary to the RGP's position, in their email to STI dated 24 June 2024 the Government Parties did not request the disclosure. It was a request by the Government Parties to STI for confirmation "*whether the Inquiry has sought disclosure from Mr McGrail and/or RGP SMT members of any such relevant WhatsApps and, if so, what their response has been.*" STI later confirmed that the Inquiry had indeed done so in July 2022.
19. Accordingly, the RGP's assertion that it complied with its disclosure promptly because it did so in response to this (late) disclosure request by the Government Parties is, in any event, self-servingly constructed on a false premise.

*Alleged guidance on compliance by STI*

20. Contrary to the impression sought to be given by the RGP in the evidence of Mr Ullger and Mr Yeats, STI did not (in the exhibited correspondence between them) direct or agree anything with the RGP/Mr Cruz about disclosure that would explain, still less justify, the non-disclosure of the WhatsApps by the RGP/Mr Ullger on a timely and spontaneous basis before the oral hearings. Still less were they “*led by [the] guidance) of STI particularly on questions of relevance*” (see Ullger 5, para 6 [E869]).
  
21. The position in this respect is as follows:
  - 21.1. In Section 1.1 of Attias & Levy’s (then STI) letter to Cruzlaw LLP dated 4 November 2022, STI –
    - (i) Correctly (though it should not have been necessary to do so) set out the “Test of Relevance” for disclosure.
    - (ii) 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.*”
    - (iii) 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 and STI expressed no view that they were not disclosable.
  - 21.2. Indeed, in the light of the content of the exchange of correspondence between STI and Cruzlaw, the RGP’s suggestion (see paras 3 and 4 of Mr Yeats’ Fifth Witness Statement) that disclosure (or rather non-disclosure) reflected a relevance test agreed with STI is not sustained by that correspondence and is therefore not accepted by the Government Parties.
  
22. Much of the RGP WhatsApp Chats is obviously relevant. Even if (implausibly) the RGP/Mr Ullger initially thought that the WhatsApps were not relevant, it must have

become apparent to them as the Inquiry progressed (and especially during the hearing) that they were relevant and should then have been disclosed pursuant to their continuing disclosure obligation.

23. The Government Parties do not understand how experienced senior police officers or anyone else could have come to the view that none of the messages in the RGP WhatsApp Chats (particularly the exchanges of WhatsApps between Mr McGrail and Mr Ullger) were relevant, nor how they could have “*interpreted our counsel’s advice on relevance (when required) as we have understood them*” to that effect.
24. The Government parties cannot therefore accept the RGP’s stated position that it has not “*in any way failed in its disclosure obligations, nor in the timeliness of its disclosure*” (para 16 of the RGP written submissions dated 17 January 2025), still less that “*the RGP disclosure has not been anything other than Comprehensive Disclosure at all material times*”, as deposed by Mr Yeats in para 5 of his 6<sup>th</sup> witness statement dated 11 March 2025 [E876].

## **A.2 Mr McGrail’s explanation for his non- disclosure**

25. For his part, Mr McGrail has not disclosed any WhatsApp messages with RGP officers at all<sup>2</sup>, despite his intense criticism of others for allegedly not disclosing relevant WhatsApp messages.
26. Clearly, Mr McGrail had access to all his WhatsApps at the time that he made his disclosures in 2022 and thus could have disclosed the RGP WhatsApp Chats well ahead of the oral hearings, as he disclosed his WhatsApps that he thought were helpful to him, with many other people, including:
  - (i) The Chief Secretary, Darren Grech
  - (ii) The Governor, Nick Pyle
  - (iii) The Chief Minister, Fabian Picardo
  - (iv) The Minister for Justice, Samantha Sacramento

---

<sup>2</sup> Save the supposedly helpful to him screenshots of SMT Group WhatsApps relating to the Airport Incident, which he mysteriously found on a pen drive in an old sunglasses case when he was clearing out an old desk drawer in November 2022 (McGrail 4, para 3).

- (v) Her predecessor, Neil Costa
- (vi) The Attorney General, Michael Llamas
- (vii) The Chairman of the Gibraltar Police Authority, Joey Britto
- (viii) The DPP, Christian Rocca
- (ix) The previous Governor, Ed Davis
- (x) Convent official, Phil Culligan

27. Nevertheless, he did ***not*** disclose any WhatsApp messages with ***any RGP officer***.<sup>3</sup> Clearly Mr McGrail, having access to his WhatsApp account at that time, could have disclosed his WhatsApps with other RGP officers, had he wanted to do so. He must have known that his WhatsApp messages with Mr Ullger were especially relevant.
28. Mr McGrail’s explanation now (over two years later) is that he did not disclose his WhatsApp chats with Mr Richardson and Mr Ullger “*because they did not feature in my mind as relevant at the time*”. Given the obvious relevance of many of the WhatsApps, and Mr McGrail’s training, experience and seniority as a police officer, the Government Parties believe that this explanation, given so very late in the day, is not plausible.
29. Mr McGrail also tellingly says that this omission was “*inadvertent*”. It cannot be both inadvertent and the result of any assessment or decision (as he was obliged to do) that they were not relevant.
30. Mr McGrail’s disclosure obligations were a continuing obligation. So, even if (implausibly) he did not consider them relevant in 2022 and 2023, he must have been starkly aware of both their existence and their relevance as the Inquiry progressed. He still did not disclose them.
31. His explanation for not doing so later is that when the RGP arrested him in March 2023 they took his mobile phone, and since they returned it in September 2023 (having examined it) “*I have not been able to access that WhatsApp account*” (para 17 of his Eighth Affidavit dated 20 June 2024).

---

<sup>3</sup> See previous footnote.

32. In other words, according to Mr McGrail, the RGP had wiped the WhatsApps from his mobile phone. Mr McGrail says that this is why, having failed to do so at the proper time in 2022, he could not disclose the WhatsApps later, after March 2023, before the oral hearings or at all.
33. Furthermore, even if (which the Government Parties do not accept to be the case) Mr McGrail did not have access to these WhatsApp messages for the reasons that he belatedly gives, nothing prevented him from disclosing their (to his certain knowledge) existence and pointing to or requesting the RGP to disclose them before the oral hearings.

### **A.3 Coincidences of non-disclosure and reasons**

34. It is the view of the Government Parties that the implausible fact and coincidence of non-disclosure and reasons for the non-disclosure by Mr McGrail and all other relevant police officers of WhatsApp messages should be seen in the context of -
  - 34.1. The unsatisfactorily explained (by the RGP) unavailability of Mr McGrail's laptop (said to have been found on 8 May 2024, though containing no relevant material) and desktop computers and day books and/or their content. (The Inquiry will recall that DC Garcia provided a report of his examination of the laptop, which report was exhibited as Exhibit 9 to the Fourth Witness Statement of Cathal Yeats. In that report, DC Garcia noted that an audio file named "Meeting with AG & DPP 20<sup>th</sup> May.m4a" was deleted from this laptop on 23 June 2020 (i.e. two weeks after Mr McGrail had left the RGP)).
  - 34.2. The unethical decision by Mr McGrail to covertly record multiple meetings with the AG, DPP, senior RGP colleagues and the Chairman of the GPA and his deliberate and tactically self-serving and manipulative decision not to disclose to the Inquiry and other Core Participants the existence of recordings and transcripts of the meetings of 13th, 15th and 20th May 2020 on a timely basis.
  - 34.3. Mr McGrail's failure to transcribe and disclose to the Inquiry the recording of his highly relevant (and unhelpful to him) conversation with Mr Richardson in the back of his car immediately following the 13 May 2020 meeting.

