



Inquest into the death of Alexander Perepilichnyy

Coroner: His Honour Judge Nicholas Hilliard QC

RULING ON APPLICATIONS BY BUZZFEED AND THE BBC

Introduction

1. This is my ruling in respect of two applications by the media for the release of material referred to during the inquest hearings.
2. The first application is by BuzzFeed, an international media organisation, supported by Hermitage Capital Management, one of the Interested Persons in this inquest, for copies of the following documents:
 - (1) Surrey Police Gold Group Minutes, dated 10th December 2012;
 - (2) Two Client Information Profile (CIP) reports by EFG Private Bank and a ‘due diligence review’ by Proximal Consulting;
 - (3) Emails dated 4th and 31st July 2012, relating to Mr Perepilichnyy’s application for life insurance;
 - (4) The witness statements of Mrs Perepilichnaya; and
 - (5) Reports dated November 2012, produced by Surrey Police’s Family Liaison Officers.
3. The second application is by the BBC in a letter from Mr Jeremy Britton, Courts Producer, for the release of the recording of a telephone conversation on 21st June 2012

in which Mr Perepilichnyy discussed an application for life insurance with an insurance broker from Reassured Ltd. This was played in open court on 9th June 2017.

4. In determining the first application, I have been assisted by the submissions made by counsel representing BuzzFeed, counsel to the inquest, and counsel for Hermitage and two other Interested Persons, the Chief Constable of Surrey Police and Tatiana Perepilichnaya, the widow of Mr Perepilichnyy.

The legal principles

5. Regulation 27(2) of the Coroners (Investigations) Regulations 2013 states that:

The coroner may provide any document or copy of any document to any person who in the opinion of the coroner is a proper person to have possession of it.

6. The power afforded by this regulation is discretionary. However, as recognised in the Chief Coroner’s Guidance No. 25, ‘Coroners and the Media’, ‘members of the media ... should normally be expected to be considered proper persons for these purposes’ (§29). Additionally, the principle of open justice creates a rebuttable presumption in favour of providing the media with access to material referred to in an inquest (§§41-45).
7. The importance of the open justice principle, and its application to coroners’ courts, have been recently restated by the Court of Appeal in *R (T) v West Yorkshire Senior Coroner* [2018] 2 WLR 211:

56 Open justice is the fundamental principle in respect of all proceedings before any court, including coroners' courts. The principle has been expressed in numerous cases, including *Scott v Scott* [1913] AC 417 (see the judgments of Viscount Haldane LC at pp 437–439 and Lord Shaw of Dunfermline at pp 476–478) and *Attorney General v Leveller Magazine Ltd* [1979] AC 440 where Lord Diplock summarised the principle at pp 449–450:

“As a general rule the English system of administering justice does require that it be done in public: *Scott v Scott* [1913] AC 417. If the way that courts behave cannot be hidden from the public ear and eye this provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice.”

57 This principle applies to coroners' courts: see *R (A) v Inner South London Coroner* [2005] UKHRR 44 at para 20. It is further embodied in rule 17 of the Coroners Rules 1984 (now rule 11 of the Coroners (Inquests) Rules 2013).

8. In *R (Guardian News & Media Ltd) v City of Westminster Magistrates' Court* [2013] QB 618, Toulson LJ (as he then was) made it clear that where the media have a serious journalistic purpose in seeking access to documents, 'Unless some strong contrary argument can be made out, the courts should assist rather than impede such an exercise' (§§76-77). He went on to explain how the court should approach its task (§85):

... I do not think that it is sensible or practical to look for a standard formula for determining how strong the grounds of opposition need to be in order to outweigh the merits of the application. The court has to carry out a proportionality exercise which will be fact-specific. Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the material in advancing that purpose and, conversely, any risk of harm which access to the documents may cause to the legitimate interests of others.

