

Commissions of Inquiry Act/Inquiry Act 2024

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

Convened by a Commission issued by His Majesty's Government of Gibraltar on 4th
February 2022 in Legal Notice No.34 of 2022

RGP's Submissions in respect of Re-convened Hearing in the Inquiry 9-11 April and Disclosure.

A: Introduction:

1. These submissions follow the Ruling by the Chairman of the 10 February 2025 to reconvene the Public Inquiry ("**Ruling**") to allow "*Mr McGrail, Mr Ullger, Mr Richardson and Mr Yeats the opportunity to give explanations for the alleged delays, failures and deletions, in public... and for their explanation to be challenged by Counsel to the Inquiry and probably by other Core Participants.*" [see paragraph 66(i) of Ruling]. Equally the Chairman found at paragraph 67 that these were just allegations, and the Chairman stressed that he had not made findings in the Ruling of misconduct or any impropriety against the RGP or its officers.
2. On the 10 February 2025 following the Ruling, Triay Lawyers as solicitors to the Inquiry ("**STI**") wrote to CP's and asked them to make submissions: on the "*alleged delays and gaps in the disclosures by the RGP and by their senior officers and on the contents of the material disclosed*" by 4pm on Tuesday 18 March 2025".
3. The Ruling followed an application ("**GOG Application**") by the Government of Gibraltar Parties ("**GOG Parties**") through a letter dated the 25 November 2024 from their lawyers Peter Caruana & Co ("**PC&C Letter**") to reconvene the hearing to address what they suggested were failings in disclosure by the RGP and its officers.

4. All relevant to disclosure, ACOP Yeats filed his Fifth Witness Statement on the 20 December 2024 (“**5WSCY**”) [**BE/15/275-281**] and on the 11 March 2025 he filed his Sixth Witness Statement (“**6WSCY**”) [**BE/28/875-890**]. COP Ullger filed his Fifth Witness Statement on the 11 March 2025 (“**5WSRU**”) [**BE/27//869-874**]. Superintendent Mark Wyan filed his Fourth Witness Statement on the 11 March 2025 (“**4WSMW**”) [**BE/48/1064-1066**]. Detective Constable Alfred Garcia of the Digital Forensic Unit filed his First Witness Statement on the 11 March 2025 (“**1WSAG**”) [**BE/49/1067-1071**]. Needless to say, the 5WSCY follows his Third Witness Statement (“**3WSCY**”) and Fourth Witness Statement (“**4WSCY**”) [**BE/1/1-6**]. Collectively all these witness statements where the context so admits are referred to as the “**RGP Statements.**” The RGP Statements address disclosure, specifically paragraph 11-28 and 66 of the Ruling and entirely reject the suggestion by the GOG Parties that the RGP’s disclosure has not been *Comprehensive Disclosure* or that there have been any delays.
5. It is apparent on proper analysis that quite apart from the generalised accusation which has been addressed by the RGP Statements and specifically 6WSCY and 5WSRU (and addressed below at paragraph 4 on) the primary focus are the matters that arise at paragraphs 23 to 28 of the Ruling. It is submitted that the issues reduce fundamentally to the narrow point of disclosure of WhatsApp messages by the RGP Officers and specifically in so far as it applies to the current RGP officers, ACOP Yeats and COP Ullger.

WhatsApp SMT Chat and Work Phones

6. As ACOP Yeats explains specifically at paragraph 21-28 of 6WSCY [**BE/28/879-881**] neither the RGP nor COP Mr Ullger, ACOP Yeats, Superintendent Mr Wyan nor former Superintendent Mr Richardson had access to any WhatsApps held on RGP devices since November 2020. This is because when the RGP changed work phones from the Samsungs to the iPhones in November 2020 (see paragraph 12 6WSCY) [**BE/28/877**] different email accounts (Google Gmail-Apple iCloud) were be used to setup the phones, and these did not allow for any WhatsApp to be restored. This was discovered in February 2025 when, in response to the Ruling, ACOP Yeats tried to restore WhatsApp

backups to obtain the requested data. This is because WhatsApp backups are stored in the associated email account linked to the phone.

