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IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF INQUEST INTO THE DEATHS OF
JOHN QUINN
ALAN McCLOY
PAUL HAMILTON
JAMES GERVASE McKERR
EUGENE TOMAN
JOHN FREDERICK BURNS
MICHAEL JUSTIN TIGHE
PETER JAMES MARTIN GREW
RODERICK MARTIN CARROLL

RULING ON THE CLAIM FOR PUBLIC INTEREST IMMUNITY IN RELATION TO THE STALKER/SAMPSON KINNEGO NARRATIVE REPORT INTO THE CIRCUMSTANCES OF THE DEATHS OF JOHN QUINN, ALAN McCLOY AND PAUL HAMILTON

O'HARA J

Introduction

[1] This is an open ruling. Having considered this application I am content that it is possible to give one ruling which is open. There is no closed ruling.

[2] I have been appointed Coroner to investigate the circumstances of the deaths of the nine men named above. The first three deaths of Sergeant John ("Sean") Quinn, Constable Alan McCloy and Constable Paul Hamilton occurred on 27 October 1982. They were officers in the RUC who were killed when the police car in which they were travelling was blown up by a bomb planted and detonated by the IRA at Kinnego Embankment near Lurgan, County Armagh.

[3] Within a few weeks, on 11 November 1982, James Gervase McKerr, Eugene Toman and John Frederick Burns had been shot dead at Tullygalley East Road. On 24 November 1982 Michael Tighe was shot dead at Ballynerry Road North and on 12 December 1982 Peter James ("Seamus") Martin Grew and Roderick ("Roddy") Martin Carroll were shot dead in Armagh City.

[4] The original inquest into the deaths of Sgt Quinn and Constables McCloy and Hamilton was concluded on 4 March 1983. On 14 November 1988, the late Mr James Elliott, Coroner, opened an inquest into the deaths of James Gervase McKerr, Eugene Toman and John Frederick Burns. The inquest was adjourned generally on 26 November 1988 upon the grant of leave for a judicial review application. The inquest was re-opened by the late Mr John Leckey on 5 May 1992. It was subsequently abandoned on 8 September 1994 following further legal proceedings. Mr Leckey indicated at this time that he would not hold inquests into the deaths of Michael Tighe, Peter James ("Seamus") Grew and Roderick ("Roddy") Martin Carroll in light of the limited access he was afforded to the Stalker/Sampson reports.

[5] On 9 October 2007 Mr John Leckey convened a preliminary hearing where he indicated that the ruling of the House of Lords in Jordan and McCaughey (2007) UKHL 14 may now pave the way for the reopening of these inquests. The Coroner indicated he would not be able to make any final decision on witnesses until he had read and considered both the Stalker/Sampson reports and the totality of evidence available to him. The Coroner also indicated that he was making no determination as to the viability of the inquests until the disclosure process was complete. Mr Leckey thereafter, sought and was granted the direction of the Attorney General pursuant to the latter's statutory powers under section 14 of the Coroner's Act (Northern Ireland) 1959 that new inquests into the deaths of the three police officers, Sgt Quinn, and Constables McCloy and Hamilton should be opened. Since then the inquests have been reviewed periodically together because there is or may be a connection between the deaths of the three police officers and the subsequent three episodes which led to the deaths of the further six individuals.

[6] This ruling concerns an application to withhold from disclosure information which would otherwise fall to be disclosed about the circumstances surrounding the deaths of the three police officers. The application is made on the basis of public interest immunity (PII). Specifically, the application relates to what is known as the Stalker/Sampson Kinnego Narrative Report, (hereafter the Kinnego Report). The Kinnego Report is one element of the findings of an enquiry which was established in 1984 under the then Deputy Chief Constable of the Greater Manchester Police Mr John Stalker. Originally, Mr Stalker was not asked to enquire into the Kinnego bombing but as his investigation progressed, he formed the view that the Kinnego bombing was so interrelated to his terms of reference that he had to report on it also. That is how he came to write the Kinnego Report.

