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(subject to editorial corrections)**

ICOS No:

Delivered: 15/04/2024

IN THE CORONER'S COURT IN NORTHERN IRELAND

**IN THE MATTER OF AN INQUEST INTO THE DEATHS OF
JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK,
DAVID McCAFFERTY AND MARGARET GARGAN
(‘THE SPRINGHILL INQUEST’)**

**RULING (NUMBER 11)
ON PUBLIC INTEREST IMMUNITY**

SCOFFIELD J (sitting as a coroner)

Introduction

[1] This is an inquest into five deaths which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. A brief summary of the factual background is contained in my ruling of 27 February 2023 (‘Ruling No 1’): [2023] NICoroner 24.

[2] This ruling deals with the issue of public interest immunity (PII) in the inquest. The Ministry of Defence (MOD) asserts PII over information within a very small number of documents relating to military intelligence matters. The Police Service of Northern Ireland (PSNI) assert PII over a much wider range of material, including PSNI sensitive material which was provided as potentially relevant documentation in the inquest in compliance with the PSNI’s duty under section 8 of the Coroners Act (Northern Ireland) 1959 (“the section 8 material”) and further material furnished on foot of searches for additional information arising from Rulings No 1 and No 3 in the inquest.

[3] The MOD’s assertion of PII is grounded upon a certificate signed on 28 November 2023 by the Secretary of State for Defence, the Rt Hon Grant Shapps MP. This claim was considered in a closed hearing on 15 December 2023. It was not ruled upon at that point given that:

- (a) I sought some additional information in order to satisfy myself on an issue which had been raised; and also

- (b) the documents containing the information over which the MOD sought PII also included information over which the PSNI was claiming PII, to be considered at a later closed hearing.

[4] The PSNI's assertion of PII is grounded upon a certificate signed on 22 January 2024 by the Minister of State for Northern Ireland, the Rt Hon Steve Baker MP; and a further certificate signed by the same Minister on 21 March 2004. The first of these certificates grounded the assertion of PII over sensitive material contained in the section 8 material and the product of intelligence searches requested further to Ruling No 1. The second grounded the assertion of PII more recently over the product of a smaller number of searches requested further to Ruling No 3.

[5] Properly interested persons (PIPs), including the next of kin (NOK) in the inquest, made open representations in relation to the assertion of PII at a hearing on 24 January 2024 and, again, on 8 April 2024. The reason for the delay in the representations made at the second of those hearings was because counsel for the NOK indicated that they would prefer not to conclude their open submissions in relation to PII until there had been a roll-back of some of the provisional redactions made to the sensitive materials on the grounds of article 2 and 8 ECHR. This was despite my preference that the main PII process should be concluded in late January or early February and kept under review as further submissions were made in due course. In any event, there have been a variety of such roll-backs now that individuals in respect of whom intelligence searches produced material have (in the main) had an opportunity to make representations to me about the disclosure of this potentially relevant material to the PIPs. Several names have now been revealed, or civilian ciphers applied, which enable PIPs to better understand to whom some of the intelligence information in the sensitive materials relates. In the event, there were no additional representations of substance from PIPs in relation to the PII exercise following this further disclosure.

[6] As I have previously mentioned, in the course of the earlier closed PII hearings it became clear that many of the documents – particularly, but not exclusively, those contained within Folder 3 (the product of the additional searches which were requested) – contained a significant degree of material which was simply irrelevant (and not even potentially relevant, in my view) to the issues in these proceedings. The documents had been reviewed by the coroner's legal team for relevance but, given the expedited nature of the process of applying provisional PII redactions in order to move the PII process forward as expeditiously as possible, relevance redactions were not applied. That issue ought now to have been rectified.

Legal principles

[7] The legal principles applicable in this context are now settled and well-known. They are helpfully summarised in the decision of the (then) Presiding Coroner, Humphreys J, in his open ruling on the claim for PII in the inquest known as 'the

Coagh Inquest': see [2022] NICoroner 4, at paras [4]-[9]. I gratefully adopt the summary there set out.

[8] In particular, the court must address four questions:

- (1) Is the threshold for disclosure of the document or information passed? If not, that is the end of the matter. No disclosure is required and, indeed, PII does not require to be claimed.
- (2) If the document or information would otherwise fall for disclosure, is there a real risk that its disclosure would cause serious harm to the public interest? If not, disclosure should simply be made. If so, the next question requires to be addressed.
- (3) Can the real risk of serious harm be mitigated or prevented by other means (for instance, by way of restricted disclosure or gisting)? If the risk of harm to the public interest can be removed in this way, this will permit disclosure. If it cannot be removed, or can only be reduced, the fourth question requires to be addressed.
- (4) Is the public interest in non-disclosure outweighed by the public interest in disclosure for the purposes of doing justice in the proceedings? The third and fourth questions can shade into each other if, for example, a gist would not be sufficient to entirely obviate the risk of harm to the public interest but would mitigate it to such a degree that the public interest in disclosure overcomes the public interest in non-disclosure. Even where the risk cannot be reduced in this way, in the final analysis, the balance is one for the court, albeit giving the Secretary of State's view regarding the nature and extent of damage to the national interest significant weight (accepting it in the absence of cogent reasons otherwise).