9. In his judgment, Toulson LJ does not seek to limit the types of legitimate interests that may potentially bear upon the balancing exercise he describes. The Chief Coroner, in his Guidance, lists seven such interests (§48). But that list is not exhaustive, and in my view, provided that the interest in question is a legitimate one, it is open to the court to evaluate it when reaching its decision. Toulson LJ also warns the court to be cautious about making editorial judgments about the adequacy of the material already available to the media (§82).
10. However, it is also important to bear in mind that the purpose of media reporting of an inquest is to facilitate public understanding of the coronial investigation into how the deceased died and, in some cases, to allay public suspicions about that person's death. Such purposes will not ordinarily be furthered by the release of information or documents that are irrelevant to the investigation. It follows that a coroner's decision will not always simply be a binary one, i.e. whether or not to release a document in its entirety. Instead, there may be circumstances where the balance between the principle of open justice and the legitimate interests of others does not justify the disclosure of a document in full, but rather favours disclosure of only a part of a document, or of a part

or the whole of a document, but in redacted form. I am fortified in this view by the practice of other high-profile inquests, for example the Coroner's Inquests into the London Bombings of 7 July 2005.¹

The application by BuzzFeed

(1) The Gold Group Minutes dated 10th December 2012

11. The Gold Group Minutes are the formal records of the meetings of the senior Surrey Police officers involved with Operation Daphne, the investigation into Mr Perepilichnyy's death. During the inquest, counsel for Hermitage Capital Management questioned Superintendent Ian Pollard, the senior investigating officer (SIO), about a comment by Assistant Chief Constable Olivia Pinkney recorded in the Minutes dated 10th December 2012, under the heading 'National and Political Context', that 'Ambient interest remains' in the ongoing police inquiry.² Further, though for these purposes less significant, references were made to the Minutes during witness examination by counsel for Legal & General.³
12. BuzzFeed request that I should release not simply the two pages of the Gold Group Minutes that place Superintendent Pollard's evidence in context, but the whole of the Minutes, which run to approximately 30 pages. They draw an analogy with the partial disclosure by a litigant of a legally privileged document during open proceedings in the civil courts, where such disclosure may give rise to an entitlement to disclosure of the whole document. They note, correctly, the Chief Constable has not served a public interest immunity certificate in support of his position that the remainder of the Minutes should not be disclosed.
13. BuzzFeed also argue that disclosure of a whole document is a pragmatic course to take, as it minimises the need for satellite argument and litigation. In doing so, they accept that the relevance of a document to the inquest may be a factor. However, they say that relevance should only militate in favour of non-disclosure in circumstances where an application would be refused under rule 15 of the Coroners (Inquests) Rules 2013 if

¹ The Inquests' documentary archive may be found at:
<http://webarchive.nationalarchives.gov.uk/20120216072441/http://7julyinquests.independent.gov.uk/evidence/index.htm>

² 13th June 2017 [6/188/19 to 9/190/12].

³ Specifically, the questioning of Superintendent Pollard on 13th June 2017 [6/9/3 to 6/10/23ff] and Detective Sergeant Michael Seear on 7th June 2017 [3/156/18 to 3/157/12].

made by an Interested Person. They argue that as the entire Minutes have been disclosed to the Interested Persons, without objection by Surrey Police on the grounds of irrelevance, then they should also be given the entire document.

14. In support of BuzzFeed's application, Hermitage Capital Management make the point that the entirety of the Minutes should be disclosed so that the particular passages referred to during the oral examination of Superintendent Pollard may be seen in their proper context. Without such disclosure, they say, it will not be possible to understand how the evidence all fits together.
15. The Chief Constable accepts that the two pages of the Gold Group Minutes that are relevant to Superintendent Pollard's evidence may be released to the media in a form that redacts irrelevant information such as the names of junior police officers. However, he advances two counter-arguments against the disclosure of the full document. First, he submits that the Minutes are wholly irrelevant to the statutory purpose of the inquest, even the extracts that have been referred to during the oral hearings, which do not bear on how Mr Perepilichnyy died, but rather concern national and political interest in subsequent police investigations. Second, he argues that there is a substantial public interest in maintaining reasonable confidentiality in such Gold Group meetings and encouraging the participants in those meetings to speak freely.
16. In my judgment, the proper course is for BuzzFeed to be provided with the two pages of the Gold Group Minutes that facilitate the media's, and thereby the public's, understanding of the evidence given by Superintendent Pollard. That portion of his evidence, it may be said, does not significantly advance my investigation into how Mr Perepilichnyy died. Nevertheless it is not wholly irrelevant and so it is right, in my view, that the associated extracts of the Minutes be released, cf. the procedure adopted by the Coroner in the London Bombings Inquests to which I have referred above.
17. However, I decline to release the remaining pages of the Minutes. At this stage of the proceedings, it is clear that those pages do not contain any relevant information or evidence. Their disclosure is not required to facilitate understanding of Superintendent's Pollard's evidence. The fact that they have been provided in redacted form to the Interested Persons does not justify their disclosure to the media. Nor does the fact that partial disclosure has been provided give rise to an entitlement to full disclosure.

