Neutral Citation No: [2022] NICoroner 6	***Ref:*** **HUM11966**
Judgment: approved by the court for handing down (subject to editorial corrections)*	***Delivered:*** **20/10/2022**

IN THE CORONER'S COURT IN NORTHERN IRELAND

_____

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF LAWRENCE JOSEPH McNALLY, ANTHONY PATRICK DORIS AND MICHAEL JAMES RYAN

_____

RULING ON APPLICATION BY XX TO REVOKE SECTION 17A NOTICE

_____

HUMPHREYS J

Introduction

[1] This is an application by XX, pursuant to section 17A(4) of the Coroners Act (Northern Ireland) 1959 ('the 1959 Act'), to revoke a notice served on him on 5 October 2022 requiring him to provide the identities of police officers known as T, F and L.

[2] The notice was served in the context of the ongoing inquest proceedings in relation to the deaths of three individuals, Lawrence McNally, Tony Doris and Michael Ryan at Coagh on 3 June 1991.

[3] Between 2011 and 2016 XX undertook academic research which resulted in the award of a PhD by St Andrews University, the thesis being entitled *"Tir Eoghain Rebellion, a local war: a study of insurgency and counter-insurgency in post-1969 County Tyrone, Northern Ireland."*

[4] This research included interviews with various participants and observers, these being conducted on a confidential basis. The interviewees remained anonymous, and the tapes created were destroyed. The thesis itself is effectively embargoed until 2066, being held securely by the university and the author's solicitors.

[5] Three of the interviewees, T, F and L, referred to the events at Coagh, and it is their identities which were the subject of the notice served under section 17A of the 1959 Act. T has identified himself as P19, a Detective Inspector who played a role in

planning and organising the security forces operation, and who has already engaged with the inquest.

The Statutory Provisions

[6] Section 17A(2) provides:

> "A coroner…who proceeds to hold an inquest, may by notice require a person, within such period as the coroner thinks reasonable—
>
> (a) to provide evidence to the coroner, about any matters specified in the notice, in the form of a written statement."

[7] The recipient of such a notice may, under section 17A(4), apply to have it revoked or varied on the grounds that "it is not reasonable in all the circumstances to require him to comply." In considering such an application, the coroner is directed by section 17A(5) to:

> "consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information."

[8] Section 17B states:

> "A person may not be required to give or produce any evidence or document under section 17A if—
>
> (a) he could not be required to do so in civil proceedings in a court in Northern Ireland…"

The Application

[9] In essence, XX submits that it would be unreasonable for him to be required to produce the information sought for the following reasons:

(i) The information itself is of little or no relevance to the questions which the inquest is obliged to answer; and

(ii) There is a weighty public interest in academic historical research and in the preservation of confidentiality agreements.

[10] In advancing this argument, XX draws an analogy with the protection afforded to journalists and their sources, and relies upon section 10 of the Contempt of Court Act 1981.

[11] Essentially, therefore, three issues arise for consideration:

(i) What is the relevance or potential relevance of the information sought?

(ii) To what extent does any privilege attach to the information?

(iii) How should any balancing exercise be carried out?

Relevance

[12] The following is the extract from the thesis which refers to Officer F, who is understood to have been a serving Royal Ulster Constabulary ('RUC') officer in East Tyrone at the time of the Coagh incident:

> "At this stage, sectarian hatred was fuelling a lot of what was happening in East Tyrone. On both the PIRA front and loyalism, murder and mayhem was fuelled by personal hatred and vendettas. PIRA twisted their justification to achieve their overall strategy and at times it was quite personal. Personal revenge was evident on both sides. Coagh was part of the local war. It wasn't an Adams and McGuinness strategy, it was an East Tyrone strategy. While they pushing to achieve PIRA goals they were also pushing to achieve their own goals, as in revenge for family members they perceived were killed by security forces or murdered by loyalists. Liam Ryan was murdered by loyalists and albeit Peter Ryan was already up and running as a murderer, Liam's murder fuelled his revenge. Pete specifically targeted individuals linked to the UDR and/or loyalist paramilitaries as they suspected. The same applies to Lawrence McNally, whose brother Phelan McNally was murdered by loyalists. Murder was their agenda for revenge. It was almost a family agenda and they both died at Coagh. Peter Ryan had a tomahawk concealed on his body at Coagh. He intended to injure the target [UDR soldier] and finish him off with a tomahawk; it was in a shoulder holster. It was personal, believe me."

[13] Officer L is described in the thesis as being in charge of Special Branch in East Tyrone at the relevant time. In his interview, he is recorded as saying:

> "The Tyrone man has a different way of operating. They had a lot of support and a lot of loyalty. We worked hard to get a clear picture and we did well. You know McNally and Ryan had 43 murders under their belts as a team. How do you deal with people like that? FT [Frank Murray, Head of South Region Special Branch] was ruthless but absolutely the right man for the right time. Coagh was another notch on his belt."

[14] It is evident therefore that these serving police officers were able to provide an account of events which purported to descend into the detail both of the attack on the Ulster Defence Regiment ('UDR') soldier and the planned counter terrorist operation. The material was considered worthy of inclusion in an academic thesis the subject matter of which was counter insurgency in Tyrone.

