

## ACCESS TO EVIDENCE SUBMITTED BY MR ALEXANDER OWENS

### Lord Justice Leveson:

1. Pursuant to Section 21 of the Inquiries Act 2005, a requirement was made that Mr Alex Owens (formerly a senior investigator employed by the Information Commissioner) produce the documents which were in his custody, which reflected spreadsheets of the materials seized from the private detective, Steven Whittamore, during the course of Operation Motorman and which were contained on a USB stick. The Information Commissioner has not raised any concerns that the Inquiry should have copies of those documents and in particular, has not suggested that Section 59 of the Data Protection Act 1998 should prevent the Inquiry from seeing and analysing the material.
2. The relevance of these documents is to assist in the identification of the extent to which Operation Motorman generated material from which it could be inferred that journalists had procured breaches of Section 55 of the Data Protection Act by seeking personal data from data controllers responsible for holding it. By way of example, that might concern information from the DVLA in relation to vehicle registration marks and from British Telecom or similar telecommunications companies in relation to telephone numbers and friends and family numbers. It does not perhaps involve, as many inquiries did, investigation of the location of particular addresses.
3. The significance of this evidence, for the purposes of the Inquiry, is that it does provide some material which goes to the custom, practices and ethics of the press; albeit, as Mr Browne has forcefully argued, it is now historical in nature. Furthermore, given the assurances provided both by Mr Thomas, the Information Commissioner at the relevant time, and Mr Graham, his successor, there is no basis for suggesting that this conduct has been repeated in that there have been no such complaints in the years since Operation Motorman reported.
4. In my judgment, it is clearly important that the Inquiry take an overall view of this material. I am anxious, however, that it does not dominate the work of the Inquiry and that it does not lead to the identification of those who were targeted, for whatever reason and whether lawfully or unlawfully, which include a large number of persons who, for one reason or another, are in the public eye. In the circumstances, I have concluded that it is appropriate that the core participants see this material, in order that they can make an assessment of it and ultimately make submissions as to its relevance to my terms of reference.

5. In the main, the spreadsheets have been prepared by reference to differently coloured books and, although certain of the spreadsheets cross titles, argument has been addressed to me that it is sufficient if I restrict disclosure to those books that affect individual titles. It has also been submitted that it should be possible to extract the data from these books, so that only information concerned with individual titles is disclosed to that title. I am very conscious, however, that in a careful exercise undertaken by Ms Hartley on behalf of Associated Newspapers Limited, she received various documents which were different from each other and not consistent and I am determined that there should be no replication of that problem. To that end, I have requested the Information Commissioner to produce the original books: that is being done.
6. It is important that I record in this judgment the circumstances upon which I am prepared to give access to this material. It may only be circulated to core participants and shown to those who have signed the confidentiality undertaking that I required of all core participants at the commencement of this Inquiry. In addition, I impose a number of additional restrictions which will form the basis of undertakings as follows:
  - i) The material will be provided on individual USB sticks which shall not be copied. Although the material has to be downloaded onto a computer to be read, it shall not be saved to the hard drive. When each session using the material has been concluded it shall be deleted. For the avoidance of doubt, I am not ruling that different members of the same team cannot access the document at the same time (loading the information onto individual computers concurrently): I am, however, requiring that it is only kept saved on the stick so that when any particular work session has been concluded, it is deleted (whether or not some trace remains which could be accessed by an IT expert).
  - ii) At the conclusion of the Inquiry, the USB sticks shall be returned; in the meantime, each core participant shall to keep the stick securely, so there is no risk of accidental dissemination of the information therein contained.
  - iii) This disclosure is being provided solely for the purposes of the Inquiry. The information contained within the material may not be used for any other purpose whatsoever.
7. Revising this *ex tempore* ruling, although implicit, I ought perhaps to make it explicit that notes can be taken from the material, but private data in the form of telephone numbers, addresses or vehicle registration marks should not be copied and neither should names be noted beyond the extent required for the purposes of the Inquiry. If any has been copied, those details should be destroyed: there is no reason why any core participant should retain any of the data that is now disclosed (save to such extent as it relates personally to that core participant). I also make it clear that I understand that the Metropolitan Police have been provided with copies of these documents by the Information Commissioner for the purposes of their inquiries. To the extent that they have material which forms part of the disclosure which I am now providing, the

police are not bound by paragraphs 6(i) and (iii) of the undertakings that I have sought.

8. Subject to these undertakings that all have offered and are prepared to give, I have come to the conclusion that it is not appropriate to restrict the dissemination of the documents so as to restrict information about individual titles to those titles. By way of explanation, I consider that it is unrealistic and unhelpful not to provide the work sheets that cross titles and I also consider that it is technically complex and time consuming to seek to extract from the individual spreadsheets only those entries that are relevant to the Inquiry. After all, there is force in the argument, from core participants who are not identified in the Whittamore Excel spreadsheets, that they will want to make submissions about the overall impact of this evidence; and if they wish to make submissions, I see no reason why each of the titles that is identified should not be able to make submissions as to the overall impact. In those circumstances, although I well understand why there is value in restricting this data, I have come to the conclusion that it is not realistic to do so and I shall provide USB sticks that contain all the data with which the Inquiry has been provided.

2 December 2011