Inquests are inquisitorial, not adversarial, and it is for me, as Coroner, to determine which documents are relevant to the investigation and to the public understanding of that investigation; and which documents should therefore be disclosed, released, or withheld, wholly or in part.

18. Over the course of the last two years, for practical reasons (including the need to avoid multiple applications for disclosure) and in order to facilitate participation in the inquest, I and my predecessor, the Senior Coroner for Surrey, have disclosed a substantial volume of documentary material to the Interested Persons. Many of those documents have proved to be relevant to the investigation into Mr Perepilichnyy's death. But many of them, wholly or in part, have not. In any event, all of the material has been subject to the imposition of a legal undertaking that, in summary, obliges the recipients to keep the material they have received confidential pending its use in court or a formal decision by me releasing them from their undertaking. It follows that the fact that the Gold Group minutes dated 10th December 2012 were disclosed in their entirety to the Interested Persons does not give rise to an inference that (1) all of the information contained in the minutes is relevant, or (2) that that information is no longer confidential. On the contrary, most of the information in the minutes is irrelevant and some, if not all, of it continues to remain subject to the confidentiality undertaking.
19. Given my decision that release of the minutes should be restricted on the grounds of relevance, it is not necessary for me to determine the second limb of the Chief Constable's objections to disclosure, namely that there is a public interest in preserving their confidentiality and that that interest outweighs the public interest in open justice. However, were I to do so, I would have been mindful of BuzzFeed's submission that the Chief Constable has not served a public interest immunity certificate, or indeed any form of evidence from a senior police officer, in support of his position. That stance contrasts with the position taken by the Secretary of State for the Home Department who served a full certificate in support of her application to the High Court to withhold sensitive material from the disclosure into the inquest.⁴
20. In my view, in light of Toulson LJ's dicta in the *Guardian* case, the absence of strong supporting evidence would have militated strongly in favour of the release of the full minutes to the media if they had been relevant or if their disclosure was necessary for

⁴ *Secretary of State for the Home Department v Surrey Senior Coroner* [2017] 4 WLR 191.

understanding the evidence given at the public hearing. It is for this latter reason that I am not prepared to accede to the Chief Constable's request to redact the names of police officers and other persons identified within the two pages of the Minutes that are now to be released. The names and status of such public officials do not ordinarily attract confidentiality during the course of an inquest.

(2) EFG Private Bank CIP reports and Proximal Consulting review

21. The CIP reports and Proximal review were referred to extensively during the inquest, in particular during the oral evidence of Elizabeth Kay, formerly Mr Perepilichnyy's client relationship officer with EFG Private Bank, on 7th June 2017. BuzzFeed now seeks copies of those documents in a form that is unredacted save to the extent necessary to protect the names of confidential sources. However, Mrs Perepilichnaya objects to this course, arguing that the documents contain sensitive financial information and should be withheld from disclosure to the media in their entirety or only released in redacted form.
22. In my view, applying the legal principles identified above, I am content for the pages of the reports and the review that were the subject of witness evidence during the hearings to be disclosed. However, I not prepared to release full copies of those documents, which are not required for the purpose of facilitating public understanding of the evidence given at the inquest. Further, all of the pages that are to be disclosed should be redacted to remove the sources of confidential information and the names of companies owned or managed by Mr Perepilichnyy, which relate to his and his family's private life and have not been referred to openly during the hearings. That information is irrelevant to the investigation of Mr Perepilichnyy's death and to the public understanding of that investigation. In those circumstances, the public interest in their disclosure does not outweigh the countervailing interests of those other persons.

(3) Correspondence dated 4th and 31st July 2012

23. These documents were referred to during Mrs Kay's oral evidence on 7th June 2017. No objection has been made to their disclosure, which I therefore order subject to any redactions that are necessary to remove sensitive personal information.

