

INQUIRY INTO THE RETIREMENT
OF THE FORMER COMMISSIONER OF POLICE

FORMER OP DELHI DEFENDANTS' CLOSING
SUBMISSIONS AFTER RECONVENTION OF INQUIRY

I. INTRODUCTION

1 These are the further written closing submissions on behalf of the Former Op Delhi Defendants ('FDs') after the reconvention of the Inquiry between 9 and 11 April 2025.

Self-Serving Approach

2 If it was not obvious at the conclusion of the main hearing, it is obvious now: Ian McGrail's approach to the retention and disclosure of potential evidence is consistently self-serving. Where he believes material will help him, he keeps it and he discloses it. If he thinks it may hurt him, he does not.

3 This was the subject with which CTI began his examination of Mr McGrail in the reconvened hearing. He obtained an admission¹ from Mr McGrail that he understood that the disclosure request from the Inquiry of 04 April 2022 included an explicit request to disclose relevant WhatsApp messages, and that at the time of the request he had access to these messages. CTI then asked Mr McGrail if he had gone through his text and WhatsApp messages in response to this request. The reply was:

A. Not in response to the disclosure. What I accessed, my phones and other data forwards as I was developing my evidence in terms of structuring my responses and so forth. So, it wasn't specifically in relation to disclosure. And so the data that I was relating to in my evidence was the one that I disclosed.

4 In other words: in response to a request to disclose all relevant messages, I disclosed those that supported my own account².

¹ Day 23, 10 April 2025, p2.

² See pp 7-8 of the same Day 23 transcript for another example of the same approach of Ian McGrail to disclose only materials that advanced his agenda:

Q. When you were first giving disclosure in 2022, did you review your messages with Mr Richardson and decide they were irrelevant, or did you not look at the messages at all?

5 Over the following 11 pages of transcript Mr McGrail attempted to explain his self-serving approach. Being unable to do so, he was driven into reliance on his own role in bringing about the Inquiry³. Why — he asked by implication — would he mislead an Inquiry that he himself had called for?

6 One compelling answer to Mr McGrail's implied question is that he thought he would get away with it. He has not, and should not.

7 Nor should he get away with his studied inscrutability during the evidence of James Levy CBE KC, Fabian Picardo KC, Michael Llamas KC and Lewis Baglietto KC. All four faced bruising criticism during the main hearing for having (it was said) destroyed or failed to disclose relevant messages. When Mr McGrail was asked⁴ by counsel for the Government Parties why he did not stop the attack by his legal team he answered that it had still not 'dawned on' him that his WhatsApp messages were not before the Inquiry.

8 It is submitted on behalf of the FDs that this answer is absurd and incredible. Mr McGrail knew full well that many of his relevant WhatsApp messages were not before the Inquiry. He knew this because he had cherry-picked other messages to be exhibited to his statements. He sat blank-faced and impassive as other witnesses to the Inquiry were taken to task. He did so because he thought that his undisclosed messages would never come to light.

A Higher Standard

9 It is submitted on behalf of the FDs that the Gibraltar public have a right to expect that their police force and its officers should adhere to a high standard in preserving and disclosing relevant material.

10 The reason for this is that it is the police who have the duty to investigate suspected criminal offences in Gibraltar. They have a statutory

A. As I said, I did not rely on them because they did not feature as my evidence went along. I wish I had.

Q. Sorry, my question is not whether you relied on them but did you look at them at all?

A. No, no, because if I had looked at them, I would have then realised that I needed to export them, and that's the relevance of them not being exported. ...That was a major learning curve for me and believe me that had I relied on them, they would have been exported and that would have made the situation far worse for me if I had exported them and still not disclosed them. ...

³ See Day 23, 10 April 2025, p12

⁴ Day 23, 10 April 2025, p143

duty to retain material that may be relevant to the investigation⁵. Relevance is defined widely to include all material that “*has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case*”⁶.

11 This Inquiry has shown that the RGP and its officers have signally failed to comply with this duty. The FDs were the *focus* of the Op Delhi investigation. But it was only through the Inquiry that they learned that the Commissioner of Police, no less, had alleged that this investigation had been subject to political interference.

12 This surprising state of affairs is the result of the same failure that required the reconvention of the Inquiry: a failure to retain and preserve all relevant material so that it may be reviewed. The Inquiry is referred to **Annex A** for the now ***Updated Chronology of Events concerning IM’s Retention & Destruction of Documents, Location of Daybooks & Devices*** appended hereto. When material is not preserved, or is lost, then a proper disclosure exercise is put out of reach — and just as unattainable with a team of seventy as with a team of seven⁷.