- 34.4. The failure by the RGP itself to preserve crucial information and evidence relevant both to this Inquiry and to a then ongoing criminal prosecution by wiping and/or apparently irretrievably losing access to WhatsApp messages on RGP mobile phones
- 34.5. The evidence of the Attorney General and the submissions made by the Government Parties about Mr McGrail's email to self dated 12 May 2020 containing information about matters that had not yet (on 12 May) occurred and alluding to things that occurred subsequently, including in the days immediately after 12 May.

#### **A.4 Double standards and inferences to be drawn**

35. The non-disclosure by Mr McGrail and the RGP of these WhatsApps spontaneously and in a timely manner, and the failure of Mr McGrail to disclose them at all, and the reasons and explanations given for those failures, is all the more concerning given the persistent and intense criticism of Mr Picardo, Mr Levy and Mr Baglietto in relation to their alleged non-disclosure of WhatsApps and the reasons that they gave:
- 35.1. 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) in the minds both of the Chairman and public opinion. As the Chairman noted in para 30 of his recent Ruling, "*everyone following the proceedings will have understood that counsel on behalf of Mr McGrail repeatedly claimed that Mr Picardo, and Mr Levy also, were reluctant to disclose some messages and had failed to disclose others, and that they did so deliberately, intending to suppress the truth and to mislead the Inquiry*".
- 35.2. Much the same was the position adopted by counsel on behalf of Mr Richardson:
- (i) whose cross-examination of Mr Levy (as the Chairman noted in para 32 of his Ruling 10 February 2025) and "*studied scepticism, gradually dissected Mr Levy, thereby exposing him to public opprobrium*". The

Inquiry will recall Mr Gibbs' cross-examination about the "replacement of the replacement mobile phone".

- (ii) As stated in paragraph 11 above, it was submitted on Mr Richardson's behalf in oral closing that the failure by Mr Levy to carefully retain and store relevant messages with Mr Picardo lent support to the view that he may have been tempted to suppress information that could have embarrassed them (Transcript Day 20, p.71).

35.3. And indeed, by the RGP. In his cross-examination of Mr Baglietto, Mr Cruz on behalf of the RGP invited Mr Baglietto to "*rethink*" his previous evidence about not deleting his WhatsApps intentionally to frustrate legal proceedings, given that it was done at a time when the prospect of legal proceedings (including criminal proceedings) was still alive (see Transcript Day 9 pages 205-206). The RGP was not shy to adopt this line with Mr Baglietto even though, as they well knew or ought to have known, the RGP itself had (i) wiped clean WhatsApp messages and other data from Mr McGrail's mobile phone after he retired (ii) failed in Nov/Dec 2020 to preserve WhatsApps chats on transfer from Samsungs to iPhones and (ii) in 2021, wiped clean the WhatsApps and other data on work mobile phone of Mr Richardson (the Op Delhi Senior Investigating Officer), even though Op Delhi was still alive and (certainly when (ii) and (iii) were done) the Inquiry had already been announced.

35.4. Mr Levy was therefore highly criticised for his explanation that he no longer had access to WhatsApps because they had been lost in transfer from one phone to another. Now it transpires that this very same reason is given by:

- (i) Mr Ullger, the Commissioner of Police, for not having disclosed the WhatsApp messages between himself and Mr McGrail on their personal devices prior to the main oral hearings; and
- (ii) Mr Yeats, on behalf of the RGP, for the inability of Mr Ullger, Mr Richardson and himself to disclose any WhatsApp messages from their RGP mobile phones in respect of the relevant period.

- 35.5. Mr Baglietto was highly criticised because he had wiped his mobile phone clean of WhatsApp messages after the Inquiry had been announced (but before he had been requested for evidence). Now it very belatedly transpires that:
- (i) The RGP did exactly that to Mr Richardson’s RGP Mobile phone; and
  - (ii) According to Mr McGrail, after the RGP examined and returned his mobile telephone, he could no longer access the RGP WhatsApp Chats. No explanation has been given as to why examination of a mobile phone by the RGP should result in the loss of such important, relevant evidence, half-way through the Inquiry.
36. It is respectfully submitted, that this coincidence of inability to disclose relevant WhatsApps by multiple past and present police officers (including Mr McGrail) for myriad reasons is in and of itself implausible, and the Inquiry should draw the same inferences from this fact as it has been invited by these same persons to draw from the supposed and speculated non-disclosure of WhatsApps by Mr Picardo, Mr Levy and Mr Baglietto.
37. What those inferences should be is of course a matter for the Chairman. However:
- 37.1. The lack of disclosed WhatsApp messages was described by counsel for Mr McGrail as “*The dog that did not bark in the night*”. By which they meant –
- (i) “the lack of evidence, like the lack of barking, was itself the evidence. And, there are many critical gaps in the material before you....” (Transcript Day 3 pages 16 -17)
  - (ii) “You may consider that probative in itself. The Inquiry has been provided with no messages at all between them.” (Transcript Day 3 pages 49 lines 2-5)



(iii) Mr Wagner (on behalf of Mr McGrail) challenged Mr Picardo for having “quite a narrow understanding of relevance and scope when it comes to messages” (Transcript Day 17 pages 107-112). This despite Mr McGrail supposedly considering that WhatsApps between him and Mr Ullger and other RGP officers were not relevant.

37.2. Nor did any of this make Mr McGrail shy of impugning even the Attorney General’s integrity when it came to openness and disclosure. Counsel for Mr McGrail asked Mr Llamas (Transcript Day 12 pages 62 and 63):

- (i) Q. Mr Llamas, have you been honest and transparent with this inquiry?
- (ii) Q. Does your written evidence to the inquiry provide a full and accurate account of your involvement in events?
- (iii) Q. Did you check your emails and messages before drafting your witness statements?
- (iv) Q. You would go through all your texts and emails before giving your evidence. Is that right?

These are precisely the things that his own client, Mr McGrail, did not do in respect of the RGP WhatsApp Chats when he made his disclosure in June and October 2022.

37.3. As the Chairman noted in his recent Ruling, Mr McGrail’s counsel repeatedly claimed that Mr Picardo, and Mr Levy also, were reluctant to disclose some messages and had failed to disclose others “*and that they did so deliberately, intending to suppress the truth and to mislead the Inquiry*”.

37.4. 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 not disclosed relevant WhatsApp messages between Mr McGrail and Mr Ullger and other RGP officers, because he and they had done this very same thing.

37.5. 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”) the fact that they had not volunteered information “until much later in the Inquiry process”. He submitted that 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”.

37.6. There is no reason why the Inquiry should not draw inferences against Mr McGrail (as he has invited the Inquiry to draw against others) arising from his and Mr Ullger’s and the RGP’s failure to disclose these WhatsApp chats, and it is not open to him or them to contend that it should not do so.

#### **A.5 RGP Mobile Device Policy**

38. The Inquiry has invited comment from Core Participants about the RGP’s Mobile Device Policy (Exhibit CY/WS5/2 [E318]).