(4) Witnesses statements of Mrs Perepilichnaya

24. Mrs Perepilichnaya's witness statements were also referred to, and relied on by her, during her oral evidence on 5th June 2017. Again, no objection has been made to their disclosure, which I therefore order subject to any redactions that are necessary to remove sensitive personal information.

(5) Surrey Police's Family Liaison Officers' Reports dated November 2012

25. Surrey Police's Family Liaison Officers (FLOs) met Mrs Perepilichnaya on several occasions during the course of November 2012. The computerised notes of their meetings were referred to repeatedly during the inquest hearings, in particular during the oral evidence of Mrs Perepilichnaya on 5th June 2017 and Detective Sergeant Seema Taylor, one of the FLOs, on 20th June 2017. BuzzFeed seek disclosure, in full, of all of the FLO reports that have been put to witnesses, subject to redactions to remove some specific sensitive information.
26. Surrey Police resist this application, on the basis that such disclosure will damage the public interest by making it less likely that other families would cooperate with police FLOs in the future. They emphasise the importance of the role that FLOs play during police investigations, both as a link between the police and families and as a means of collecting information. They also object on the grounds that the contents of the specific FLO reports relied on during the inquest are, for the most part, irrelevant.
27. Mrs Perepilichnaya also resists BuzzFeed's application, on the basis that her conversations with the FLOs took place shortly after her husband's untimely death and in circumstances where she had a legitimate expectation that the resulting records of their discussions would remain confidential. She remains acutely and understandably sensitive to any unwarranted disclosure of personal information about her family and to media reporting that, from her perspective, has intruded, inaccurately and speculatively, on their private life. In the alternative, she argues that the FLO reports should be redacted to remove references to matters of particular sensitivity to her.
28. Given the extensive references to the specific FLO reports during the course of the public hearings, it is difficult to see how the non-disclosure of those documents would now prevent or otherwise significantly reduce the risk that Surrey Police identify.

Likewise, although Mrs Perepilichnaya may legitimately have expected that her conversations with the FLOs would remain confidential, any such confidentiality has been necessarily lost as a result of the disclosure and public use of the resulting reports, which are relevant to the investigation into Mr Perepilichnyy's death, during the inquest hearings.

29. In my view, again applying the principles that I have identified above and consistent with my approach to the other documents, I am prepared to release copies of the pages of the FLO reports that were referred to during the oral evidence at the inquest. Such a course will facilitate public understanding of the evidence given at the inquest. I am not prepared to accede to Surrey Police's request that I should remove the names of any police officers from those documents, other than those who have already been publicly named during the hearings. As I indicated in the context of the Gold Group minutes above, those persons are public officials and their names will not ordinarily be attract a claim of confidentiality. However, in line with my general policy of redacting irrelevant sensitive personal information, I am persuaded that it is appropriate to redact the reports to remove the specific information identified by Mrs Perepilichnaya through her legal advisers.

The recording of the telephone conversation on 21st June 2012

30. This recording was played in full in open court during the public hearing on 9th June 2017. Both the public and the media were free to attend that hearing. A full transcription of the recording is also included within the official transcript of the day's proceedings which, like all of the transcripts from the hearings, is available on the Chief Coroner's website.
31. The BBC submit that, in order to facilitate accurate reporting of the hearing on 9th June 2017, I should also release the audio recording itself. In considering this request, I must necessarily balance the rights of the BBC and media with those of Mrs Perepilichnaya and her family. As I have indicated, the media and the public already have access to the full transcript of the recording. Listening to the original audio recording will not improve accuracy of the reporting of it. Nor will it add to the public's understanding – either of what was being said by Mr Perepilichnyy and the insurance broker, or of the significance of that conversation in context of my investigation.

32. I have heard the evidence in this inquest over a long period and am now familiar with the very considerable strain and stress which the impact of the evidence and the reporting of it can cause to Mrs Perepilichnaya and her children. It has proved to be very intrusive on occasions and distressing for them. I regard myself as well-placed to assess both the relative importance of the audio recording and the likely effect upon Mrs Perepilichnaya and her family of its release. In these very particular circumstances, I take the view that the balancing exercise favours the non-release of the recording.

HHJ Nicholas Hilliard QC

27th July 2018