7. This means that at the time letters from the Former STI requesting evidence and disclosure were received in July of 2022, neither the RGP, nor its senior officers with Apple devices, had access to the SMT Chat or other WhatsApp messages on the RGP mobile phones, for the relevant period (1st of January 2020 to the 30th June 2020).
8. As made clear by ACOP Yeats specifically at paragraph 20 6WSCY **[BE/28/879]** shortcomings identified during this Inquiry in relation to work phones and the RGP policy is and has been addressed by the RGP and clearly with the benefit of hindsight the exchange of work phones from one provider to another that occasioned the loss of data is regrettable but it cannot alter the fact that this information was not available at the material time disclosure requests were made and remains unavailable. The RGP process and obtaining of work phone policy has evolved since August 2019 and was constrained as ACOP Yeats explained at paragraph 10 6WSCY **[BE/28/877]** by the limited support it received from the Governments Information Technology and Logistics Department (“ITLD”). The Chairman will recall that the RGP made recommendations through its counsels Mr Cruz’s closing submission that included the need for independent and more IT resources.
9. By way of additional clarification, at paragraphs 14 and 15 of the Ruling the observation is made that it is not clear whether COP Ullger and ACOP Yeats had work phones. The answer is they both did. On the 22nd of August 2024 the RGP’s counsel Mr Cruz emailed STI informing them of what the RGP believed was available in terms of further disclosure following the STI’s June 2024 request for WhatsApp messages **CY/WS6/8 [BE/28/964]**. The email contained an Excel spreadsheet which shows the different phone number messages the RGP were considering. The table lists two numbers for COP Ullger, *5000 and *9001 his personal and work phone respectively and two numbers for ACOP Yeats *6000 and *9002, again his personal and work phone. It is perfectly understandable that given the extraordinary complicated and voluminous disclosure by the RGP that STI may not have recalled this communication.

The Alleged Deletions

10. The further RGP Disclosure of December 2024 enclosed a report (“**Extraction Report**”) created on the 10th of December 2024 (by PS Daniel Caruana of the RGP working on data originally extracted by DC Mussen of the Police Service of Northern Ireland (“**PSNI**”)). The messages between Mr McGrail’s phone and Mr Richardson’s phone extracted from the image of Mr McGrail’s phone obtained by SEO McVea should not be interpreted to suggest that there has been any deletions of messages between Mr McGrail’s phone and Mr Richardson’s phone during the relevant dates (1 January 2020-30 June 2020). This is explained in detail in paragraphs 30-40 of 6WSCY [BE/28/881-883] and also in paragraph 14-17 of 1WSAG [BE/49/1069-1070]. Equally with reference to paragraph 26 of the Ruling there was no deletion of any messages between Mr Richardson phone and Mr Wyans phone as explained in paragraph 17 of 1WSAG [BE/49/1070].
11. References in the Extraction Report to “Total” which shows 615 of which there are 88 deleted are not references to WhatsApp’s messages and deletions. DC Garcia of the DFU in 1WSAG (paragraphs 15-17) [BE/49/1069-1070] has clarified that this refers to the total number of chats contained in the WhatsApp application, this includes group chats or chats with other WhatsApp users. The number 615 means that there are 615 total chats with other WhatsApp users identified by the forensic software (Physical Analyser) of which 88 of those have been deleted.
12. As was explained to STI in advance of the Ruling, it does not mean that there are 615 messages between Mr McGrail and Mr Richardson, of which 88 messages have been deleted. The number of messages for the relevant period (1st of January to the 30th of June 2020) is 30 and is shown in the line containing “Instant Messages” within the Extraction Report.
13. As ACOP Yeats explains and with hindsight if the RGP had not worked to such a tight timescale in December perhaps a fuller explanation would have avoided the need to now explain this matter. Moreover, the RGP’s self-imposed and higher standards (compared to other CPs) of forensic examination as explained below at paragraph 37 have not immediately been

recognised by those who seek to suggest failings, perhaps entirely understandably.

Correct and Timely Disclosure by the RGP

14. For reasons explained in the RGP Statements (and summarised below) the RGP does not accept that it has in any way failed in its disclosure obligations, nor in the timeliness of its disclosure.