[7] The Secretary of State for Northern Ireland and other relevant Ministers have issued a number of PII certificates over the years in relation to related legal proceedings including some or all of these inquests. Certificates were, for example, issued in 1988 and 1992 in relation to the deaths at Tullygalley Road East on 11 November 1982. When Mr Leckey reopened his coronial investigation into this series of inquests, the Secretary of State for Northern Ireland issued a further PII certificate in December 2010 on the basis that disclosure of one or more documents or parts of documents within what was termed "Bundle A" would cause real damage or harm to an important public interest. The Kinnego Report was included in Bundle A.

[8] I need not set out the entirety of the recent history of these inquests. In short summary, it was hoped that the inquests could be heard on a modular basis, with the incidents being heard in chronological order. Other modules may also have been required to address wider issues of relevance to the inquests. The inquests have been at a preparatory stage for many years, and I was concerned that awaiting one large hearing to address all four incidents and related issues may be unmanageable.

[9] The PII process has also been ongoing for a long time. As a feature of the modular approach it was determined that a PII process should be held that was limited to the Kinnego Report. It was considered likely that a ruling on the application of PII to the Kinnego Report would assist in answering many common issues which would arise across all four incidents.

[10] At a PII hearing in relation to the Kinnego Report on 3 June 2021 issues were raised by some of the NOK about the age of the certificate grounding the PII application. The age of the certificate may have been of importance if the circumstances underlying the assertion of PII had changed in the years between the certificate and the date of the application.

[11] The age of the certificate having been raised as an issue led to the proceedings before me on 3 June 2021 being adjourned and to a fresh ministerial PII certificate being issued on 27 October 2021. This later certificate was to broadly similar effect as the 2010 certificate but did make around 26 rollbacks of redaction.

[12] In the 2021 certificate the Minister has asserted the following at para 13:

> "(i) The very nature of the work of the security, military and intelligence agencies of the Crown requires secrecy if it is to be effective and there is an obvious and widely recognised need to preserve that effectiveness. The government's approach to PII requires me to focus specifically on the risk that damage which would be done by disclosure of the material in issue and to assert PII only if satisfied that the disclosure of that material would bring about a real risk of serious harm to an important public

interest. Having adopted that approach, I am satisfied that disclosure of particular information contained within the sensitive schedule would bring about a real risk of serious harm to an important public interest."

[13] At the following paragraph, para 14, the Minister summarised the information and certified that the documents included information of one or more of the following six kinds:

> "(a) Information relating to methods, techniques or equipment of the PSNI, the security, military and intelligence services disclosure of which would reduce or risk reducing the value of the method, techniques or equipment in current or future operations;
>
> (b) Information relating to persons providing information or assistance in confidence to the PSNI, the security, military and intelligence services, disclosure of which would endanger or risk endangering the persons concerned or other persons or would impair or risk impairing their ability or willingness to continue providing information or assistance or the ability of the PSNI, the security, military and intelligence services to obtain information and assistance from the person concerned or other persons;
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> (c) Information relating to operations and capabilities of the PSNI, the security military and intelligence services, disclosure of which would reduce or risk the effectiveness of operations, either current or future;
>
> (d) Information relating to the identity, appearance, deployment or training of current and former members of military, security and intelligence services, disclosure of which would endanger or risk endangering them or other individuals or would impair or risk impairing their ability to operate effectively as members of the security and intelligence services or the ability of the military, security and intelligence services to recruit and retain staff in the future;
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> (e) Information received in confidence by the PSNI, the security, military and intelligence services from foreign liaison sources, disclosure of which would jeopardise or

> risk jeopardising the provision of such information in the future.
>
> (f) Other information likely to be of use to those of interest to the PSNI, the security, military and intelligence services including terrorists and other criminals, disclosure of which would impair or risk impairing PSNI, the military, security and intelligence services performance of their functions."