[15] At this stage, the extent of information known by either individual about the incident is unknown. However, if their identities are not revealed, then the coroner's investigators will be unable to pursue the lines of enquiry which naturally flow from the material which they gave to XX. It should be recalled at this stage that the section 17A notice simply requires the identities to be divulged to the Coroner.

[16] It was argued by counsel for XX that the extracts amount to no more than expressions of opinion and therefore have no probative value. However, the validity of any opinion depends on the facts from which such opinion derives, and the Coroner's investigators would be able to probe what each of these individuals actually knew about the Coagh incident and their sources of knowledge. I am quite satisfied that such information meets the threshold of potential relevance and ought, prima facie, to be disclosed.

Privilege

[17] All parties accept that privilege, as properly understood, only attaches to communications between lawyer and client. As Lord Denning said in *AG v Mulholland* [1963] 2 QB 477:

> "The only profession that I know which is given a privilege from disclosing information to a court of law is the legal profession, and then it is not the privilege of the lawyer but of his client. Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer when directed to by a judge. Let me not be mistaken. The judge will respect the confidences which each member of these honourable professions receives in the course of it, and will not direct him to answer unless not only it is relevant but also it is a proper and, indeed,

> necessary question in the course of justice to be put and answered." (at 489)

[18] This principle remains good law following the decision of the Supreme Court in *R (Prudential Assurance) v Special Commissioner of Income Tax* [2013] UKSC 1.

[19] However, the protection afforded to journalists and their sources is well recognised. In *Goodwin v UK* [1996] 22 EHRR 123 the Strasbourg court held that the protection of sources is a necessary part of press freedom in a democratic society. An order to disclose sources is likely to have a chilling effect on such freedom and would not be compatible with Article 10 of the European Convention on Human Rights ('ECHR') unless there was some overriding requirement in the public interest.

[20] Section 10 of the Contempt of Court Act 1981 ('the 1981 Act') provides:

> "No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

[21] This statutory provision is often invoked by journalists and has given rise to what is known as the 'newspaper rule' in the law of defamation. However, its scope is undeniably wider than merely those engaged in journalistic pursuits since it captures anyone responsible for a publication.

[22] By section 2(1) of the 1981 Act, 'publication' includes any speech, writing or other communication in whatever form, which is addressed to the public at large or any section of the public. For an example of the invocation of section 10 outside the journalistic field, see the judgment of Gillen J in *Re Ian Paisley Junior* [2009] NIQB 40. I accept that section 10 may also be relied upon by authors of published academic articles in order to refuse to disclose the identities of sources. However, this protection only relates to publications – it cannot be said that this academic work was addressed to the public at large or a section of the public. On the contrary, it is expressly embargoed from publication until 2066.

[23] The public policy behind section 10, as explained in *Goodwin*, is to encourage freedom of the press and promote the right of freedom of expression in Article 10 ECHR. The same public interest does not arise in relation to academic writings such as the one in question in this case, which is by its very nature private.

[24] If I accepted that section 10 could be relied upon by XX, the next step would be to consider whether disclosure is nonetheless necessary in the interests of justice,

which may give rise to similar considerations as the test contained in section 17A(4) of the 1959 Act.

The Balancing Exercise

[25] Having found that the material is relevant and not covered by any species of privilege, I nonetheless take into account the fact that the information was provided to XX in confidence. An obligation of confidence entered into should not lightly be infringed by order of a court. I, therefore, propose to consider the issues which require to be placed in the balance.

[26] In *Re McIntyre* [2012] NIQB 65, the applicant asserted, unsuccessfully, his own article 2 rights to seek to resist the PSNI from receiving the 'Boston Tapes.' Treacy J stated:

> "I do not consider that Art 2 in this case (or indeed more generally) can have the effect of prohibiting the police from seeking or receiving material relevant to a serious, live criminal investigation. Investigating murder and gathering relevant material is not only a requirement of domestic law but it is also a requirement of the positive investigative duty which Art 2 imposes upon contracting States." [para 37]

[27] The duties of a Coroner in holding an Article 2 compliant inquest are well established and include taking steps to ensure that all relevant evidence is secured. If there were identified witnesses of potential relevance from whom evidence was not gathered and considered, the inquest may fail to render the state's Article 2 obligation.

[28] XX does not assert that his Article 2 or Article 8 rights are engaged, nor that he is seeking to protect his Article 10 right to freedom of expression. Even if they were in play, it is unlikely that any of these could trump the Article 2 investigative obligation imposed upon the Coroner. The balance is always likely to fall on the side of the pursuit of reasonable lines of enquiry, rather than the suppression of potentially relevant evidence. In doing so, the inquest is ensuring public confidence is maintained and all relevant material is considered in answering the statutory questions.

[29] This is particularly true because of the special measures which can be afforded to witnesses in these types of proceedings. Other military and police witnesses have been granted anonymity and are screened from public view whilst giving evidence. This allows a proper balance to be struck between any Article 2 or Article 8 rights of the individual witnesses concerned and the need to adduce and receive relevant evidence. If Officers L and F are identified in the first instance, it

would only be to the Coroner and the Coroner's team and an opportunity would be afforded to seek special measures.

[30] For these reasons, the balance in this case, whether under section 17A of the 1959 Act, section 10 of the 1981 Act or at common law, comes down firmly in favour of disclosure of the information sought.

Conclusion

[31] The application is therefore refused, and I will hear counsel in terms of a timescale for compliance with the notice and next steps.