15. Firstly, it is worth noting (as made clear in 6WSCY [BE/28/875] and 5WSRU [BE/27/869]) that the RGP was not a core participant (“CP”) at the beginning of the Inquiry process when the Provisional List of issues (“PLOI”) were determined, nor was it familiar with the Protocol for Receipt and Handling of Documents, Redaction and Records Management¹ (“**the Protocol**”) or the thinking behind it. It became a CP on the 20 October 2022 after the second preliminary hearing on the 20 September 2022 (“**2PH**”). Secondly, the RGP as a CP had (by a very significant margin) the most significant and onerous disclosure obligation (well in excess of 1 million documents). As made clear by ACOP Yeats this was not the case of one-person checking their laptop or other devices. Thirdly and as repeatedly very often by the RGP’s Counsel Mr Cruz in submissions, the RGP had (and has) very important ongoing Policing Obligation which became very much more challenging because of numerous related criminal investigations including those arising from the “Whistle Blowers” or “Job Offers” investigation and the depletion of human resources (the force was short staffed by 40 police officers). These are not excuses, but realities.

16. After the 2PH Mr Cruz solicited a meeting with the former STI Attias & Levy (“**Former STI**”) and on the 20 October with COP Ullger, ACOP Yeats present, this meeting took place. Its primary objective was to discuss disclosure and specifically the test of relevance. Following the meeting the Former STI made clear by letter dated the 4 November 2022 (CY/WS6/10) [BE/38/974]:

*“that documents will be relevant **if they touch on Mr McGrail's personal conduct** in relation to the discharge of his duties as RGP Commissioner,*

¹ First Issue on 22 September 2022 under the authority of the Commissioner;

either directly or from a supervisory perspective, and more so in relation to the issues set out in the Provisional List of Issues”² and further clarified that such: “indication is not intended to be applied as a firm criterion or yardstick to determine relevance, but is tendered by way of informal guidance by way of assistance only.” [emphasis added].

The Former STI drew parallels with CPR 31 although recognised that “*comprehensive, thorough and rigorous search*” as per protocol may not be the same as “*reasonable search*” in CPR 31. He encouraged regard to CPR 31B.

The Former STI stated: “*that searching through every email is likely to be inappropriate, and in our respectful view you should use your discretion in applying filters for example, emails sent to or from persons named in the disclosure requests over date ranges when it is likely that communications on the relevant matters took place*”.

He affirmed that: “*In our view a thorough search in line with CPR methodology is likely to satisfy the standard in the Document Protocol in many cases.*”

Finally, the Former STI confirmed that: “*We do not intend to require Core Participants to run your proposed searches by the Inquiry team, but if issues arise the Inquiry may in due course, ask you to provide it with your methodology and, if necessary conduct further searches*”.[emphasis added].

Former STI indicated that further assistance was available.

17. Mr Cruz wrote back on the 11 November 2022 (CY/WS6/11) **[BE/39/982]** thanking Former STI for guidance and (taking up the invitation) sought further clarification, particularly as he pointed out on the RGP’s behalf, that it was difficult for the RGP to be adjudicator of what another... may consider relevant or “*would (if aware of their existence) wish to be provided with*”. The RGP evidence (those of its senior officers) has always been (and remains) they did not properly understand why Mr McGrail

departed as he did, or what the reasons were. There were no explanations given at the time, ergo it was difficult, if not impossible for the RGP to properly assess the relevance of many matters in the PLOI.