[14] At para 16 of the Certificate the Minister asserted that it was not possible for him to be more specific in open proceedings about the particular information which is referred to in a sensitive schedule or the precise harm that its disclosure might risk causing since to do so would be to cause the very damage that the certificate seeks to avoid. Although the certificate itself was made available to the properly interested persons (PIPs) , the schedule is a sensitive document setting out the detail of the claim in respect of each redaction and is only provided to the court to be aired in closed session.

[15] Some of the NOK then raised an issue on 25 November 2021 as to whether the minister had applied a different/wrong test when he issued the 2021 certificate when compared to the 2010 certificate. There was some difference in the wording between the 2010 and 2021 certificates. In the 2010 certificate the Secretary of State considered whether or not disclosure of the materials in question "*would* cause real damage or harm to the public interest." In the 2021 certificate the Secretary of State considered if there would be a "real risk of serious harm being caused to an important public interest by disclosure." Given this issue had been raised the PII application could not be dealt with at that time.

[16] I received additional written and oral submissions and gave a ruling in June 2022 that I would apply the test as formulated in the 2021 certificate. I considered there to be no material difference between the two tests. I also ruled that in the event that, during the course of my deliberations of the PII application, it appeared that the differently worded test in the 2010 and 2021 certificates produced a different decision on disclosure, I would consider inviting further submissions. For the avoidance of doubt, I have followed that ruling when considering this PII application. Having done so, I have not identified any document for which the decision on disclosure is different when applying the 2010 and 2021 certificate wording.

[17] The PII application was listed on 20 October 2022. I heard submissions in open court from properly interested persons. The court then went into closed session, and I heard detailed submissions on the PII application. The closed session took two days and was heard over 20 and 27 October 2022. The process followed was that I went through every line of the PII redactions sought to the Kinnego Report in order to fully scrutinise the claim for PII.

[18] I am necessarily limited in what I can say in an open ruling about what was debated during a closed hearing. However, I can indicate that the bundle of papers for the Closed session included a tranche of what is referred to as 'open source material.' The central issue arising in respect of that material was whether any of the information that was sought to be withheld was already in the public domain. I heard submissions on that issue from the applying party and also from my own counsel.

[19] I gave the application further detailed consideration in the period following the hearings on 20 and 27 October 2022. That detailed consideration caused me to revisit some of the arguments on the issue of what is/is not in the public domain and the potential ramifications of public domain material on the PII application.

[20] As I hope will be understood, there is a vast amount of information pertaining to these inquests. My legal team reviewed aspects of the material on my behalf, particularly with a view to the issue of what may be in the public domain. That work took several months. A further closed bundle of papers was constructed by my legal team.

[21] This further bundle of papers contained material which highlighted the possibility that the matters subject to the PII application may be in the public domain. Notwithstanding the additional bundle comprised largely open source material, the bundle was (and remains) closed because the grouping of the material and descriptive elements such as the index tends to identify the very issues which were sought to be withheld from disclosure by the PII application.

[22] In very broad terms, the further bundle contained the following types of material:

(a) Court judgments

(b) Transcripts of court proceedings.

(c) Official Records and records of inquiries.

(d) Books, including those authored by journalists.

(e) Newspaper articles.

(f) Sundry items.

[23] Having reviewed this material I considered it necessary to have a further hearing to hear submissions as to what was in the public domain and any impact of that on specific aspects of the application. I stress that I had not yet formed a concluded view on the PII application and considered these further submissions were

a necessary step. This could only be done in closed as the identification of the particular aspects of the public domain material in relation to which I wanted further submissions would have tended to identify the material sought to be withheld.

[24] I sought to arrange this further hearing for the later part of 2023. That did not prove possible. Accordingly, the matter came back before me for a closed PII listed for 25 and 26 March 2024.