The PSNI application

[9] The PSNI application for PII has been grounded upon the interests of national security and, in particular, the determination of residual terrorist groups to counter the work of the PSNI. The justifications put forward for the assertion of PII in relation to the sensitive documents related mostly to information related to operations of the security and intelligence agencies; information relating to the methods and techniques deployed by those agencies; and information related to persons providing or having provided information or assistance in confidence to those agencies. Some, much more limited, reliance was also placed upon the public interest in not disclosing information relating to the identity, deployment and training of current or former members of the security and intelligence agencies.

[10] As to source protection, failure to protect such information is said to have the potential to jeopardise the personal safety of an individual who provided

information, their family members or another person misidentified, resulting in an increased risk of death or serious harm. In turn, this would lead to a loss of confidence of the individual in the agencies and impair the ability of that individual (or others) to continue to provide information or assistance. That would lead to a reduction in the number of individuals willing to undertake such a role or provide such assistance, adversely impacting national security by significantly undermining the ability of the relevant agencies to support counter-terrorist policies. Disclosure of information in relation to the operations and methods of the agencies may, it is said, serve to undermine their present and future operations.

[11] In his submissions, Mr Coll KC accepted that it was relevant to consider the passage of time; but nonetheless contended that it was entirely possible that there were still those who may be able, willing or actively seeking to built up a knowledge of who may have provided information to the authorities. In his vivid submission, “there is no statute of limitations in relation to terrorist internal security.” Given that, as time goes by, it becomes more difficult for the state to ascertain the degree of risk in this regard, he contended that it was appropriate for the Minister to take a protective approach. He also relied heavily upon the chilling effect which comes from any disclosure of the identities of individuals working with, or who have provided information to, the security agencies. He submitted that the intelligence *product* was being released in large measure, even though withholding of information on PII grounds was being sought in relation to the sources of relevant information and the methods of its having been gathered.

[12] There were closed hearings in relation to the PSNI material on 25 and 26 January 2024 and on 22 March 2024. I have carefully considered the PSNI sensitive material (contained in Folders 1, 2 and 4, bundled together into File 1; in Folder 3, contained in File 2; and in Folder 5, which was provided separately). Broadly speaking, Folders 1, 2 and 4 contained section 8 material and Folders 3 and 5 contained material generated from searches which followed Rulings No 1 and 3 respectively.

[13] I am satisfied that all the information over which PII is claimed meets the broad test of potential relevance, subject to what is said in the following paragraph. As I have already mentioned, there were a number of passages within certain documents in respect of which PII has been claimed which were in my view not at all relevant, even potentially so, and which are now therefore to be redacted on relevance grounds. Given the application of provisional redactions to names on article 2 and 8 grounds, it may not always have been evident to PIPs whether the information was or was not relevant to the issues in this inquest. The nature of the documents disclosed, however, is such that, in many cases, they contain some potentially relevant information and other information unrelated, or only loosely related, to the information which gave rise to the disclosure of the document to me in the course of this inquest.

[14] There are also a large number of redactions which were proposed on PII grounds which could, in my view, also have been proposed simply on the grounds of non-relevance. These relate to what might be called administrative markings on intelligence reports and documents which give Special Branch reference numbers in relation to topics, persons or operations. In many cases these markings might simply be removed on the grounds of irrelevancy since they do not speak to the substance of the intelligence information with which the documentation is concerned. In other cases, such as this one, they were proposed for PII redaction because it might be argued that they are in some way potentially relevant, showing certain connections or commonalities between documents, but of such limited evidential value or materiality that the relevant balancing exercise resolves decisively in favour of non-disclosure. I have concluded that, on either basis in this case, it is appropriate for these proposed redactions to be upheld. They could properly be said to be irrelevant but, alternatively, the public interest in their disclosure for the purpose of these proceedings is minimal. Against that, I accept the submission made by Mr Coll that disclosure of these markings does give rise to a real risk (albeit difficult to quantify) of serious harm to the public interest in the form of damage to national security by means of disclosing operational techniques of the security intelligence agencies and/or permitting jigsaw identification of members of those agencies or sources.

[15] A wide range of redactions relate to source references, the concern being that disclosure might identify someone who provided assistance to security agencies or give rise to jigsaw analysis, might allow someone to build up a picture of when or where covert human intelligence sources were used and, possibly, to then go on to identify such a source (or narrow the field of those who might potentially have been such a source). Many of the proposed redactions relate to this type of information. It is commonplace in proceedings in this jurisdiction for the public interest in the protection of sources to outweigh public interest in disclosure which might compromise their identity for the reasons summarised in para [10] above. I also accept the PSNI view that there remains a real risk of retaliation, even now, in respect of those who may be considered to have wrongly assisted the authorities.