13 Of course, it is not usually necessary to preserve material if its content is reliably duplicated elsewhere and has in fact been preserved. An email will be copied many times between sender and recipient, even when it is sent within a single organisation, but only one copy is necessary for the purposes of a disclosure review. Similarly, it is possible to conceive of a policy of duplication of all potentially relevant material from instant messaging platforms into another form, such that the original messages could be deleted without risk to the efficacy of any future disclosure review, or the fairness of criminal proceedings.

14 There may be police forces in the UK who are capable of successfully putting such a policy into practice. They will have a policy that mandates duplication of potentially relevant instant messages. They will have

⁵ See paragraph 5.1 of the Code of Practice on the Recording, Retention and Disclosure of Material Obtained in a Criminal Investigation, parts of the Codes of Practice published under Part 29 of the Criminal Procedure and Evidence Act 2011, and annexed to Legal Notice 2012/183. The provisions of this Code are similar to those in the Code of Practice published under the UK Criminal Procedure and Investigations Act 1996.

⁶ See paragraph 2.1(h) of the Code

⁷ Paul Richardson’s evidence was that the disclosure exercise in the Op Delhi criminal proceedings was conducted over six months by a team of six RGP officers and a lawyer from OCPL — see Day 23, 10 April 2025, p187.

sophisticated IT systems for which officers will have received comprehensive training. Insofar as the Inquiry has heard, the RGP has no such policy, no such IT system⁸, its officers have received no such training, and is not so capable. The suggestion that duplication of information into computer systems and daybooks renders preservation of messages unnecessary is (the Inquiry may conclude) no more than a *post hoc* attempt to justify a culpable omission.

15 Moreover, the RGP has colourfully demonstrated its incapability by (if Mr McGrail's account is to be accepted) losing the day books of its most senior officer, when day books are one of the alternate records relied on as permitting safe destruction of instant messages⁹. Equally concerning, is the failure to record contact with prosecution witnesses (James Gaggero, Darren Grech, Albert Mena) either in a day book or on a computer system. Had this Inquiry not taken place, the FDs would have had no inkling that WhatsApp was used by RGP officers to communicate with those who, it was intended, would give evidence for the prosecution at the FDs' trial.

16 Failure to preserve relevant material is consequential of itself. But it can also operate as a shield for deliberate malpractice. It has been the FDs' case from the time that they were arrested in the spring of 2019 that they would not have been subject to criminal investigation and prosecution had it not been for improper influence exerted by Bland Group Ltd, and in particular by its chairman James Gaggero.

17 The Inquiry may recall the glowing terms in which James Gaggero referred to John Perez and Thomas Cornelio in a call to Fabian Picardo KC on Saturday 21 July 2018 — "*most effective talented people*", "*fantastic job*", "*great Gibraltarian genius*" (Cornelio), "*all of them great*"¹⁰ — and then his *volte face* after he discovered that ownership of NSCIS was in dispute. Why was James Gaggero afforded the opportunity to bring a criminal complaint through a private meeting in Mr McGrail's office? What contact was there between him and Mr McGrail over the three months or so that passed before this complaint was divulged to any other RGP officer?

⁸ Reference was made to the Cyclops system. However, it appears that as of 2020 this was not fully implemented, and was still undergoing testing, with some resistance amongst officers to using it all. See the annex to the 202 HMICS report at D9685-6

⁹ See the evidence of Richard Ullger answering questions from CTI at Day 22, 09 April 2025, p168

¹⁰ See the contemporaneous notes of Fabian Picardo KC at B1129.

18 Had relevant material been properly preserved, these questions could be answered conclusively. Because it has not been so preserved, the Inquiry — and the public — must rely on the fragile evidence of Mr McGrail, whose initial claim to a vestigially limited role in Op Delhi¹¹ has been fully debunked by the evidence received by this Inquiry.

19 Furthermore, the Inquiry — and the public — may be driven to question *why* the relevant material was not preserved. Is it true that Mr McGrail's daybooks were left in a Royal Caribbean Cruises bag in the Commissioner of Police's office and then somehow lost? Is it in every case an unfortunate accident that WhatsApp messages are not available? Or has there been a deliberate withholding and destruction of evidence of contact between James Gaggero and Ian McGrail that would be embarrassing, or worse, if disclosed?

Enduring Issues

20 It has taken considerable effort and expense for the Inquiry to reconvene for three days — effort and expense that was only necessary due to failures to comply with the clearest of disclosure requests. It would be comforting to conclude that this has resolved all issues of missing material.