39. In the view of the Government Parties, any Policy that requires RGP work mobile phones to be wiped clean of work-related WhatsApp messages without those being backed up and retained elsewhere first, is necessarily unsound. There is no way of knowing what data of value in a future context is not thereby being destroyed, including potential evidence in the investigation of possible disciplinary infractions or crimes by that or other police officer(s) or other persons. It is inconceivable that the RGP would have such a policy.

40. In fact, it appears ***not*** to have such a policy. Under para 3.3 of the Policy what requires to be wiped off is “all ***personal*** data”. Work related and generated WhatsApp messages are not ***personal data*** (though obviously would be removed from the phone before it could be handed to another officer for his/her use).

41. In so far as concerns this Inquiry, therefore, there is nothing in the Policy that *required* the WhatsApps to be deleted (still less to be deleted without being copied and retained). Silence about preserving data does not require it not to be preserved. The RGP simply did so (and in the case of Mr Richardson and Mr Tunbridge, it did so after the Inquiry had already been announced).
42. In the Government Parties view, this is not adequately explained, let alone justified, by Mr Yeats' bald assertion that the RGP does not keep copy of messages before wiping phones clean so that they can be re-issued to other officers. Be that as it may, the failure to do so did not reflect any requirement of the RGP's Mobile Devices Policy.
43. This (and the deletion of WhatsApps by the RGP) did not prevent counsel for Mr McGrail from cross-examining the then Governor Mr Pyle about his deletions of WhatsApps (which he did in accordance with the requirements of established Foreign Commonwealth and Development Office's policy in that respect) with the obvious innuendo that he had done so in order to conceal them from the Inquiry.

## **PART B: SUBSTANTIVE RELEVANCE OF THE WHATSAPP MESSAGES**

44. The RGP WhatsApp Chats now disclosed by the RGP (particularly those between Mr McGrail and Mr Ullger) are obviously relevant to the issues under inquiry, some highly probative. Indeed, some are highly probative to one of the main issues under inquiry, namely: why and how Mr McGrail chose to retire.
45. 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.
46. There follows in outline form a summary of the principal respects in which the RGP WhatsApp Chats between Mr McGrail and Mr Ullger are highly relevant to the issues under inquiry. These are explained in further detail in the Annex to these submissions (which form part of these submissions).

47. Why and how Mr McGrail retired.

47.1. The WhatsApps between Mr McGrail and Mr Ullger show that Mr McGrail did not, as he has claimed in this Inquiry, choose to retire because of any supposedly corrupt or unlawful interference by anyone in the live Operation Delhi criminal investigation, but rather because (as the Government Parties have contended) 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.

47.2. This is so because, as these WhatsApp messages now show, Mr McGrail had, at least by 29 May (and probably as early as 20 May), resolved to retire and thereafter worked to ensure that he would be allowed to do so on the best financial terms. Far from seeking to stay on as Commissioner of `Police, his concern was that he may not be allowed to retire but would instead be sacked. Nothing that occurred after the date when Mr McGrail decided to retire date could have been the reason for him doing so.

47.3. For example only:

- (i) at row 2462 there is a voice clip from Mr Ullger to Mr McGrail in which Mr Ullger reports on a conversation he had just had with Samantha Sacramento. The salient part is as follows:

*“I told her about the fact that the best scenario here was or what you were looking at was you wanted to, you know, retire now because ya **your position was untenable with the individual, with all individuals for that matter and that you wanted to leave the organisation with heads up, but maintaining your pay, and to retire, to have your retirement package in 2 years’ time.**” (emphasis added)*

- (ii) On 30 May 2020, Mr McGrail tells Mr Ullger (with reference to the approach to Ms Sacramento): *“Don’t push it rich. You have to be very subtle.”* (row 2496 [E763]) and *“**All I want is a dignified exit and not a**”*

*forced one.*” (row 2497 [E764]) Mr Ullger acknowledges that he is “*fully conscious of it*” (row 2498 [E764]) – So Mr Ullger knew this.

47.4. It is respectfully submitted on behalf of the Government Parties that Mr McGrail’s case theories, narratives and credibility, including when impugning the honesty of others, should be seen in the light of the contradictions in his position brought into sharp focus by these WhatsApp messages which, like a “dog that did not bark in the night” he failed to disclose and hoped would not see the light of day.

48. Alleged Unlawful interference in Op Delhi investigation.

48.1. *The meeting of 12 May between Mr McGrail and the Chief Minister*

- (i) It is remarkable and telling, that there has not been disclosure of a single WhatsApp message by any police officer, including Mr McGrail, about the supposed interference in a live criminal investigation that this meeting has later been alleged to have constituted.
- (ii) This “*dog that did not bark*” strongly suggests it was not thought by the RGP to constitute any such thing. This confirms the Government Parties’ position that no such interference occurred.

48.2. *The meetings of 13<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> May*

- (i) The Chairman has the recordings and the transcripts of the meetings on 13th, 15th and 20th May 2020 between the RGP, the Attorney General and the DPP and, as he has correctly pointed out to the CPs, he can therefore himself consider and assess what transpired at the meetings. i.e., whether they were collaborative and consensual or improper “interference” in a live criminal investigation.
- (ii) Nevertheless, the WhatsApps show what Mr McGrail himself thought at the time and are therefore probative of the genuineness of the case advanced about that by him in the Inquiry:

- (a) He described the meeting of the 15<sup>th</sup> as “Goodish” and encouraged Mr Ullger to “Chill out”. These are hardly words and sentiments that would be used following a meeting at which the Commissioner of Police thought there had been corrupt, illegal and unconstitutional interference in a live police investigation.
- (b) Indeed, this is also in keeping with the tenor of the conversation between Mr McGrail and Mr Richardson in the back of the car after the 13<sup>th</sup> May meeting [C6929].
- (c) The WhatsApps clearly show that, contrary to their case narrative in the Inquiry, the RGP felt free to arrest Mr James Levy and did not want to. On 16 May (i.e., after the 13 and 15 meetings), Mr McGrail told Mr Ullger: “**I am hoping** that JL does not force the issue **where we have to end up arresting him.**” (emphasis added)

48.3. This thoroughly undermines the notion advanced by Mr McGrail that the police either were or even felt restrained by the CM or the AG from arresting Mr Levy in order to protect him. The expression of hope plainly conveys the meaning that Mr McGrail and the RGP did not want to have to arrest Mr Levy. The reference to “where we have to end up arresting him” plainly means that the RGP were and felt free to do so if they decided it was necessary to do so.

49. HMIC Report.

The WhatsApp messages between Mr McGrail and Mr Ullger show:

- 49.1. The extent to which Mr McGrail was in fact concerned by the criticism level at the RGP in the HMIC Report and its possible effect on him. This contrasts with the narrative he has advanced in this Inquiry.
- 49.2. That Mr McGrail and Mr Ullger agreed a list of issues that they could say explained why they never worked on the 2016 Inspection recommendations.

49.3. That Mr McGrail did not make sufficient progress in the implementation of the HMIC Report recommendations, and he was conscious of and concerned about this.

50. Incident at sea.

The WhatsApp messages between Mr McGrail and Mr Ullger show:

50.1. As early as 09:49 on 8 March 2020 (that is, within hours of the collision) Mr McGrail was clear in his mind where the collision had occurred. In a WhatsApp to Mr Ullger at 09:49, Mr McGrail said: “*Collision happened 6NM east of the airport/la linea beach.*” (row 1031 [E502]).

