

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**

**FIFTH WITNESS STATEMENT OF ASSISTANT COMMISSIONER OF
POLICE CATHAL YEATS**

1. My name is Cathal Yeats, and I am the Assistant Commissioner of Police. I am in my 27th year of police service and have been the Assistant Commissioner since July 2020.
2. I write this statement to further clarify questions by the Inquiry on the disclosure of WhatsApp messages, and suggestions by other parties that the Royal Gibraltar Police has not complied with its disclosure obligations. I will address the questions posed by the Inquiry individually.
3. Before doing so I will set out the timeline leading to the disclosure of the RGP messages to the Solicitors to the Inquiry ("STI") on the 2nd of September 2024. The request for disclosure was made by STI on the 27th of June 2024 to Mr Cruz of Ellul and Cruz, (then Cruzlaw). I understand this followed a request from Mr Dumas of Peter Caruana and Co, solicitors for the government parties (made on the 24 June 2024). Following clarification sought from the STI on the same day (27th of June), of the date range they required disclosure of, (the 12th of May to the 9th of June 2024), the process to comply with the request commenced. This was completed by mid to late August and following communication and agreement with the STI and the assistant Counsel to the Inquiry, the disclosure requested was delivered on the 2nd of September 2024. This disclosure was subsequently received by Core Participants on the 4 November 2024.
4. The relevance test I have applied throughout is what Mr Cruz, now of Ellul Cruz, explained to me and RGP colleagues following his engagement with the former

STI in November of 2022. Applying that test I concluded that none of the messages I had access to were relevant. I remain of that view. This includes an exchange of messages relating to an email of the 19th of May, (for the avoidance of doubt the email was separately disclosed), which the STI subsequently deemed relevant and was disclosed in evidence. The same occurred with a small number of messages inquiring about Mr McGrail's welfare in the days leading up to and immediately after his retirement.

5. It is also relevant to explain why it became necessary to examine the image of Mr McGrail's personal phone which had been seized by SIO McVea in the context of a criminal investigation. For reasons that he does not understand but suspects is as a result of him purchasing a new phone in June 2020 (refer to email 28 June 2024 timed at 13:05 contained in Exhibit CY/WS5/1) Commissioner Ullger has not been able to retrieve messages from the relevant period from his personal phone, (this absence includes other persons with whom he regularly corresponds). Although not having any messages in his control, in the knowledge that an image of Mr McGrail's device had been taken by the RGP, Commissioner Ullger sought Mr McGrail's consent to retrieve the messages from the image. Mr McGrail consented and the messages for the relevant period were disclosed via Ellul & Cruz to the STI on the 2nd of September 2024. I now provide relevant correspondence in relation to paragraphs 3 and 4 of this statement as **Exhibit CY/WS5/1**.

*Whether, as suggested by Mr McGrail in his Ninth statement, SIO McVea "imaged" his personal phone (*4000) as part of his investigation in 2023 [McGrail 9 para 11].*

6. Yes, SIO imaged Mr McGrail's personal phone (*4000) as part of his investigation. The device was seized on the 23rd of March 2023 and sent for imaging and analysis by the Police Service of Northern Ireland on the 9th of May 2023. The device was returned to Mr McGrail on the 1st of September 2023.

Whether the RGP has retained this image and therefore has access to the full contents of Mr McGrail's personal phone prior to its erasure.

7. The RGP has retained the image and has access to the contents of Mr McGrail's phone as it was on the 23rd of March 2023.

For the avoidance of doubt, whether SIO McVea also "imaged" any phone belonging to Mr Richardson and if so whether these images have been retained.

8. No phone belonging to Mr Richardson was imaged by SIO McVea.

The source of the messages between Mr McGrail and ACOP Yeats disclosed by the RGP in September 2024, which were provided in two subfolders: 'McGrail phone' and 'Yeats phone'. Please confirm:

(a) Whether this indicates that messages between Mr McGrail and ACOP Yeats were recovered from Mr McGrail's phone (as well as ACOP Yeats' phone).