18. Moreover, Mr Cruz made clear that the RGP considered a *reasonable search* must be *a comprehensive, thorough and rigorous search* (a distinction without a difference is how he put it) and that is what the RGP would carry out. As explained in 6WSCY paragraph 53 **[BE/28/887]** during that first phase of the disclosure process (before the STI took the process over in early 2023) all RGP Documents were subjected to two tier reviews, namely by the RGP and then by the RGP and its legal team led by Mr Cruz. The RGP agreed the methodology with the Former STI and CTI, which methodology continued until spring of 2023 when CTI/STI decided on an alternative more interventionist approach, which was immediately agreed to by the RGP, who proactively engaged in the same. It was made clear by STI to all CPs (by letter dated 29 June 2023 (CY/WS6/17) **[BE/47/1062-1063]**) that their: “...*decision to take over the RGP disclosure process pre-dated the criminal investigation and not as a result of any failings by the RGP in the disclosure process.*”
19. It is evident from the RGP Statements and specifically 6WSCY (paragraphs 41-65) **[BE/28/884-889]** that the RGP, at all material times, proactively and in close and careful liaison with Former STI and subsequently with the STI carried out its disclosure diligently and in accordance with both the Protocol and the guidance in Civil Procedure Rule 31, and importantly as directed by the Former STI and STI. Comprehensive Disclosure was given in very good time before the April 2024 Inquiry Hearing.
20. As ACOP Yeats makes clear (6WSCY paragraphs 41 and throughout including paragraph 65) **[BE/28/884-889]** that disclosure is not static. The RGP recognised that there is both a continuing obligation to disclose, and events and evidence on the stand, during the Inquiry Hearing (9 April 2024-9 May 2024) gave rise to an awareness by CTI/STI and other CPs of what further disclosure may be deemed relevant, by any one CP. The June 2024 GOG Parties Disclosure Requests (referred to below at paragraph 25) is precisely an example of this. As matters progressed to the main adjourned Inquiry Hearing the RGP has always reacted expeditiously to any disclosure request and within deadlines set (or extensions granted).

21. After the start of the Inquiry Hearing, as matters arose in evidence, it has equally responded as quickly as possible as is evident from ACOP Yeat's Third, Fourth, Fifth and Sixth Witness Statements (3WSCY, 4WSCY, 5WSCY, 6WSCY). The RGP has given full and comprehensive disclosure of what it understood to be relevant (at the material time) but clearly the RGP further disclosure (described below) is a reaction to events, as they unfold. For the avoidance of any doubt the RGP Further Disclosure (both in September 2024 and December 2024) as made clear by its counsel Mr Cruz in Ellul & Cruz's letter to STI (see letter dated 20 December 2024 page 2 paragraph 3 (CY/WS6/9) [BE/37/970]) contains documents "*connected*" with the PLOI, not in its view relevant to PLOI. In other words, the giving of the RGP Further Disclosure, or indeed any further disclosure is not an acknowledgement that there was any failing in the first place, but on advice (and in an abundance of caution) the RGP has now given any document connected with the PLOI (even where it thinks it irrelevant) and has continued to clarify matters following, importantly, forensic examination of RGP Devices.
22. Disclosure does not happen in a vacuum and context is important as explained in the RGP Statements. It is evident, and the RGP suggest both uncontroversial and incontrovertible (and relevant) that the RGP faced numerous challenges (at the material time) most if not all of which were not down to the RGP, these included:
- (i) Lack of knowledge or understanding of the reasons for the issues being listed in the PLOI and the effect on the test of relevance;
 - (ii) Challenging resources from ITLD that caused some inevitable delay;
 - (iii) A data breach of the Former STI and a change in STI on the 31 January 2023 with resultant delay both in its capacity to seek clarification and or file its disclosure;
 - (iv) Unfounded accusations (by junior officers) at the time (and in the context of the 19 Whistle Blower statements) that the RGP own disclosure process could have been compromised, which needed investigation (by SIO McVea) and inevitably caused delay;
 - (v) Ongoing and additional challenge on RGP resources in carrying out its Policing Obligations whilst complying with its disclosure obligations caused in part from the 19 Whistle Blower statements that required criminal investigations;

- (vi) A change of policy and procedures adopted by the STI compared to the Former STI;
- (vii) A substantial reduction in RGP human resources at the material time;

23. In all the circumstances (and additionally particularly in context) the RGP rejects the suggestion by any CP that Comprehensive Disclosure was not given, or that it was delayed or flawed.

Recent Requested Disclosure

24. Whilst comprehensive disclosure (of RGP disclosure) was provided by STI to all CPs very well in advance of the evidential part of the Inquiry in April 2024 (keeping in mind that the hearing of the live evidence was delayed from Autumn 2023 until Spring 2024) at no time prior to the GOG Parties Disclosure Request (the day before the June 2024 Final Hearing) did the GOG parties (or others including STI who had taken over the process in January 2023) highlight any apparent concerns including those underpinning the GOG Application.

