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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* 08/09/22

IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATH OF NOAH PETER DONOHOE

OPEN RULING ON PUBLIC INTEREST IMMUNITY APPLICATION

Donal Lunny QC and Laura Curran (instructed by the Crown Solicitor's Office) for the PSNI
Sean Doran QC and Declan Quinn (instructed by the Coroner's Service) for the Coroner
Brenda Campbell QC and Malachy McGowan (instructed by KRW Law) for the Next of Kin

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HUMPHREYS J

Introduction

[1] In June 2020 Noah Donohoe, a 14 year old boy, tragically lost his life. He was the much-loved only child of Fiona Donohoe and, by all accounts, a talented, intelligent and popular young man. Any parent beset by such a tragedy is entitled to the fullest investigation to discover how and why their child died.

[2] The inquest which is scheduled to commence in November 2022 will consider the four statutory questions, namely:

(i) The identity of the deceased;
(ii) The place of death;
(iii) The time of death; and
(iv) How the deceased came by his death.

[3] Within question (iv) there are many issues including Noah's movements, his behaviour, any interaction with other persons and how he came to enter the storm drain system where his body was eventually found. Furthermore, the inquest will

examine the investigation which was undertaken into his disappearance and death. In doing so, the coroner, whether sitting with or without a jury, will hear evidence from factual witnesses and a range of experts across various disciplines. The inquest will also have access to and consider the documents generated by the police investigation.

[4] In reviewing many of the leading authorities, Morgan LCJ in *Re Gribben* [2017] NICA 16 concluded:

> "The purpose of the inquest is to allay rumour and suspicion and to investigate fully and explore publicly the facts pertaining to a death occurring in suspicious, unnatural or violent circumstances. The coroner must decide how widely the enquiry should range to elicit the facts pertinent to the circumstances of the death and responsibility for it (Jordan v Lord Chancellor at [37], Ramsbottom at [11], Bubbins at [159] and [161] and Scott Baker LJ in the Diana/Dodi inquest) … Where information which is relevant or potentially relevant to the purpose of the inquest is received by the coroner it should be disclosed, suitably redacted if necessary, to the next of kin ('NOK'). The concept of potential relevance imports a broad ambit to the obligation of disclosure." [para 50]

[5] It is in this context that the present application comes before the court. In it, the PSNI seek to withhold certain information which would otherwise be subject to disclosure on the grounds that it attracts public interest immunity ('PII'). This is my OPEN ruling on the PII application. The entire reasoning of the court on this application cannot be disclosed and will be the subject of an additional CLOSED ruling.

Public Interest Immunity

[6] Before examining the application in these proceedings, it is important to set out the purpose of and the principles governing PII.

[7] By virtue of section 17B(3) of the Coroners Act (Northern Ireland) 1959 ('the 1959 Act'), the rules of law governing the withholding of evidence on the grounds of PII apply to inquests as they apply to civil proceedings in a court in Northern Ireland.

[8] In *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin), which arose out of the

death of Alexander Litvinenko, Goldring LJ set out a number of applicable principles:

> "53. 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.
> 54. 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.
> 55. 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.
> 56. 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.
> 57. 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.
> 58. 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.

> 59. 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.
> 60. 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.
> 61. 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."

[9] In any PII application, the decision maker is not the state agency or government minister but the judge or coroner hearing the case. This is a fundamental protection from the potential abuse of the power to withhold information.

[10] There are four questions for the court to answer:

(i) Is the threshold for disclosure passed?

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

(iii) Can the real risk of serious harm be mitigated or prevented by other means or by some restricted disclosure?

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

[11] In carrying out the balancing exercise, the coroner is considering two competing aspects of the public interest. Firstly, the principle of the proper administration of justice in an open and transparent manner and secondly, the prevention of harm to national security from the potential disclosure. The nature of this task is discussed in *R –v- Chief Constable of West Midlands Police ex parte Wiley* [1995] 1 AC 274, and is often referred to as the *Wiley* balancing exercise.

[12] It must also be noted that there is no power for a coroner to consider a closed material procedure application under the Justice and Security Act 2013. The absence of such a procedure in inquests means that any evidence which is considered by a coroner or jury must be disclosed to Properly Interested Persons ('PIPs'). A coroner who has sight of unredacted material for the purpose of a PII application, when the claim is upheld, must put such material out of his or her mind in the decision making process.

[13] It should be stressed that there is nothing unique or unusual about a PII application in inquest proceedings, as is illustrated by the plethora of reported decisions in this field.

The PII Certificate

[14] On 18 July 2022 the then Secretary of State for Northern Ireland ('SoS'), Shailesh Vara MP, signed a PII certificate whereby he asserted that certain documents should be redacted as they attract PII.