[25] In advance of the hearing on 25 March 2024 I read the entirety of the further bundle of documents. I also reviewed all of the documents prepared and considered at the previous PII hearing.

[26] On 25 March 2024 the further bundle and its content were opened to me by my own counsel, together with submissions as to its potential import to the PII application. I then heard submissions on behalf of the applicant. The applicant also responded to questions I raised in relation to the material.

[28] One important aspect to the closed hearing was consideration of whether material could be gisted.

[29] I have now given further consideration to the application and am satisfied I need hear no more submissions or review any further material before coming to a decision on the application for PII. I repeat that this application relates solely to the Kinnego Report. Before giving my ruling, I summarise the applicable law.

Purpose of inquests

[30] An inquest is required by Rule 15 of the Coroners Practice and Procedure Rules (Northern Ireland) 1963 to answer four statutory questions - that is, who the deceased was? When did he die? Where did he die? And how did he die?

[31] Inquests are important, particularly in the context of the investigation of deaths connected to the actions of police/military personnel. Inquests are often the main mechanism by which interested persons gain answers to the key questions arising from a death. The House of Lords observed in *R v HM Coroner for Western District of Somerset and Another, ex parte Middleton* [2004] UKHL 10 at para [47] that:

> "(a) In the absence of full criminal proceedings, and unless otherwise notified, a coroner should assume that his inquest is the means by which the state will discharge its procedural investigative obligation under art.2. There is force in the criticism made by all parties of the distinction drawn between individual and systemic neglect, since the borderline between the two is indistinct and there will often be some overlap between the two: there are some

> kinds of individual failing which a sound system may be expected to detect and remedy before harm is done. There will, moreover, be individual failings which need to be identified even though an individual is not to be named. "Self-neglect" and "neglect" are terms of art in the law of inquests, and there is no reason to alter their meaning. The recommending of precautions to prevent repetition is for the coroner, not the jury."

Disclosure of information in inquests

[32] As Gillen J observed in PSNI, *Re Judicial Review* [2010] NIQB 66, (a previous judicial review arising from the Stalker Sampson series of inquests) at para [41]:

> "[41] If inquests are to maintain public confidence, put minds at rest and answer the questions of the families who are bereaved, it is vital to ensure that the interested parties/next of kin can participate in an informed, open and transparent fashion on an equal footing with all other parties throughout the various stages of the Inquest including, at the outset of the process, the very scope of the inquest... I accept the strength of the argument of Mr O'Donoghue QC, who appeared on behalf of the Coroner with Mr Daly, that the need for a public investigation, in this instance into issues surrounding the allegation that the State has a "shoot to kill" policy, requires the Coroner to view disclosure in a generous light to enable informed representations to be made by the notice parties as to the scope of the inquest itself…"

[33] The default position is that all proceedings will happen in open proceedings and all potentially relevant information will be disclosed. I need not set out the authorities that support these propositions as they are not in any dispute. The threshold for disclosure is intentionally low in inquests - potential relevance.

[34] There are some restrictions on the default position of openness and disclosure. By virtue of section 17B(3) of the Coroners Act (NI) 1959 the rules of law governing the withholding of evidence on the grounds of PII apply to inquests in the same way as they apply to civil proceedings in a court in Northern Ireland.

[35] It is a long-recognised process that Ministers can issue certificates in support of an application to withhold material from disclosure on grounds of PII. By the issue of a certificate the Minister seeks to discharge his/her duty to the State to guard against the risk of damage to national security by disclosure of information in legal proceedings.

[36] The principles which govern the application of PII in civil proceedings are well established. In *R v Chief Constable of West Midlands Police ex parte Wil*ey [1995] 1 AC 274, the primary principle recognised was one of balance. If, applying "the real risk of serious harm to national security" test the material attracts PII, the question becomes whether the public interest in nondisclosure is outweighed by the public interest in disclosure of the information for the purposes of doing justice in the proceedings.