The June 2024 GOG Parties Disclosure Requests (“GOG Parties Disclosure Request”)

25. For reasons explained in 5WSCY (and evidenced specifically in CY/WS5/1) [BE/16/304-305] the RGP responded to STI request for further disclosure on the 27 June 2024, the same day, by requesting clarification of both the date range and relevance. STI explained in a response of the same day that date range was the 12 May 2020 until the 9 June 2020 and the issues were those in the PLOI. The email exchanges are worth considering as illustrative of the RGP attitude and responsiveness and are as follows:

24 June 2024 times at 9:46:

“Dear Sirs

We note that we have not been provided with disclosure of any WhatsApp messages between:

*Mr McGrail and COP Ullger;
Mr McGrail and ACOP Yeats;
Mr McGrail and Supt Wyan;
Mr McGrail and any other member of the RGP SMT;
Mr Richardson and Supt Wyan;
Any RGP SMT group chat (other than some messages relating to the Airfield Incident [C757 et seq]).*

We would be grateful if you could confirm whether the Inquiry has sought disclosure from Mr McGrail and/or RGP SMT members of any such relevant WhatsApps and, if so, what their responses have been.

*Yours faithfully,
Peter Caruana & Co”*

27 June 2024 timed at 15:28

*“Dear Nick,
I refer to the below message received from Caruana & Co. The Inquiry would be grateful if you could disclose the relevant WhatsApp conversations from the relevant time period between the persons listed below.
I look forward to hearing from you.
Best wishes
Seb”
Sebastian Triay”*

27 June 2024 timed at 15:59

*“Hi Sebastian,

For what period and in relation to what matters?

12 May 2029- 9 June 2020?

Nick”*

27 June 2024 timed at 16:14

"Hi Nick,

Sorry for not being clearer, yes the period 12 May 2020 to 9 June 2020, and in relation to the list of issues.

Best wishes

Seb

Sebastian Triay"

26. This request was sent by Cruzlaw LLP to RGP the same day. The next day, Friday the 28 June 2024 COP Ullger explained to Cruzlaw LLP that he did not have WhatsApp communications with Mr McGrail prior to July 2021, having lost messages with numerous persons (such as family members) as well as Mr McGrail, he presumed because of a change of phone in June 2020. He suggested an alternative pragmatic solution, namely the possibility of obtaining a data from Mr McGrail's phone from SIO John McVea, held by the PSNI (that SIO McVea had obtained in the context of a criminal investigation). He requested that Cruzlaw LLP seek Mr McGrail's permission.
27. Cruzlaw LLP on the very same day sought permission from Charles Gomez & Co ("**CG&C**") [**BE/16/301**] as solicitors for Mr McGrail. Such permission was granted by email from CG&C to Ellul & Cruz ("**E&C**") on the 2 July 2024 (subject to a review of material by CG&C) [**BE/16/299**].
28. Messages were obtained from an extraction held by PSNI and sent to CG&C directly by COP Ullger on the 14 August 2024 (for review by them) and on the 20 August 2024, approval was given by CG&C with the recommendation that redacted and unredacted versions should be provided to STI (to allow STI to verify any redactions prior to circulation to other CPs) [**BE/16/312**].
29. On the 22 August E&C wrote to STI and CTI explaining that E&C had received most of the required disclosure, but that Mr Cruz (who had conduct of the matter) was away and would be meeting the RGP on the 2 September 2024. Mr Cruz advised that he could send complete disclosure on that date, or most disclosure immediately. Ms Hope Williams assistant CTI responded on the 23 August 2024 expressing the preference for the former option to avoid possible duplication in any review. [**BE/16/315-316**]