[15] Mr Vara referenced the continuing threat from terrorism in Northern Ireland, particularly from dissident republicans, and the role that security and intelligence agencies play in countering this threat. There is no suggestion that dissident republicans were involved in the death of Noah Donohoe, but rather than the disclosure of certain information would be valuable to them, and their ilk, in understanding the measures taken by those tasked with counter terrorism activities.

[16] The SoS acknowledged that the ultimate arbiter on this issue was the court but, in his opinion, the disclosure of certain material would give rise to a real risk of serious harm, and the balance falls in favour of non-disclosure.

[17] In his certificate the SoS identifies the following categories of material in relation to which it is said disclosure would be harmful to the public interest:

(a) Information relating to the methods, techniques and equipment of the PSNI and other security forces;

(b) Information relating to persons providing information or assistance in confidence to the police or other agencies;

(c) Information in relation to operational capability and strategy of the PSNI and other services;

(d) Information relating to identity of members of such agencies;

(e) Information received in confidence by the PSNI and other agencies;

(f) Other information likely to be of use to those of interest to the PSNI, including terrorists and other criminals.

The PII Materials

[18] The court was concerned with three files of documents:

(i) File 1 – a single document, consisting of 188 pages, described as the C2 Review carried out by the PSNI into the investigation and dated October 2020;

(ii) File 2 – comprising 122 pages, made up of 61 intelligence documents, each of them 2 pages in length;

(iii) File 3 – 293 pages of materials arising out of the PSNI investigation, including officers' notebooks, conference notes, an Occurrence Enquiry Log Report, a Current Situation Report, an Action Register and an extract from a College of Policing publication.

[19] These files were not, in any sense, being withheld. Rather there were a series of proposed redactions sought by the PSNI and endorsed by the SoS in the PII certificate. These consist of:

(i) File 1 – 170 out of 188 pages are wholly unredacted, the redactions relate to fewer than 100 words across the 18 pages. Of the 71 redactions, 44 relate to reference numbers and 27 to the grading of intelligence;

(ii) File 2 – of the 61 intelligence documents, 52 are recording intelligence information provided to the PSNI whilst nine relate to requests for intelligence. Of the nine documents relating to requests for intelligence, only two have any redactions. The remaining 52 have redactions which relate to reference numbers, the grading of intelligence, information relating to sources and police methodology as to the processing of intelligence information.

(iii) File 3 – 272 of the 293 pages are wholly unredacted, with 16 of the 46 redactions consisting of reference numbers.

[20] Each of the redactions has been given a label to explain to the reader what it relates to, in general terms. The 61 intelligence reports have been given individual ciphers so it is possible to cross reference those in the other files.

[21] Applying the principles set out above, I propose to address each of the categories of material in respect of which redactions are sought.

(i) Reference numbers

[22] Each intelligence document created by the PSNI has a unique reference or log number. Such numbers are relevant to the issues to be determined at the inquest only on the broadest application of the test for disclosure. For reasons which I set out in the CLOSED ruling, I am satisfied that disclosure of these numbers could be injurious to the public interest in that it would run a real risk of harm to national

security. There is no sensible basis upon which this material could be 'gisted' or disclosed in some alternative way. As senior counsel for the next of kin ('NOK') readily accepted, such disclosure would not further the administration of justice in any material sense. It could not be said that any answers to the many questions posed in this inquest could be found or indeed be assisted by the revelation of these numbers. The balance therefore comes down firmly in favour of non-disclosure and the application for PII in respect of the intelligence reference numbers is upheld.

(ii) Intelligence grading

[23] The NOK contend that the 'grade' afforded to each piece of intelligence information is relevant as it permits an interrogation and evaluation of the police response to the receipt of such information. Counsel observes that much of the intelligence information received was demonstrably incorrect and it would be of assistance to the inquest and to the representatives to be able to reconcile the grading of such information with its accuracy.

[24] I agree with the analysis presented by NOK counsel in relation to the relevance of the grading material and am satisfied that the test for disclosure in relation to it is met.

[25] For reasons which must necessarily be limited to the CLOSED ruling, I am satisfied that disclosure would cause a real risk of harm to the public interest. For reasons which also relate to the manner in which intelligence information is handled, it is also not possible to gist the material or disclose it in some alternative fashion.

[26] In considering the balancing exercise, I am influenced by the fact that material within the C2 Review report does address some of the questions about the intelligence material. Equally, the substance of the intelligence information is, in all cases, being disclosed. Thus the inquest and the NOK will be able to arrive at an assessment as to the accuracy of the material being provided by sources, when measured against and alongside all the other evidence which will be adduced. This will provide a much more accurate picture of the reliability of the information than the subjective view of a particular police officer at the time the information was relayed. In no case is the detail of what was being conveyed to the police proposed to be withheld. All that is absent is the number, grading and source information. On this basis, I am persuaded that the balance comes down firmly against the disclosure of the grading of the intelligence information.