50.2. There was none of the obfuscation that he deployed in the Inquiry about “the incident” being both the chase and the collision, and that distinction being relevant to why he prevaricated about telling the Governor. Nothing prevented Mr McGrail from then telling Mr Pyle the same thing. Mr Pyle’s narrative is thus fully sustained and Mr McGrail’s completely undermined in this respect.

51. Fractions relationship with Gibraltar Police Federation.

The WhatsApp chats between Mr McGrail and Ullger show that, contrary to Mr McGrail’s narrative in this Inquiry:

51.1. The hostile and fractious relationship between the Command and the GPF leadership was not due solely to the alleged behaviour and attitude of the GPF. They show the very hostile, antagonistic and dismissive attitude by Mr McGrail and Mr Ullger to the GPF leadership, and the nature and extent of the insulting and disrespectful language in which this was expressed by them. The Inquiry will have noted the frequent references to the GPF leadership as “idiots”, “bastards” and fools.

51.2. Mr McGrail and Mr Ullger themselves engaged in bullying and manipulative actions against the GPF leadership as part of their campaign against it.

51.3. The WhatsApp exchanges therefore sustain Mr Pyle’s evidence that he was receiving constant reports about the hostile and fractious relationship between the RGP senior command team and the GPF leadership. Plainly there was, Mr McGrail and Mr Ullger were themselves contributing to that and Mr Pyle’s concern would appear to have been entirely justified.

## **B.2 The significance of friendships**

52. Mr McGrail was critical of the role that alleged friendships had played in the Op Delhi issue. Indeed, he placed it at the heart of the unlawful conspiracy that he sought to weave around it.

53. In this context, much was made of a single reference by Mr Baglietto to Mr Picardo as “Bro” (an acknowledged contemporary vernacular term of close friendship). See McGrail oral opening (Transcript Day 3 pp 49-50) and Transcript Day 3 page 60 line 18:

*“from 12 May Mr Picardo, from what we have seen was enthusiastically texting or Whatsapping Mr Baglietto, whom he referred to in the messages as "bro" .....Talk about friends in high places, this is frankly astonishing.”*

54. The RGP WhatsApp Chats between Mr McGrail and Mr Ullger, now disclosed, show clearly the very close personal bonds of friendship that exist (and then existed) between Mr Ullger and Mr McGrail:

*23/05/2020 18:51:07 – Richard Ullger: Pensando en ti hermano. Let me know if you need anything  
xx*

*23/05/2020 18:52:05 – Ian McGrail: Biggest of hugs mate..... my brother*

*...*

*24/05/2020 20:35:48 – Richard Ullger: Venga mate. Love you [kissing emoji]*

*24/05/2020 20:36:29 – Ian McGrail: Love you too. Big hug.*

*...*



28/05/2020 18:45:05 – Ian McGrail: *On edge. Wanting this over. Lets see what reaction I get from GPA to the Lawyer's letter.*

28/05/2020 18:46:55 – Richard Ullger: *We are thinking about you both all of the time. All we do is talk about you. It's so painful to see you so sad. Be strong mate, you have the admiration of all. Everyone in the command is proud of you [thumbs up emoji] Big hug mate.*

28/05/2020 18:47:41 – Ian McGrail: *That means a lot Rich. Thanks*

...

29/05/2020 09:37:38 – Ian McGrail: *Many thanks. Love you mate.*

29/05/2020 09:38:07 – Richard Ullger: *Love you more xxx*

...

29/05/2020 16:23:01 – Richard Ullger: *Love you mate. Pensando en ti. Hate seeing you so sad. It's just not you. Fuf. Chin up brother.*

29/05/2020 16:23:52 – Ian McGrail: *Love you too. Te aprecio un monton. Just want to take the bend and be relieved of all of this.*

....

04/06/2020 13:58:37 – Richard Ullger: *Ave we can't wish it sooner. You know I am here for whatever you need. Lo que sea mate.*

04/06/2020 13:59:14 – Ian McGrail: *I know Rich. Thanks my brother.*

...

05/06/2020 18:45:49 – Richard Ullger: *Try and rest this weekend mate. You need it. Happy que you are more tranquilo. Love you loads. Big hug. Really proud of you*

05/06/2020 19:13:21 – Ian McGrail: *Thanks mate. Still not out of the woods. I now pray that they do not refuse my intention to retire early. You have a pleasant weekend yourselves. My brother from another mother. Biggest of hugs. Love you too.*

...

08/06/2020 13:42:25 – Ian McGrail: *15mins to go. Please pray hard Rich. Love you mate.*

08/06/2020 13:43:15 – Richard Ullger: *Mate all we are doing is thinking of you mate. Love you loads. Be strong brother*

...

08/06/2020 16:49:51 – Richard Ullger: *God I'm going to miss you so much [crying face emoji]*

...

09/06/2020 19:19:16 – Ian McGrail: *Emotional beyond belief. Thanks my brother. Here rooting for you ALWAYS. Big hug*

09/06/2020 19:20:57 – Richard Ullger: *Ya mate, an incredible day. Thanks gonna miss you so much. Big hug mate.*

09/06/2020 19:22:40 – Ian McGrail: I ain't far away. Will demand to meet you as often as possible.

55. The Government Parties make no criticism whatsoever of this. There is absolutely nothing untoward about two colleagues who have worked together for many years becoming close and mutually supportive personal friends, nor, in the context of southern European culture, that purely platonic relationships of personal friendship between two colleagues should be verbalised and expressed in these vernacular terms.
56. However, what is “sauce for the goose is sauce for the gander” and three relevant points arise in this respect:

56.1. The use of vernacular expressions of friendship

- (i) Mr McGrail has sought to exploit the fact that on one occasion Mr Baglietto referred to Mr Picardo as “Bro”. There can be no doubt that Mr Picardo and Mr Baglietto are longstanding and close personal friends and colleagues.
- (ii) In the light of the language used to reflect the relationship between Mr Ullger and Mr McGrail, it was disingenuous for Mr McGrail to criticise the fact that Mr Baglietto referred to Mr Picardo as “Bro”, still less to thereby impugn the integrity or credibility of either of them or their evidence.

56.2. The expression of unconditional support to friends

- (i) Mr McGrail and the RGP have been highly critical of Mr Picardo for what they consider to be his unconditional support for his personal friend, professional mentor and political supporter, James Levy despite being unsighted as to the nature and extent of the evidence of alleged wrongdoing held by the RGP against Mr Levy.
- (ii) Yet, these WhatsApp chats now reveal that this is precisely what Mr McGrail, Mr Ullger and Mr Yeats did-

- (a) Both Mr Ullger and Mr Yeats unconditionally supported and upheld the position of their close personal friend and colleague, Mr McGrail following his meeting on 12 May with the Chief Minister;
- (b) Despite not having been present at that meeting, they have both proceeded on the assumption (as if it were a fact) that Mr McGrail had not lied to the Chief Minister at that meeting, e.g.,
  - on 30/05/2020 at 16:07, Richard Ullger says: *“por favor Ian, you have let no one down, on the contrary because of your actions you or your principles will never be forgotten” ... “Be proud brother” ... “We are”* – thereby clearly showing that he did not for one minute consider that Mr McGrail had lied to or misled the CM or the Governor, despite having no first-hand knowledge to that effect.
  - On 03/06/2020 at 16:16:47, Richard Ullger says: *“I’m sorry because my bestie is suffering and it’s so wrong. So fucking wrong. We will have better days together though, of that I’m sure”*.
- (iii) It is not clear why Mr McGrail and the RGP might think that Mr Picardo is not entitled to the same consideration in relation to his unconditional faith in and support for his friend, Mr Levy.