30. On the 2 September 2024 a USB Memory stick with all RGP's September Disclosure was provided that was then circulated by STI to all CP's on the 4 November 2024. **[BE/16/317]**
31. This has all been explained with supporting documents specifically in 5WSCY and also in all the RGP Statements, but what it dispels is any suggestion by GOG Parties that the RGP has double standards, or that the RGP has done anything other than give the full and timely disclosure sought, in the manner sought and at all material times. As and when expanded or further disclosure has been sought (as is not unusual in an Inquiry) it has been given in a very timely fashion.
32. Evidently (as made clear in 5WSCY paragraph 5 **[BE/15/276]** and more specifically by COP Ullger in 5WSRU paragraph 21-23) **[BE/27/873-874]** before July 2024 COP Ullger could not give disclosure of messages between him and Mr McGrail, because he simply did not have them. In fact, he could have stopped there in response to the STI following the GOG Parties Disclosure Request (and complied with his disclosure obligations as he had no documents under his control) but chose to make immediate efforts to source the WhatsApp exchanges by alternative means. Other RGP Officers such as ACOP Yeats (as he explained in 5WSCY **[BE/15/275-281]** and in 6WSCY **[BE/28/875-890]**) also gave full disclosure in accordance with best advice, Documents Protocol and guidance from STI/CTI.
33. The STI 9 December 2024 Letter requested that the RGP provide further disclosure of WhatsApp exchanges over an expanded date range (to those requested on the 27 June 2024, provided on the 2 September 2024 ("**RGP's September 2024 Disclosure**") and circulated to CPs on the 4 November 2024) together with a witness statement from a senior officer (as therein explained) by the 20 December 2024.
34. The RGP provided such further disclosure ("**RGP December 2024 Disclosure**") and witness statement as requested on the 20 December 2024 by way of 5WSCY **[BE/15/275-281]**.
35. The RGP Further Requested Disclosure was circulated by the STI to all CP's on the 24 December 2024.

36. When further questions have been raised these have been addressed timely throughout the process as evident from 6WSCY [BE/28/875-890].
37. Importantly and related specifically to the WhatsApp and mobile devices issue, it is very important to note that the RGP standard of disclosure has been forensic. As made clear by ACOP Yeats at paragraph 39 of 6WSCY [BE/28/883] and generally therein, the RGP disclosure uniquely, has been subject to self-imposed forensic analysis, which evidences any possible deletion, or alteration in record. It is very important to note that, no other CP or witness has gone to this length or been invited to. It would be very interesting to see if those that criticise RGP disclosure would subject their own devices to such scrutiny. Filing a witness statement asserting something without review by CTI or STI or any third party is the most that any party has done.
38. As an example (with reference to 5WSCY paragraph 5, [BE/15/276] and 5WSRU paragraph 21 [BE/27/873]) had COP Ullger simply said, “*I have no messages*” and filed a witness statement to that effect (rather than obtain an extraction of Mr McGrail’s iPhone and had that forensically analysed) many of these issues would not have arisen. The RGP thoroughness and willingness to go the extra mile (voluntarily) has received no credit or been recognised, perhaps because it has not been properly understood and will be better explained in live evidence in response to questioning.

Effective Relevance of WhatsApp Exchanges

39. The RGP shares the Chairman’s preliminary view at paragraph 61 of the Ruling that nothing recently disclosed, either individually, or cumulatively could, or should likely impact on the core issues and findings. Indeed, even if any of the RGP Further Disclosure can be deemed to be relevant, the RGP would submit it simply reinforces the RGP primary submission in its opening and closing submissions. Namely that (whatever one’s view, or case theory, be it the GOG Parties, or Mr McGrail’s) there was a breakdown in the Rule of Law, a complete failure of any due process, or adherence to the Constitution, the Police Act or basic rules of fairness and or natural justice. Indeed, these further disclosures by and large do little more than show empathy by senior RGP officers specifically COP Ullger and ACOP Yeats for the position Mr McGrail found

himself in during the relevant period approaching the 9 June 2020 and a little after.

40. In the context of that empathy, it is important to correct another incorrect suggestion by GOG Parties, namely that the RGP position and Mr McGrail's position were immediately aligned, or in the words of PC&C in the PC&C Letter paragraph 5.2 when referring to the credibility of the case theory advanced by Mr McGrail: *"with the active coincidence of view and support of the RGP"*.

Mischaracterization of the RGP position by GOG Parties.