[37] In conducting this balancing exercise, the Minister must consider and balance relevant competing public interests and agree to the disclosure of the material if satisfied that the overall public interest favours disclosure. However, if the Minister is not satisfied that the overall interest favours disclosure, the proper course is to make a certificate for the assistance of the court. The court remains the ultimate decision maker as to whether material should be disclosed.

[38] Where the Minister issues a certificate, the Minister is to be considered by the court as the expert on matters such as national security

[39] In *Al Rawi and Others v Security Services and Others* [2011] UKSC 34 the Supreme court considered a claim for damages against various public authorities made by those who had been detained by foreign authorities at various foreign locations and allegedly suffered ill treatment. Though the case addressed issues not entirely on point with the issues to be determined by me, certain observations of the court on the issue of the interplay between open justice and the need to protect national security were offered by the members of the court, in particular Lord Clarke who offered a four stage approach at para [182]:

> "(a) In this regard the decision in *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] EWHC 152 (Admin), [2009] 1 WLR 2653 is instructive. At para 34 Thomas LJ set out four questions that arise when carrying out the balancing test:
>
> (i) Is there a public interest in bringing the redacted paragraphs into the public domain?
>
> (ii) Will disclosure bring about a real risk of serious harm to an important public interest, and if so, which interest?
>
> (iii) Can the real risk of serious harm to national security and international relations be protected by other methods or more limited disclosure?

(iv) If the alternatives are sufficient, where does the balance of the public interest lie?"

[40] The four questions identified in *Al*-Rawi have been applied in numerous subsequent cases, most recently in this jurisdiction by Mr Justice Humphreys in an application by the Chief Constable and the Secretary of State reported at [2024] NIKB 18.

[41] Further useful guidance can be found in the decision of Goldring LJ in *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) (the *Litvinenko* case). In *Litvinenko* the Secretary of State claimed PII for a number of documents relating to national security and the coroner found that some of the information contained therein could be disclosed by gist. Goldring LJ held that that the coroner had failed to apply the correct legal test and had not been made aware of the analysis of Lord Neuberger in *R (Binyam Mohammed) v Secretary of State for Foreign and Commonwealth Affairs* [2011] 218 when he said:

> "While the question of whether to give effect to the certificate is ultimately a matter for the court, it seems to me that, on the grounds of both principle and practicality, it would require cogent reasons for a judge to differ from an assessment of this nature made by the Foreign Secretary. National security, which includes the functioning of the intelligence services and the prevention of terrorism, is absolutely central to the fundamental roles of the Government, namely the defence of the realm and the maintenance of law and order, indeed ultimately, to the survival, of the state. As a matter of principle, decisions in connection with national security are primarily entrusted to the executive, ultimately to Government ministers, and not to the judiciary..." (para [131])

[42] Goldring LJ set out nine principles:

> "First, it is axiomatic, as the authorities relied upon by the PIPs demonstrate, and as the Coroner set out in his open judgment, that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for courts, not the Government, to decide whether or not PII should prevent disclosure of a document or part of a document.
>
> Second, as I have said, the issues which we have had to resolve only concerned national security. The context of

the balancing exercise was that of national security as against the proper administration of justice. Had the issues been such as have been touched upon by the PIPs in their submissions, different considerations might well have applied.

Third, when the Secretary of State claims that disclosure would have the real risk of damaging national security, the authorities make it clear that there must be evidence to support his assertion. If there is not, the claim fails at the first hurdle. In this case there was unarguably such evidence. The Coroner did not suggest otherwise.

Fourth, if there is such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be an end to the matter. There could be no disclosure. If the claimed damage to national security is not "plain and substantial enough to render it inappropriate to carry out the balancing exercise," then it must be carried out. That was the case here.