56.3. The reliability of what is said about one’s friends

- (i) In Mr McGrail’s Oral closing it was submitted on his behalf (see Transcript Day 21 page 39):
 

*“And of course he was Mr Levy’s great friend. This is one of the reasons why conflict of interest rules exists because people cannot be objective when an issue involves their close friend”*.
- (ii) The Government Parties do not agree with that submission. Friendship is not an obstacle to honesty and truthfulness. But, if Mr McGrail believes it to be,

then the Inquiry would have to view the RGP evidence and general case narrative during the Inquiry in the light of that submission.

18<sup>th</sup> March 2025

Sir Peter Caruana KCMG KC

Christopher Allan

Philip Dumas

---

**ANNEX TO THE WRITTEN SUBMISSIONS OF THE  
GOVERNMENT PARTIES DATED 18<sup>TH</sup> MARCH 2025**

---

**The reason for Mr McGrail's retirement**

1. It has been at the heart of Mr McGrail's narrative and submissions throughout this Inquiry that he was forced to retire because of alleged improper interference in the Op Delhi investigation.
2. In contrast, the Government Parties have submitted throughout that this is not the case and that he (rightly) chose to seek early retirement because he knew he had lost the confidence of key persons and authorities without whose confidence his position as COP was untenable, and that his position had therefore become untenable.
3. The RGP WhatsApp Chats between Mr McGrail and Mr Ullger show that, contrary to the narrative and case advanced by Mr McGrail and on his behalf during the Inquiry, his decision to seek retirement was entirely due to the fact that he had lost the confidence of key persons and authorities. This is exactly what the Government Parties case and submissions have been throughout the Inquiry.
4. As early as 20 May 2020, Mr Ullger and Mr McGrail were already exchanging messages in terms that strongly suggest that Mr McGrail was of a mind to leave (rows 2400-2401 at [E747]). Since he had not yet met with Mr Britto and been handed the letter on 22 May 2020 (and therefore not been told that others had lost confidence in him) this could only have been on the basis of his own assessment that others had lost confidence in him based on what he then knew, which was (i) the fact that the Chief Minister believed that he had lied to him (Mr Llamas had told Mr McGrail this on 13 May) and (ii) the content of the HMIC Report (as to which see below).

5. On 24 May 2020, Mr McGrail told Mr Ullger that he was “*longing for this nightmare to end*” and Mr Ullger replied that “*now its time to think about you. You and Diane.*” (Rows 2427 –2428 [E751]). This language is consistent only with a “departure intention” of which Mr Ullger was then already aware.
6. On 29 May 2020, Mr Ullger and Mr McGrail have a most telling exchange which (in the Government Parties’ view) makes clear beyond peradventure, that, by 29 May 2020 at the very latest, Mr McGrail had already decided that he wanted to go and was then concerned only not to be seen to have been forced out and to secure the best possible pension and other departure terms. Staying on as Commissioner was not in his contemplation or desire.
7. On that day (and obviously pursuant to a previous understanding between Mr McGrail and Mr Ullger that the latter would do so – see rows 2456-2459 “*Done SS. Ya te hablar*” loosely translated “*I’ll explain later*”). SS is a reference to Samantha Sacramento, then the Minister for Justice.
8. At row 2462 there is a voice clip from Mr Ullger to Mr McGrail in which Mr Ullger reports on a conversation he had just had with Samantha Sacramento. The salient part is as follows:

*“I told her about the fact that the best scenario here was or what you were looking at was you wanted to, you know, retire now because ya **your position was untenable with the individual, with all individuals for that matter and that you wanted to leave the organisation with heads up,** but maintaining your pay, and to retire, to have your retirement package in 2 years’ time.”* (emphasis added)
9. Later that day, Mr McGrail tells Mr Ullger: “*Just want to take the bend and be relieved of all of this*” (row 2483 [E761]). This language also is consistent only with a departure intention.
10. On 30 May 2020, Mr McGrail tells Mr Ullger (with reference to the approach to Ms Sacramento): “*Don’t push it rich. You have to be very subtle.*” (row 2496 [E763]) and

**“All I want is a dignified exit and not a forced one.”** (row 2497 [E764]) Mr Ullger acknowledges that he is *“fully conscious of it”* (row 2498 [E764]) – So Mr Ullger knew this.

11. On 5 June 2020:

11.1. Mr McGrail’s solicitors emailed the GPA stating that Mr McGrail wanted to take early retirement.

11.2. Mr McGrail also tells Mr Ullger: *“Thanks mate. **Still not out of the woods. I now pray that they do not refuse my intention to retire early...**”* (row 2625 [E784]).

12. The exchanges between 6 and 8 June 2020 show that the concern was all about not being required to resign (i.e., sacked) and the terms of retirement and not any expectation or desire to stay on.

13. All the above exchanges flatly contradict the case narrative of Mr McGrail that *“he was agonising over what decision to take because he saw how difficult his position was becoming”* (Gomez & Co’s submissions letter of 17 January 2025 in response to application to reconvene). He may well have made the decision to go because he saw how difficult his position had become, but there is no evidence (and much to the contrary) of agonising about what his decision should be i.e. stay or go.

14. It is therefore apparent that Mr McGrail had decided to go before (and notwithstanding) his letter of 29 May 2020 to the GPA. This begs the question: what was the real purpose of that letter?

14.1. Plainly, it was not to seek to stay on as Commissioner of Police. We now know this from the above exchanges of WhatsApp messages.

14.2. We therefore now know that, far from hoping that the 29 May letter to the GPA would result in him staying on as COP, Mr McGrail’s concern was that he may not be allowed to retire and was actively seeking the Minister of Justice’s

assistance (through Mr Ullger) to be allowed to do so on financially favourable terms.

14.3. This despite the narrative to the contrary effect in Mr McGrail's 29th May letter to and its references to:

- (i) the alleged inappropriate interference in a live criminal investigation;
- (ii) the request to the GPA that it should not exercise its powers under section 34 to call for his retirement;
- (iii) calling for recusals from the GPA's decision the "fundamental unfairness; abuse of process and procedural flaws" and "vanishing reasons for the invitation to retire";
- (iv) the fact that the exercise by the GPA of its power to call for Mr McGrail to retire "would indeed be an affront to the rule of law and a breach of your duties under the Constitution" and a breach of natural justice;
- (v) the fact that "it would not be possible to reach a just result unless it is to allow Mr McGrail to remain in post".

14.4. Given that it was not written with a view to remaining in post, the Government Parties posit that the true purpose of the letter was to avoid the possibility (not yet activated by the Governor) that the Governor would call on him to resign (sacked) and to leverage the best possible financial terms on retirement. This view would appear to be sustained by the recruitment of the assistance of the Minister for Justice to achieve that very result at the very same time as the letter was sent. It is also sustained by the fact that on the very day that the letter was sent (29 May) Mr McGrail was speaking to Mr Ullger about his wish to retire and that he was "now awaiting a reaction to my letter".