41. The RGP's has made the point repeatedly in its Opening Written and Oral Submissions and its Closing Written and Oral Submissions that its primary concern has been and remains the failure to adhere to "**process**". The failure by the GOG Parties to respect the Constitution, the Police Act, the Rule of law by adopting no, or no proper process in the removal, or effective removal of a serving COP even if the reasons for such removal are those identified by the GOG Parties.
42. The RGP has left the matter entirely for the Chairman. In its Closing Submissions it said:

"Even if as they both [Mr Picrado and Mr Pyle] have suggested they had lost confidence in a COP, in this case Mr McGrail for reasons they explain (a matter for the Chairman) then the RGP believe that either inviting the GPA to utilize their section 34 powers or resorting (even if possible) to section 13f, without any constructive engagement is most worrying.

The process which was chosen given the overwhelming evidence (including that of both Mr Picardo and Mr Pyle) the RGP suggests was borne out of a desire to remove Mr McGrail without any adherence to the Police Act, or without regard to the importance under the Constitution to respect the independence of the GPA, and thereby the RGP.

Taken even at its highest, and assuming Mr Picardo KC and Mr Pyle, versions of events are to be accepted, or preferred, they were complainants (albeit interested and probably conflicted).

It was incumbent, the RGP submits, for them to have reduced their complaints to writing, communicated those complaints formally to the GPA and allow the GPA appropriate time, space and independence to consider the complaints. The GPA could then have properly engaged with the section 34 process. All parties appear to agree that this should involve a process that is neither predetermined, nor inevitable, and should subscribe to the Constitutional, ECHR rights to a fair hearing (that every person should enjoy) or those at least identified in section 34 itself.”

43. Therefore, the RGP rejects totally the suggestion that it has done anything other than maintain a neutral position, albeit it has always explained (from the outset) that neutral does not translate to finding the middle ground.

44. As it made clear in its Headline Observations:

*“A wrongful process and procedure to bring about the removal of a serving Commissioner of Police (“COP”) in an unlawful manner (in breach of the Constitution 2006 (the ECHR) and Police Act 2006 and the rules of natural justice or fairness) was engaged in, **irrespective of whether confidence in Mr McGrail had been irretrievably lost as suggested, or for the reasons given, or alternatively the reasons suggested by Mr McGrail.** Those with Constitutional responsibilities to act as a check and balance on the executive failed to do so adequately or at all. There was an individual and collective failure to uphold the Rule of Law by safeguarding the Independence of the GPA or the RGP.”* [emphasis added].

GOG Parties Position

45. As explained the RGP does not believe that the RGP’s September 2024 Disclosure and the RGP December 2024 Disclosure has any meaningful impact on that conclusion, nor will any cross examination by CTI, the GOG Parties or other CP’s be likely to impact the Chairman’s preliminary conclusions on core facts and core findings. Evidently the reconvened hearing on the 9-11 April 2025 will be the appropriate test.

46. The RGP notes paragraph 33 of the Ruling, but with the greatest respect the RGP humbly insists it never focussed any “*attack*” on the GOG Parties

disclosure (as suggested by GOG Parties) as evident from all its submissions, specifically its closing submissions. It did not ask any such question of Mr Picardo KC, Mr Pyle, or Mr Llamas KC. It accepts it did ask Mr Baglietto KC two questions about the retention of documents, but again with all due respect that was in context of threats to take legal action in tort of misfeasance against the RGP, or its officers on behalf of Mr Levy KC (see Transcript page 205/6 Day 9, 18 April 2024). The RGP has not aligned itself with that line of attack of GOG Parties disclosure by others that some CP's have. The RGP is not shy, and neither is its counsel, if it had chosen to do so it would have asked clear questions of GOG Parties on disclosure and made clear submissions in its closing submissions. The RGP focus is and has always been the Rule of Law, the Constitution, the Police Act and due process.

47. The RGP's position on whether the Inquiry Hearing should be reconvened was one of neutrality as recognised in the Ruling at paragraph 6 (save for concerns as to public cost and GOG Parties purpose). Its view having considered the Ruling has now evolved to one of support for the reconvening of the Inquiry Hearing for the reasons identified by the Chairman in the Ruling (*Open Justice and Fairness*) and very importantly to protect both the integrity of the Inquiry as suggested by the Chairman and that of the RGP Disclosure process. Its officers look forward to assisting CTI and any CP and the Chairman by giving live evidence.

Nicholas P Cruz
Counsel for RGP
Ellul & Cruz
18 March 2025.