[16] I am also satisfied that disclosure of information relating to the precise dates of intelligence information would give rise to a real risk of harm to the public interest. Where this was to occur, it would give rise to a risk of identification of the source of the information. In many instances, however, the PSNI was persuaded to roll back or gist some of the information proposed for PII so that a more precise indication of the date of the information would be provided (for instance, by disclosing the month the information was received even if the precise date was not provided; or by indicating whether the information was received prior to, or after, the incidents which this inquest is investigating).

[17] I am further satisfied that the disclosure of information relating to the grading of intelligence information would give rise to a real risk of harm to the public interest. I am aware that this is adopted as a general approach in PII processes in

legacy inquests in this jurisdiction. The basic point is that if some gradings are released, whereas others are not, this runs the risk of identification of which information was provided from a high grade (and therefore very well-placed) source which, in turn, may lead to source identification. The absence of information in relation to the grading of intelligence received obviously then has a potential knock-on effect in relation to the deployment of, or weight which can be attributed, to some of the information.

[18] In considering the proposed PII redactions in the course of closed hearings, there was a number of areas where I was concerned about the balance struck between the public interest in disclosure and that in non-disclosure. This arose principally in relation to issues where the material proposed to be withheld on PII grounds was potentially of more probative value or relevance than much of the rest of that proposed for redaction. For this reason, my legal team and I explored with the PSNI and the relevant subject matter expert the possibility of providing a gist in a number of these instances. That has resulted in a gist being provided in relation to various PII redactions.

[19] On occasions the gist to be provided will now appear on the face of the redacted document, with the gist appearing over the redaction concealing the precise text to which the gist relates. On other occasions, the relevant gist is to be provided in a separate 'narrative gist' document, where the proper balance between the competing public interests requires disclosure of some information by way of gist whilst, at the same time, the best or only way to cater for risks arising from such disclosure (usually in relation to source protection) require the gist to be detached from the document from which it has been drawn. Where this approach has been adopted, it is to satisfy the requirement, in my view, that some gist be provided; but to meet legitimate concerns that, if the gist was clearly attached to the source document, it would compromise or risk compromising the identity of the source. Where information has been gisted in this way, I am satisfied that the kernel of the information which is relevant (or potentially relevant) to the inquest has been disclosed, albeit there are occasions when a degree of detail or particularity is not able to be disclosed because that would give rise to an unacceptable risk of source identification. Frequently, the greater the level of detail provided, the greater the risk of source identification as the pool of potential sources with such detailed knowledge is correspondingly narrowed.

[20] In light of the roll-backs agreed by the PSNI in the course of the closed hearings and the gists which it has accepted can be provided, whether on the documents themselves or in the form of the narrative gists, there were no contentious issues on which I needed to adjudicate in a separate closed ruling.

[21] In summary, the claims for PII in this case were, in the main, properly advanced. A further version of the sensitive materials will now be made available with some roll-backs of the provisional PII redactions and some gists provided. In

respect of that further version of the sensitive materials, I am satisfied that the remaining PII redactions are appropriate and should be maintained.

The MOD application

[22] The MOD assertion of PII was grounded upon the risk that disclosure of the relevant material would harm the operational capability and national security of the United Kingdom. As with the certificates relied upon by the PSNI, the MOD PII certificate refers to the remaining threat from terrorism in the United Kingdom, and Northern Ireland in particular; and to the determination of terrorism organisations to counter the work of the security forces. The concern is that the material covered by the assertion of PII may disclose information about the methods of operation and capabilities of the security forces, so allowing counter-measures to be taken.

[23] I am content to uphold the PII claim in relation to the very limited material over which the MOD asserted it. In each case, I consider that the public interest in non-disclosure outweighs the public interest in disclosure for the purposes of the inquest, bearing in mind in particular the materiality of the information over which the claim for PII has been made.

The 'Litvinenko question'

[24] Having determined that certain material or information should not be disclosed in the course of the inquest because claims for PII have been asserted and upheld, I am also required to consider whether as coroner I can still carry out a sufficient inquiry into how the deceased met their deaths. This is sometimes referred to as the 'Litvinenko question' - arising from the investigation into the death of Alexander Litvinenko (see *R (Litvinenko) v Secretary of State for the Home Department* [2004] HRLR 6). An inquest should only be abandoned on these grounds, in favour of inviting the government to establish a public inquiry, where, in light of PII exclusions, the coronial investigation would then be seriously incomplete or potentially misleading. I do not consider that that is the effect of the PII claims which have been upheld in this inquest. It can properly proceed.

Conclusion

[25] The PII claims are upheld to the extent indicated in the folders of sensitive material which will now be disseminated to PIPs. Practically speaking, this will likely involve the provision of replacement pages in respect of those portions where, as a result of the PII process, there are to be roll-backs or gists; along with the provision of the narrative gists now provided by the PSNI. As usual, the upholding of the PII claims will be kept under review, as necessary.