(iii) Information relating to sources

[27] Counsel for the NOK accepted that, as matters stand, they do not seek disclosure of the names and addresses of those sources who provided information to the police. However, if such information related to the quality, strength or reliability of the intelligence material, disclosure would be sought for similar reasons as those which were advanced on the issue of grading.

[28] I have had sight of all the material in unredacted form and can confirm to the NOK that the information relating to sources exclusively contains names, addresses and contact details. There is nothing within those redacted sections which would assist in the process of evaluating the quality of the intelligence information provided.

[29] Again, whilst I am satisfied that this material meets the relevance threshold, disclosure would present a real risk of serious harm to the public interest. The identity and details of those individuals who provide covert intelligence information to the police have always been recognised as meriting protection from public disclosure. The lives and well being of these individuals would be placed in jeopardy if terrorists and other criminals became aware of their operations. Equally, disclosure would create a chill factor whereby sources would cease to provide information to the security forces.

(iv) Police methodology

[30] A number of the redactions concern the manner in which police handle intelligence information provided to them. On the broad, generous view of relevance these could be said to have bearing on the issues in the inquest but essentially these relate to the manner in which police collate and develop intelligence. They say little about the quality or reliability of the evidence but speak to the approach of law enforcement agencies when intelligence is received.

[31] Disclosure of the methods used by police in such circumstances would undeniably be of assistance to those who wish to commit crimes or acts of terrorism. Equally gisting of this material would not serve to obviate the potential harm to the public interest which could be caused. In the balancing exercise, it is clear from the unredacted material that this would be of very limited assistance either to the decision maker or the NOK representatives in seeking answers through the coronial process.

[32] File 3 contains a number of redactions in relation to:

(i) How the police deal with electronic devices; and

(ii) The carrying out of specialist search operations.

[33] In each of these cases, the threshold of relevance for the purpose of disclosure is met. However, the police derive much information from mobile phones and computers, and the precise means by which this is done would be of very significant value to those who seek to commit crime and perpetrate acts of terror. The same can be said of the methods used by police to carry out specialist search operations. There is no basis to gist this material without causing it to be revealed.

[34] Having carefully considered the unredacted entries, I am satisfied that the balance comes down in favour of non-disclosure. The potential for harm to the public interest in the form of national security is significant. By contrast, the impact upon the open and proper administration of justice is minimal. All the parties have the benefit of the outcomes and results of the police investigation, including the examination of electronic devices and the search operation. There is nothing in the detail of the methodology which I have seen which would give the decision maker any greater insight into the evidence which has been obtained.

The Litvinenko question

[35] Once the court has reached the conclusion that materials should not be disclosed by reason of PII, it is required to consider the '*Litvinenko* question', namely whether the coroner (with or without a jury) can still carry out a sufficient inquiry into how the deceased met his death. If I were not so satisfied, the appropriate course of action would be to invite the Secretary of State to instigate a public inquiry.

[36] This course of action should only be adopted where the absence of the material covered by PII would render the inquest seriously incomplete or its outcome potentially misleading – see *R (Litvinenko) v Secretary of State for the Home Department* [2004] HLR 6.

[37] I am quite satisfied on the basis of all the material which I have seen that this inquest can safely and properly proceed to answer the statutory questions.

Conclusions

[38] Having examined all the unredacted material, and heard submissions in both open and closed sessions, I have therefore reached the following conclusions:

(i) The claim for PII in respect of the redacted material is upheld;

(ii) There is nothing in the material which has been redacted which is of central relevance to the questions to be determined at the inquest;

(iii) By contrast, disclosure of the redacted material would give rise to a real risk of serious harm to the public interest;

(iv) The redactions themselves are no more than the minimum necessary to ensure that the real risk of harm is mitigated;

(v) The representatives of the NOK can be assured that nothing has been redacted which shows that any third party was involved in Noah Donohoe's death, nor that would suggest there has been any 'cover up' in the course of the investigation;

(vi) In fact, the redactions only relate to the ways in which the police handle and process intelligence information, and to the identity of sources. The actual content of the intelligence is not redacted at all so the NOK and the coroner have a full picture of the information which was supplied to the police;

(vii) Given the lack of probative value of the material, and the potential risk of harm of disclosure, the balance comes down clearly in favour of non-disclosure;

(viii) This limited withholding of information will have no adverse impact upon the ability of the inquest to answer the statutory questions and to comply with its obligation to allay rumour and suspicion and fully investigate the death.

[39] In accordance with established principle, the issue of PII should be kept under review as the inquest progresses.