21 Comforting, but wrong. Significant gaps remain, that may never be filled. The FDs remind the Inquiry of only two.

22 First, Mr McGrail's day books, last seen¹² (apparently) in a Royal Caribbean Cruises rucksack in the Commissioner's office at New Mole House. There are three realistic possibilities here. Either Mr McGrail is lying when he says he left his daybooks with the RGP and himself purposefully concealed these contemporaneous records because they were inconvenient to his account. Or the RGP helped him with that process. Or the RGP somehow inadvertently lost all of these clearly recognisable daybooks. It is difficult to believe that such a large number of daybooks (obviously fundamental records required for an ongoing criminal process)

¹¹ Witness statement of 20 June 2022 at paragraph 11, A4: "*The investigation then began its course and apart from periodic briefings which I received from Superintendent Richardson, the senior officer in the investigating team, my personal involvement in the case was limited to requesting assistance from the Director General of the UK's National Crime Agency ("NCA"), Lynne Owens, for specialist computer forensic investigation support.*"

¹² Save for three scanned pages of course

could have been lost accidentally without the greatest incompetence. None of these three explanations provides a particularly appetising conclusion.

23 Second, the hard drive containing RGP data taken by Mr McGrail when he retired. This hard drive was later returned but it is of course impossible to corroborate Mr McGrail's assertion that the data that was on it when it was returned was the same as when it was taken. The Chairman is referred to **Annex B** for a Schedule of the evidence addressing the mysterious movements of ***Mr McGrail's hard drive***.

24 Even taking Mr McGrail's assertions about the hard drive's contents at face value, the hard drive contained material that should have been reviewed for disclosure in the criminal prosecution, but was not¹³ — see the list prepared by Mr McGrail from E138 to E142. This includes extensive correspondence with prosecution witnesses Darren Grech and Albert Mena, which would clearly require careful review. The Inquiry is referred to **Annex C** appended hereto for a schedule of ***Material disclosed to the inquiry but omitted from the 'DIS1' schedule of unused material***.

25 There is also the question of Mr McGrail's audio recordings: it was not until the commencement of the Inquiry process that Mr McGrail felt it necessary to disclose to the Inquiry that he had recordings of discussions which (on his case) evidenced political interference in the investigation into the FDs. At no point in the criminal investigation were the FDs made aware of this, notwithstanding that the Senior Investigating Officer for Op Delhi (Paul Richardson) was aware that at least some meetings had been covertly recorded.

26 No experience of criminal legal practice is necessary to see that the case for disclosure of those recordings to the FDs in the criminal proceedings was strong. Some of the *content* would undoubtedly have been disclosable, particularly insofar as it went to the issues of political interference in general, the absence of the employer government support for the case against Caine Sanchez¹⁴, and the reasons for the failure to follow the line of inquiry that led to James Levy CBE KC's mobile phone and

¹³ The descriptions in Mr McGrail's list are not sufficiently detailed to be precisely matched against the descriptions in the schedule of unused material prepared for the criminal proceedings, so it is not possible to assert that *none* of these documents were reviewed for disclosure. However, such comparison as is possible suggests that the overwhelming majority of the documents listed in the rows entitled "folder of correspondence..." do not appear on the 'DIS1' schedule of unused material for the criminal proceedings.

¹⁴ A significant deficiency in the case against him, and one that troubled the Chief Justice.

Hassans' computers. But also the simple *fact* that the SIO of the Op Delhi investigation had acquiesced in the making of covert recordings by his own chief officer was plainly capable of assisting the defence. These audio files should have been made available to the disclosure officer and the OCPL by both the SIO and then Commissioner of Police McGrail. There is no record in the SIO's Daybook to confirm the existence of this evidence and nor did the SIO request a copy from Ian McGrail of these audio files.

27 But no decision on disclosure of these recordings was or could be taken, because they were not provided to the seven-strong disclosure team, and never reached the disclosure schedule nor the desk of the reviewing lawyer at OCPL.

Conclusion

28 The focus of this Inquiry is of course on the reasons and circumstances of Mr McGrail's retirement. But the wider context cannot be ignored. Indeed, an element of this context operated to constrain the reconvened hearing, by preventing questions from being asked on the subject of the hard drive, due to a live criminal investigation into Mr McGrail's conduct in this matter that has now been ongoing for more than two years.

29 The FDs agree with the Government Parties that the RGP and Mr McGrail's disclosure failings must place in a very different light the accusations of deletion and withholdings of messages made at the main Inquiry hearing. They would ask the Inquiry to go further and consider whether, in the light of the fundamental failings, brought to light by this Inquiry, to ensure basic evidence was preserved and disclosed to the police disclosure officer and the OCPL, the RGP of 2020 could be relied upon to carry out a fair investigation at all.

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29 April 2025

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