Fifth, when carrying out the balancing exercise, the Secretary of State's view regarding the nature and extent of damage to national security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it. If there are, those reasons must be set out. There were no such reasons, let alone cogent or solid ones, here. The Coroner did not seek to advance any. The balancing exercise had therefore to be carried out on the basis that the Secretary of State's view of the nature and extent of damage to national security was correct.

Sixth, the Secretary of State knew more about national security than the Coroner. The Coroner knew more about the proper administration of justice than the Secretary of State.

Seventh, a real and significant risk of damage to national security will generally, but not invariably, preclude disclosure. As I have emphasised, the decision was for the Coroner, not the Secretary of State.

Eighth, in rejecting the Certificate the Coroner must be taken to have concluded that the damage to national security as assessed by the Secretary of State was

> outweighed by the damage to the administration of justice by upholding the Certificate.
>
> Ninth, it was incumbent on the Coroner to explain how he arrived at his decision, particularly given that he ordered disclosure in the knowledge that by doing so there was a real and significant risk to national security." (paras [53] to [61])

Public domain

[43] It is incumbent on the court to establish what information is already within the public domain. If information is already in the public domain that may preclude it being withheld on PII grounds. In *AG v Guardian Newspapers No 2* [1990] 1 AC 109 (the renowned Spycatcher case) Lord Justice Goff said:

> "…in cases of Government secrets the Crown has to establish not only that the information is confidential, but also that publication would be to its "detriment" in the sense that the public interest requires that it should not be published. That the word "detriment" should be extended so far as to include such a case perhaps indicates that everything depends upon how wide a meaning can be given to the word "detriment" in this context.
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> To this broad general principle, there are three limiting principles to which I wish to refer. The first limiting principle (which is rather an expression of the scope of the duty) is highly relevant to this appeal. It is that the principle of confidentiality only applies to information to the extent that it is confidential. In particular, once it has entered what is usually called the public domain (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it. I shall revert to this limiting principle at a later stage.
>
> The second limiting principle is that the duty of confidence applies neither to useless information, nor to trivia. There is no need for me to develop this point.
>
> The third limiting principle is of far greater importance. It is that, although the basis of the law's protection of confidence is that there is a public interest that confidences

> should be preserved and protected by the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. This limitation may apply, as the learned judge pointed out, to all types of confidential information. It is this limiting principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure."

[44] Whether a matter is in the public domain is a question of fact. There is, in my assessment, a further question of whether what is in the public domain is such as to publicly disclose an issue which is sought to be withheld on grounds of national security. It is on these issues that I focused at the most recent PII hearing.

[45] These are not straightforward assessments. Various factors are at play, including the nature of the open source material. For example, an official public governmental document or legal proceedings in a senior court is a more reliable form of open reporting that speculation on the same issue in a newspaper article. Further, care must be exercised as to what information is actually contained in a publication. Is an issue simply referred to or is its existence formally admitted in some way?

[46] In my view it is wrong to attempt a 'jigsaw' approach of drawing together disparate items to identify what is in the public domain. Such an approach is necessarily somewhat subjective and speculative. Moreover, there is a risk of a judge cited on a PII application analysing material with the benefit of knowing what the underlying material contains.

[47] As stated above, I considered a bundle containing open source material at the time of the original PII application. At the hearing on 25 March 2024 I considered the further tranche of material that comprised, as previously stated:

(a) Court judgments

(b) Transcripts of court proceedings.

(c) Official Records and records of inquiries.

(d) Books, including those authored by journalists.

(e) Newspaper articles.

(f) Sundry items.

Discussion and decision

[48] I turn now to consider the following questions in relation to the material in respect of which PII is claimed:

(i) Is the threshold for disclosure passed?

(ii) Is there a real risk that disclosure of the material would cause real risk of serious harm to an important public interest (or cause serious harm to an important public interest)?

(iii) If there is such a risk, can that risk be mitigated or prevented by other means or by some form of restricted disclosure?