9. This is correct. The sub folder titled "McGrail phone" (in the 2 September 2024 RGP disclosure) contains messages between Mr McGrail and ACoP Yeats recovered from the "McGrail phone image".

10. The sub folder titled "Yeats phone" (in the 2 September 2024 RGP disclosure) contains messages between Mr McGrail and ACoP Yeats recovered from ACoP Yeats' phone.

(b) How were these messages were recovered? Were these recovered from the 'image' taken by DCS McVea?

11. The messages referred to in paragraph 9 of this statement and contained in the sub folder titled "McGrail phone" were recovered from the "image" taken by SIO McVea.

(C) Why were messages from Mr McGrail's phone between Mr McGrail and COP Ullger not also recovered and disclosed?

12. They were recovered and disclosed, (in the 2 September 2024 RGP disclosure). The messages contained in the folder titled "*4000 IM to *5000 RU" were recovered from the "image" taken by SIO McVea.

13. No messages have been recovered from CoP Ullger's personal phone as explained in paragraph 5 of this statement.

An explanation of the RGP's policy on retention/deletion of WhatsApp messages (and other electronic data held on work phones) after an officer retires or leaves the RGP (inclusive of any policy in place concerning the Commissioner of Police or a member of the SMT). Please provide (if available) a copy of any written policy and explain whether any image or record is made of the contents of these phones prior to deletion, and if not, how the RGP ensures that all relevant data is retained.

14. The RGP's Mobile Devices Policy ("the policy") is attached as Exhibit CY/WS5/2.

15. Paragraph 3.3 of the policy states:

- a. *The mobile devices are issued to the post holders and are associated with the post as per Appendix 1. Thus, when an officer or support staff member moves from his relevant post, the officer/support staff member will with the assistance of the RGP IT technician ensure that his / her work issued mobile device is wiped of all personal data and is handed over to the person taking over their role*
16. No images of devices are taken, and no messages are retained. Email created or accessed on mobile devices is retained because it is stored on the RGP email server.

An express answer to the question in our email of 25 November 2024, namely: "As for 12 May in particular, can the RGP please confirm whether it has in its possession or control (whether or not the messages are relevant to the list of issues):

17. Following the request for additional disclosure, (a widening of the time parameters from the 12th of May 2020 to the 9th of June 2020 to the 1st of January 2020 to the 30th of June 2020), the phones believed to have been in the possession of Mr McGrail and Mr Richardson were sent to the RGP's Digital Forensic Unit ("DFU") for analysis and the extraction of messages.
18. An analysis of both phones has revealed that neither of the phones now believed to have been in the possession of Mr McGrail, and in the possession of Mr Richardson, were in fact in use by them at the time. It is possible that the phones in use by both Mr McGrail and Mr Richardson remain in use within the RGP but with different telephone numbers. A forensic examination of every phone in the RGP would be required to determine whether the RGP has messages in its possession or control from Mr McGrail's and Mr Richardson's work phones in 2020.

(1) Outgoing messages from IM work phone;

19. For the reasons stated in paragraphs 17 and 18 we cannot confirm this definitively.

(2) Incoming messages to IM work phone, including any messages from PR personal phone;

20. For the reasons stated in paragraphs 17 and 18 we cannot confirm this definitively.

(3) Outgoing messages from PR work phone;

21. For the reasons stated in paragraphs 17 and 18 we cannot confirm this definitively.

(4) Incoming messages to PR work phone, including any messages from IM personal phone.”

22. For the reasons stated in paragraphs 17 and 18 we cannot confirm this definitively.

Please answer this question for each of the (4) categories identified, including by reference to any ‘image’ taken by SIO McVea in the course of the data breach investigation, and if messages for any category are not retained, please explain why not.

23. There are no messages, whether incoming or outgoing, in the “image” taken by SIO McVea of Mr McGrail’s personal phone *4000 with either Mr McGrail’s work phone (56199010) or Mr Richardson’s work phone (56199004).