15. Similarly, all Mr McGrail's case narrative in relation to **events after** (at the latest, but probably for the reason stated above, much earlier) **the 29<sup>th</sup> May 2024** suggesting the contrary is necessarily contrived and orchestrated posturing for the purposes of this Inquiry. That narrative cannot have been relevant to why and how he chose to retire early (a decision that he had already made at the very latest by 29 May, as we now know from these WhatsApp messages). For example -



15.1. That he was “forced out” by the abuse in June of statutory powers by the Interim Governor Mr Pyle (that in addition he is alleged not to have had because of the imminent arrival of the new Governor);

15.2. “IM *reluctantly* agreed” (emphasis added) to retire early (see para 23 McGrail Written Opening). It is now evident that Mr McGrail’s retirement was not reluctant. Indeed, his concern was not being allowed to do so.

15.3. Para 117 (McGrail Written Opening):

“117. NP illegitimately threatened to use the Governor’s powers which were not available to him in June 2020 because the new Governor was imminently to arrive;

117.1 NP rushed to remove IM before the new Governor arrived,

117.2 NP was convinced by FP that IM had to be removed “*before he meets the Spanish on Tuesday*” so that the government could be seen to be “*taking decisive action*”.

117.3 NP then suggested to London that “*the outcome also plays well into our ongoing negotiations with Spain*”.

117.4 NP refers to emphasising the “*strength of his feelings*” to the GPA which suggests he was not giving the GPA any room to make a different decision.

117.5 NP had no power under the Constitution to exercise the Governor’s functions from the moment he was notified of the imminent arrival of the new Governor.”

58.4 McGrail’s Written Closing:

(i) Paras 117-123. In the same vein.

(ii) The Letter of 29 May.

- (a) At paras 124-126 Mr McGrail submits that this letter should have “prompted Mr Pyle to pause and consider his duties under section 11 of the Police Act to maintain the integrity and independence of the RGP” and “should have prompted Mr Pyle to suspend his actions in relation to Mr McGrail” (for all the reasons therein stated).
- (b) We now know from the RGP WhatsApp Chats that the reality of Mr McGrail’s position was very different. Far from wanting these things he was, at the very same time as that letter issued, sending WhatsApp messages to Mr Ullger (with emojis of crossed fingers included) hoping that he would be allowed to retire immediately. (In any event, Mr Pyle’s evidence was that he did pause, reflect and consult officials in London).

- 16. Since 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, including (but not limited to) improper actions by the Interim Governor, Mr Pyle) could have been the reason for him doing so.
- 17. Nor, it is submitted by the Government Parties, can the WhatsApp exchanges between Mr Ullger and Mr McGrail be reconciled with the submission made by the RGP in their closing Written Submissions at para 13.8.4:

*“The RGP cannot understand why there was no further engagement by the Chief Minister with the then COP Mr McGrail to try and resolve issues, between then and the 9 June 2020”.*

- 18. Since before 29 May it was known to Mr Ullger that Mr McGrail wanted to retire (a matter of which he was “*fully conscious*” – see WhatsApp dated 30 May at 10:33), that his concern was that he may not be allowed to do so and Mr Ullger actively engaged the

assistance of the Minister for Justice to secure Mr McGrail's ability to retire on financially fair terms.

### **Alleged Unlawful interference in Op Delhi investigation**

#### *The 12 May 2020 meeting with the Chief Minister and Attorney General*

19. On 12 May 2020, there appears to have been only a single WhatsApp message exchanged between Mr McGrail and Mr Ullger, but because it is redacted it is obviously irrelevant to the Inquiry (row 2367 [E741]).
20. Accordingly, and despite the fact that Mr McGrail and others have sought to create during this Inquiry the narrative that the meeting of 12 May itself constituted interference in a live criminal investigation (notwithstanding that Mr McGrail himself was not conducting the investigation) it is remarkable (if that meeting did indeed, in their minds, comprise interference) that there is not a single WhatsApp message between Mr McGrail and any of the SMT or investigating officers (or indeed between the investigating officers themselves) commenting on any such interference (which they would rightly have considered to be a serious matter and therefore worthy of commentary). This point has to be seen also in the light of the volume and frequency of messages between them generally.

#### *The meetings of 13<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> May 2020*

21. The allegation that the Attorney General (on his own behalf, and as "wingman" for the Chief Minister) and the DPP improperly "interfered with a live criminal investigation" in the (covertly recorded) meetings of 13<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> May ("**the Meetings**") lies at the heart of Mr McGrail's case narrative in this Inquiry. This is the reason he alleges obliged him to seek early retirement.
22. The Government Parties have throughout the Inquiry submitted that this is not a sustainable proposition, for three reasons. First, that there was no improper interference in the Meetings. Second, that even if (contrary to the Government Parties first contention)

there was improper – or any - interference, it was manifestly not the reason why Mr McGrail chose to retire. Third, even in the second case, any such interference would not have required or justified, still less obliged, such retirement. Mr McGrail’s duty and obligation as Commissioner would have been to uphold the operational independence of the RGP, not to seek early retirement in the face of an alleged assault on it.

23. The RGP WhatsApp Chats between Mr McGrail and Mr Ullger show that, contrary to the narrative and case advanced by Mr McGrail and on his behalf during the Inquiry, he thought that the 15 May meeting had gone well. It therefore did not constitute any part of the reason for his decision to retire. This is exactly what the Government Parties case and submissions have been throughout the Inquiry (and what, it is submitted, the covert recordings of the Meetings show).
24. On 15<sup>th</sup> May 2020 at 16:45:24 Mr Ullger asks Mr McGrail how the meeting that day (between the RGP, including him, and the AG and DPP) had gone. As the Chairman will be aware, it was this meeting that is alleged to have constituted the principal “interference”. Mr McGrail replies “All good’ish” (rows 2373-2374 [E742-3]):

*15/05/2020 16:45:24 – Richard Ullger: Que mate. How did it go?*

*15/05/2020 16:46:30 – Ian McGrail: **All good’ish**. Too much to explain by text. **Chill out**. We’ll chat on Monday.*

25. Furthermore, it is remarkable and telling that there is not in any of the RGP WhatsApp Chats a single reference to the alleged “interference” or to the Meetings constituting improper interference with the RGP’s operational independence which has loomed so large in Mr McGrail’s, Mr Richardson’s and indeed the RGP’s narrative in this Inquiry. To borrow Ms Gallagher’s literary reference, this truly is a case of “*the dog that did not bark*”.
26. Furthermore still, it was central to Mr McGrail’s case narrative that the alleged interference involved curtailing the RGP’s right to proceed against “the Chief Minister’s friend and mentor” James Levy KC to protect him. The RGP WhatsApp Chats between Mr McGrail and Mr Ullger show that this is not true and further, that Mr McGrail does

not believe it to be true. Mr McGrail fully understood that the RGP would be free to arrest Mr Levy if they wanted to, and indeed, Mr McGrail did not want to and hoped that he would not have to. And Mr Ullger agreed. This is apparent from the following exchange which took place after two of the three meetings (the third is acknowledged by the RGP to not have involved alleged interference even on their own case narrative):

*16/05/2020 12:09:45 – Ian McGrail: **I am hoping** that JL does not force the issue **where we have to end up arresting him**. (emphasis added)*

*16/05/2020 12:13:47 – Richard Ullger: Ya, ave lo que pasa Monday.*

27. This thoroughly undermines the notion advanced by Mr McGrail that the police either were or even felt restrained by the CM or the AG from arresting Mr Levy in order to protect him. The expression of hope plainly conveys the meaning that Mr McGrail and the RGP did not want to have to arrest Mr Levy. The reference to “*where we have to end up arresting him*” plainly means that the RGP were and felt free to do so if they decided it was necessary to do so.