(iv) If not, is the public interest in nondisclosure outweighed by the public interest in disclosure for the purposes of doing justice in the proceedings.

(i) Relevance?

[49] Having considered all of the material in the Kinnego Report, I have concluded that it meets the potential relevance test and would therefore be subject to disclosure under Section 17 A of the 1959 Act. The redacted portions of the Kinnego Report therefore pass the threshold test for disclosure. That is a matter with which the Minister did not take issue.

[50] I add that the information sought to be redacted is, in my assessment, highly relevant to the inquest concerning the deaths at Kinnego. Further, that report and the information sought to be redacted from it are very likely to be relevant to the other inquests.

(ii) Real risk of serious harm by disclosure?

[51] I set out above the Open content of the ministerial certificate. I need not repeat that here.

[52] I acknowledge that the Minister is the person best placed to make an assessment of matters such as the public interest and national security. However, I am required not to simply rubber-stamp the Minister's assertion. I must make my own assessment. In the event that I disagree with the Minister's assertion I must set out my cogent reasons for doing so.

[53] The deaths at the Kinnego Embankment occurred more than 40 years ago. It might seem at first blush that after all of those years, some of the national security

issues extant then may no longer apply or be diluted to an extent that disclosure may be safely made now. That was one of the issues which was closely scrutinised in the closed hearings.

[54] Having adopted this approach and scrutinised all of the issues, I am satisfied that there remains even after all this time a real risk that disclosure of the redacted material would cause serious harm to the public interest. I accept the Minister's assessment of those matters.

[55] In reaching that conclusion, I took account of the multiple open source materials discussed above. Ultimately, I have accepted the applicant's submission that the issues sought to be protected by the application are not in the public domain, or not in the public domain to such an extent that the application is materially weakened.

(iii) Can that risk be mitigated or prevented by other means or by some form of restricted disclosure?

[56] As set out above, the possibility of gisting the material sought to be withheld was a constant theme in the closed proceedings. The proposed redactions were reviewed line by line, and as part of that process I enquired whether gisting was an alternative to the redactions.

[57] In my assessment gisting is not feasible for the redactions to the Kinnego Report. I accept the Minister's assertions on gisting. The information sought to be withheld is of such a nature that there is no safe means, so far as I can identify, of it being summarised.

[58] I should and do confirm that despite the extent of the redactions in the Kinnego Report I am satisfied at this point that they are set at the minimum level necessary to protect the national interest.

(iv) Is the public interest in nondisclosure outweighed by the public interest in disclosure for the purposes of doing justice in the proceedings?

[59] The unredacted Kinnego Report is a very important document. It is of central importance to the inquest into the circumstances of the bombing which took the lives of the three RUC officers. It also has importance to the other inquests. However, in my assessment the information which is sought to be withheld continues to be very sensitive and cannot be disclosed. Dissident elements remain a significant threat. The age of the report is not sufficient to dilute the risks of harm which arise from disclosure of the information sought to be withheld.

[60] Against that backdrop I cannot find that the undoubtedly strong public interest in the disclosure of the report outweighs the competing public interest in maintaining national security. As set out above, I accept the ministerial assertions of that risk.

[61] Accordingly, the application for PII is upheld.

Viability

[62] I have not heard any submissions on the viability of these inquests. Should any PIP wish to make submissions on the issue I invite them to be served by 9am on Monday 29 April 2024.

[63] My provisional view is that these inquests are not viable. There are two main issues facing these inquests:

(a) The non-disclosure as a result of PII of relevant information. For the reasons set out above I have decided to uphold the PII claim. The result of that is highly relevant information being withheld from disclosure. My provisional view is that these inquests cannot adequately investigate the deaths where such disclosure is withheld.

(b) The imminent compulsory ending of the inquests on 1 May 2024. In reality, there is insufficient time to complete these inquests.

[64] I need not expand these provisional issues any further. I will review the issue after sight of any submissions from the PIPs.