Any messages (with irrelevant messages redacted, save for date and time) on the “image” of Mr McGrail’s personal phone (if held by the RGP) between Mr McGrail, Mr Richardson and COP Ullger. We draw your specific attention to paragraph 14 of McGrail 9, in which Mr McGrail provides his permission for these messages to be provided.

24. Messages for the expanded date range (1st January 2020 to 30th of June 2020) in the “image” taken by SIO McVea of Mr McGrail’s personal phone *4000 with Mr Richardson’s personal phone *9135 are contained in sub folder “IM Personal Image with PR Personal” in the USB pen drive accompanying this statement. The RGP has not secured Mr Richardson’s consent to disclose these messages (unlike in the case of Mr McGrail) and therefore the STI may wish to procure consent from Mr Richardson or his counsel before further distribution.

25. Messages for the expanded date range (1st January 2020 to 30th of June 2020) in the “image” taken by SIO McVea of Mr McGrail’s personal phone *4000 with Mr Ullger’s personal phone *5000 are contained in sub folder “IM Personal Image with RU Personal” in the USB pen drive accompanying this statement. There are two sub folders marked “Redacted” and “Unredacted” in the USB pen drive. The folder titled “Unredacted” is for STI, (should they wish) to review the RGP and Ellul & Cruz assessment of whether the disclosed messages are related to the PLOI as we do not assess they are necessarily relevant.

Expanded date ranges for the messages disclosed to the Inquiry by the RGP in September 2024 between Mr McGrail and COP Ullger, Mr McGrail and ACOP

***Yeats, Mr McGrail and DCI Wayne Tunbridge, and Mr Richardson and Supt Wyan.
Please provide all relevant messages from 1 January – 30 June 2020.***

26. Messages between Mr McGrail and COP Ullger (are those referred to in paragraph 25 of this statement and further addressed in paragraph 9 and 10.)
27. Messages between Mr McGrail and ACoP Yeats for the expanded date range and recovered from the “image” taken by SIO McVea are contained in sub folder “IM Personal Image with CY Personal” in the USB pen drive accompanying this statement. The messages are unredacted for relevance or connection with the PLOI as I do not assess that any of them are as I say in paragraph 4 of this statement relevant. The volume of messages is small and the STI, (should they wish) can review the RGP and Ellul & Cruz assessment and form their own view on relevance.
28. Messages between Mr McGrail and ACoP Yeats for the expanded date range and recovered from ACoP Yeats’ personal device *6000 are contained in sub folder “CY Personal with IM Personal” in the USB pen drive accompanying this statement. The messages are unredacted for relevance or connection with the PLOI as I do not assess that any of them are as I say in paragraph 4 of this statement relevant. The volume of messages is small and the STI, (should they wish) can review the RGP and Ellul & Cruz assessment and form their own view on relevance.
29. There are no messages available for disclosure between Mr McGrail and Mr Tunbridge, (from their work phones). The one irrelevant message disclosed on the 2nd of September 2024, (from their work phones), was erroneously disclosed for the reasons stated in paragraphs 16 and 17 of this statement.
30. Messages between Mr Richardson and Supt Wyan for the expanded date range and recovered from Supt Wyan’s personal device *4840 are contained in sub folder “MW Personal with PR Personal” in the USB pen drive accompanying this statement. The messages are unredacted for relevance or connection with the PLOI. The volume of messages is small and the STI, (should they wish) can review the RGP and Ellul & Cruz assessment and form their own view on relevance.
31. Given what I have stated I, nor the RGP as an organisation believe that I, or the RGP, have failed in our disclosure obligations. We have interpreted our counsel’s advice on relevance (when required) as we have understood them following his discussions with the past and the current STI. Furthermore, as will be seen from the accompanying exhibit, we have also complied with all requests and deadlines set

by the STI on disclosure including those arising from other Core Participant's during or after the hearing of live evidence.

STATEMENT OF TRUTH

I believe the contents of this witness statement to be true.



NAME: CATHAL YEATS

DATE: 20/12/24