### **The HMIC Report**

28. **The extent of their concern**

28.1. The WhatsApp messages between Mr McGrail and Mr Ullger (disclosed in late December 2024) reveal the extent of their concern about the HMIC report and its criticism of the RGP, and that they were engaged in an effort to get HMIC to alter the language of the draft report.

28.2. On 3 March 2020, Mr Ullger asks Mr McGrail, ‘*what did Joey have to say about HMIC?*’ To which IM responds: ‘*He was in agreement with our views and how we intend to approach the situation. **He is also worried as we are of the potential wake this will bring if the language isn’t changed.***’ (Row 947-948 [E489]).

28.3. On 5 March 2020 (Rows 986-987 [E495]):

- (i) Mr McGrail to Mr Ullger: “**HMIC me trae por la calle de la amargura.** *Battling against Cathal and Paul. Its an uphill struggle for me. Get you arse back”.*
- (ii) Mr Ullger replied: “*Ya, I told you that they were pasota about it, not putting the importance to it and saying that we were over reacting. **They don’t see the damage it can do.** Ya queda poco, I arrive on Wednesday evening and also took Thursday and Friday off, but I’ll be on Thursday.”*

28.4. Indeed, it appears that Mr McGrail and Mr Ullger were in fact concerned about Mr McGrail’s position as COP, even before the search warrants/12 May 2020 meeting with the Chief Minister:

- (i) On 6 March 2020 (row 998 [E497]), Mr McGrail said: “*Me tiene amargao esto. At least joey agrees with us pero I don’t think I can count with his support **if the wheel comes completely off**”.*
- (ii) On 15 March 2020, Mr McGrail said: “*I am soooo mosquado con los SoP del marine section done by Brian F & Nolan apparently. So so shabby in presentation. In blank paper, no letterhead, no author, no date. Shambolic. Such basic things that even probationer wouldn’t miss. **Si a ultima hora HMIC tiene razon** [loosely translated: In the end HMIC are right] **on the negative comments viz leadership.** [We can [sic, cannot] fucking produce a proper set of instruction”. Mr Ullger responds “*Indeed that was so oor, pero el Wayne has responsibilities here too and should have had a better grip. I’ve said it before, not impressed with Nolan either”* (rows 1086-1087 [E511]).*
- (iii) On 9 May 2020, after Mr McGrail forwarded Mr Ullger some messages of support and praise in the wake of the publication of the HMIC Report, Mr Ullger says “*Oh wow nice words. We need to keep these.*” (row 2291 [E726]) and later: “*I think it is important to print those off and leave them*

*in the safe. You never know. A good to always have. Ex Gov and MoJ showing you support and trust” (row 2305 [E729]).*

29. Acknowledgement of ex-post facto need to justify failure to implement previous recommendations

29.1. On 28 April 2020, Mr Britto emailed Mr McGrail Mr Ullger asks for explanations as to why recommendations of the 2016 HMIC inspection hadn't been met yet (RGP disclosure file name R\_0000780).

29.2. Mr McGrail says to Mr Ullger: “**There are many questions we can't answer as it was down to wawi.**” To which Mr Ullger replies: “**Indeed that's what I was going to say.**”

29.3. Later that day, Mr McGrail sends Mr Ullger a voice clip [ROW 2004: 28 April 2020: IM voice clip (file name: “93940226-79e2-4859-bb0d-a2a9e0193d80.opus”)] as follows (*transcribed*):

(i) “**Mira Rich, vamo tener que explica lo... why we never worked on the, on the other recommendations. Lo vamos a explicar, por ejemplo, lack of resourcing, challenges con el IT system, and a couple of others that obviously, Moveyval, el focus on Moneyval, big big operations that we had to dedicate a lot, a lot of time and energy, con que there's loads of reasons why we can we can say that we couldn't allocate that much time to it.** And then I'll remind them that the inspection was not meant to have been commissioned so soon, but it was mainly arising from the staff survey, that we wanted them to come in. Errr, con que no tengo problema ninguno explica”

(ii) RU replies (Row 2005 E675): “*Absolutely no problems. I think that we can justify with a lot of reasonings. No veo too much of a big deal.*”

29.4. It is submitted that the Inquiry should listen to this clip as Mr McGrail demeanour appears to convey the objective of the ex=post facto construction of credible

explanations, as opposed to relating genuine reasons. These same items became Mr McGrail's narrative and evidence to this Inquiry.

30. The Government Parties' case in relation to the HMIC Report issue (i.e. Mr McGrail's failure to address the issues in the 2016 HMIC Report) has been that it was a contributor to accumulating loss of confidence for both the Governor and the Chief Minister, but would not of itself have resulted in a loss of confidence in Mr McGrail, such as to seek his removal from office, for either of them.
31. In contrast, Mr McGrail's case was that he did not agree with or accept a number of the Recommendations, that a number of the issues implicated the Government and the Governor as much as the management of the RGP and that if implementation progress was slow it was mainly due to the Government's failure to provide adequate resources to do so. To disprove the latter, the Government adduced evidence and made submissions to the effect that after Mr McGrail's departure, implementation progress was rapid.
32. Once again, the RGP WhatsApp Chats between Mr McGrail and Mr Ullger undermine and disprove Mr McGrail's self-serving narrative and sustain the Government's position in relation to this issue.

*01/06/2020 18:35:16 – Ian McGrail: I would ask a big favour (I know you are already working at it) but the more that is done on the HMIC recommendations within the next couple of weeks the better.*

*01/06/2020 18:36:29 – Richard Ullger: Fuck novea, No me los creo. The quicker they speak to CM the better. Absolutely mate, I told you today, I'm doing absolutely everything I can do to push things to show that we are dealing with them proactively.*

33. Those WhatsApp messages demonstrate that Mr McGrail was conscious of his lack of progress in the implementation of the HMIC Report recommendations, and his vulnerability in that respect, and asked Mr Ullger's help to accelerate progress at the last minute to discredit reliance on this as a reason to lose confidence in him, which he was aware (from the 22 May letters) was being relied upon by the Governor and the Chief Minister.



34. Furthermore, the RGP WhatsApp Chats between Mr McGrail and Mr Ullger appear to show Mr McGrail and Mr Ullger engaged in a public relations effort to minimise the adverse public perception of the HMIC Report issue:

*15/05/2020 16:49:56 – Richard Ullger: Venga. Had a good chat with James Neish. He’s going to do a good article on us on the HMIC. Ya hablaremos of his intent.*

A broadly favourable commentary report by James Neish duly appeared in the Gibraltar Chronicle on the 28th May 2020.

### **The Incident at Sea**

35. Two relevant points arise from the WhatsApp chats between Mr McGrail and Mr Ullger in relation to the Incident at Sea, as follows.

36. Knowledge of location of collision.

36.1. It is now clear beyond peradventure that as early as 09:49 on 8 March 2020 (that is, within hours of the collision) Mr McGrail was clear in his mind where the collision had occurred. In a WhatsApp to Mr Ullger at 09:49, Mr McGrail said: “*Here with AG in my office. Collision happened 6NM east of the airport/la linea beach.*” (row 1031 [E502]).

36.2. Mr McGrail was therefore perfectly aware from the very outset that the relevant information was where the collision had occurred, not where the chase had began. Mr McGrail then had no notion (such as has subsequently been developed for the purposes of his case narrative in the Inquiry) of any relevant distinction between the location of the collision and the location of the commencement of the chase.

36.3. Accordingly, the whole narrative developed in the Inquiry of some special significance of the word “incident” as being divisible into location of collision and commencement of the chase, upon which Mr McGrail has relied to justify his failure to provide the best available information to the Governor, is simply unsustainable.

- 36.4. There was nothing to prevent Mr McGrail from conveying to Mr Pyle (even with cautionary qualification) the very same thing that he conveyed to his Assistant Commissioner (with no cautionary qualifications whatsoever).
- 36.5. This (then undisclosed) evidence fully sustains Mr Pyle’s position in respect of this matter and completely undermines Mr McGrail’s evidence to the Inquiry.
37. Mr McGrail’s interference with the independent MET investigation:
- 37.1. On 8 March 2020, Mr McGrail says to Mr Ullger:” *Te lo juro que le pego a alguien.* [loosely translated, this means “I swear I will hit somebody”] *No vea el Paul R already talkinb [sic] of potential corporate manslaughter etc. I have really had to assert myself here*”. (Row 1028 [E502])
- 37.2. Mr Ullger replies “*FFS does he know how fucking difficult it is to operate out there.*” ((Row 1029 [E502])
- 37.3. Three days later, on 11 March 2020 (Rows 1072-73 and 1078-80 [E509]), with reference to the MET team’s imminent arrival and the statements being prepared by the crew of the police vessel, Mr Ullger says to Mr McGrail: “*I understand they are doing their statements today no?*”
- 37.4. To which Mr McGrail replies: “*They are coming on Friday. I intend to brief them on the local context. **But I am concerned of PR steering it to where I do not want it to go.** When are you back at work?*”.
- 37.5. To which Mr Ullger in turn responds: “*Absolutely. I have my thoughts and **I think que esto we can get it right** but we need to explain the context the way the marine section works. I’m prepared to sit with the and prepare them.*”

## **The Fractious relationship with the Gibraltar Police Federation/Bullying**

38. The WhatsApp chats between Mr McGrail and Ullger show that, contrary to Mr McGrail's narrative in this Inquiry, the hostile and fractious relationship between the Command and the GPF leadership was not due solely to the alleged behaviour and attitude of the GFP. The WhatsApps show the very hostile, antagonistic and dismissive attitude by Mr McGrail and Mr Ullger to the GPF leadership, and the nature and extent of the insulting and disrespectful language in which this was expressed by them. The Inquiry will have noted the frequent references to the GPF leadership as "idiots", "bastards" and fools.<sup>1</sup>
39. Furthermore, the WhatsApp exchanges between them would appear to show that Mr McGrail and Mr Ullger themselves engaged in bullying and manipulative actions against the GPF leadership as part of their campaign against it:

- (i) **E371-E373** Rows 257-267 – Messages on 22/01/2020 –

*IM: "Got an idea for the working group dealing with bullying. We should ask the fed whether any of their members have reported instances of bullying to them. If so, we should encourage them to come forward thru the fed so that they are considered under the new policy. **Like this we put the fed on the spot** to feel obliged to report. If they haven't had cases reported to them then there isn't supporting evidence of the survey results. Surely allegations have to be looked at & corroborated."*

- (ii) **E392** Row 379: (27/01/2020): *IM: "I am taking the GPF on. They are way out of order but I need support from GPA and GOG" .*

- (iii) **E394** Row 390-392 (27/01/2020):

*IM: "John Field is going to email MM as a board member disassociating himself from such commentary and advising MM that it is out of order as we all remain police officers."*

*RU " **That's a good idea. Important maybe that we get people like Tony Gaul to do the same.**"*

---

<sup>1</sup> e.g., E372 – Row 264 (22/01/2020); E373- Row 267 (22/01/2020); E417 – Row 528 (03/02/2020); E417 – Row 531 (03/02/2020); E422 – Row 562 (06/02/2020); E423 – Row 567 (06/02/2020).

”IM: “*Ya - i can't do the approaching.*”

[Mr Ullger's response is redacted]

(iv) In context of discussing a supposedly ‘discreditable’ Facebook post by the GPF about the disciplinary action against Mr Morello and Mr Simpson, Mr Ullger says (E399 Row 416 on 27/01/2020): “*Absolutely and it's what my mate said. Just add it on to everything we have already. But we need to get a grip of their governance and their supervision. No one knows what they do. We also need to use them for operational policing. I say this cos Morello will refuse and it will be another tick in that box.*”

(v) There was then continuing discussion between them as to how to make life more difficult for the Federation (E400 – Row 419-420 (27/01/2020):

IM: “*There's more we can like make them ask for permission before the visit any of our stations.*”

RU: “*Can do*”.

(vi) Mr Ullger expressed the wish to start “*tightening the grip on them*” and repeated his proposed strategy for doing so: “*Force them to be operational etc*” (E417 – Row 530 (03/02/2020).

(vii) It was part of Mr McGrail's and Mr Ullger's strategy to get others to “give the GPF leadership a “hard time”): Mr Ullger told Mr McGrail: “*The inspectors and CIs need to give them a hard time too.*” (E420 – Row 546 (04/02/2020).

(viii) Such was Mr McGrail's and Mr Ullger's hostility to the GPF that even the latter's decision to resume meetings with the Gibraltar Police Federation was viewed with hostility and aggression and appears to have required to be undermined:

IM: “*Ya empezamos con el mariconeo [literally, homosexual activities] del [of the] GPF. They have emailed GPA about wanting to start meeting*

*with the GPA again & also asking if they have received the HMIC report.”*

RU: *“Toma ya. Wasa”* [loosely translated: Wow, what a joke]

RU: *“Bueno [Well] we will shoot them down with our FO entry.*

IM: *“In the FO entry we should say that the GPF will be consulted via the steering group. But it shows, that instead of asking us, they go behind our backs and direct to GPA.”*

RU: *“Ya que cabrones son.”* [What bastards they are]

- (ix) The exchanges of WhatApps also appears to undermine the claim that the RGP were taking allegations of bullying seriously:

*RU: El cabron de Olivero harping in about the Fed again.*

*IM: What is he saying now?*

*RU: The same shit.*

*RU: About bullying and low morale.*

[WhatsApps on 10/02/020 Rows 619-622 [E433]]

40. The WhatsApp exchanges therefore sustain Mr Pyle’s evidence that he was receiving constant reports about the hostile and fractious relationship between the RGP senior command team and the GPF leadership. Plainly there was, Mr McGrail and Mr Ullger were themselves contributing to that and Mr Pyle concern would appear to have been entirely justified.
41. Given Mr Ullger’s own statements and attitude in the WhatsApps, they also put a wholly different gloss on the narrative advanced at the hearing that such was the unreasonableness of the GPF leadership that it spurned the opportunity of a “new start” when Mr Ullger replaced Mr McGrail as Commissioner.

ANNEX ENDS