IN THE CORONERS COURT
AT CHRISTCHURCH
(IN-CHAMBERS)

CSU-2019-CCH-000165 to
CSU-2019-CCH 000214;
CSU-2019-CCH-000326

I TE KŌTI KAITIROTIRO MATEWHAWHATI
KI TE ŌTAUTAHI
[I TE TARI]

UNDER **THE CORONERS ACT 2006**

AND

IN THE MATTER OF **Inquiries into the deaths of 51 people in relation to the 15 March 2019 Christchurch Masjid Attacks**

Date of Order: 8 March 2022

INTERIM NON-PUBLICATION ORDER No. 1
PURSUANT TO SECTION 74 CORONERS ACT 2006

---

1. **There are interim orders prohibiting publication of the following (subject to the exceptions set out at 2. below) under section 74 of the Coroners Act 2006:**

    a. **all evidence, including photographs/CCTV images and communications transcripts, which detail the medical and emergency response to the 15 March 2019 masjid attacks or the names and/or identifying particulars of the people involved;**

    b. **all evidence in the Police investigation source materials category of 'online investigation bundle documents';**

    c. **all evidence which details personal information of any of the deceased, the injured and other witnesses, the medical and emergency responders, Mr Tarrant, or his family or friends/associates;**

    d. **the names and/or identifying particulars of Mr Tarrant's family and friends/associates interviewed as part of the Police investigation.**

2. **The orders at 1. above do not apply to prohibit the publication of some or all of the content of the following publicly available materials:**

    a. **The 'General Evidential Overview'**

    b. **First responder timeline**

    c. **The 'Operation Deans – The first 48 hours, formal Police debrief'**

    d. **Dr Hick's 'Analysis of the Medical Response to the Mass Homicide of 15 March 2019'**

Information disclosure background

[1] An inquiry into each of the 51 deaths related to the Christchurch Masjid attacks on 15 March 2019 was opened by Judge Marshall in 2021 (collectively, the Inquiry). The Inquiry follows an earlier successful criminal prosecution of Mr Tarrant[1] and the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 which publicly reported its findings in late 2020.[2]

[2] The Inquiry is currently at the point of determining the issues that will be taken forward into the substantive inquiry phase, which may involve an inquest hearing. As part of determining scope, written submissions have been received from Interested Parties[3] and a scope hearing was convened between 22-24 February 2022.

[3] To date some information has been made available to Interested Parties and some information has been made publicly available either on the dedicated Inquiry website or upon request.[4] Police have also made their internal review report

[1] Mr Tarrant pled guilty to and was convicted and sentenced on 51 charges of murder, 40 charges of attempted murder, and one charge of engaging in a terrorist act.

[2] The Royal Commission of Inquiry's report *Ko tō tātou kāinga tēnei* was presented to the Governor-General on 26 November 2020 and subsequently tabled in Parliament on 8 December 2020 at which time it became publicly available. The report is available at https://christchurchattack.royalcommission.nz/.

[3] The term 'Interested party' is defined in s 9 of the Coroners Act 2006. To date, there are around 100 people/organisations who have been afforded status as an Interested Party.

[4] See https://coronialservices.justice.govt.nz/masjid-attacks-coronial-process/relevant-documents. A 'General Evidential Overview' report is publicly available online which sets out the key points and timeline of events as it relates to the Police and St John's response. In addition, a 'Victim Evidential Overview' specific to each of the 51 people who died has been provided to the deceased person's family but has not been made publicly available. The expert report of Dr Hick "Analysis of the

"Operation Deans – The first 48 hours, formal Police debrief" publicly available.[5]

[4] I indicated at the conclusion of the scope hearing that it was my intention to revisit and address the information disclosure process as a matter of priority. The Minute on General Information Disclosure No. 1 (General Information Disclosure Minute No. 1) of the same date as this order provides for disclosure of a range of documents that have been provided to the Inquiry, all of which relate to an issue proposed to be in-scope, an issue that may be considered to naturally align with an in-scope issue, or an issue for which submissions have been advanced that the issue ought to be in-scope.[6]

[5] Given the nature and extent of disclosure that is now available to Interested Parties, it is necessary to consider whether any non-publication order under s 74 of the Coroners Act 2006 (the Act) is indicated.

Approach to section 74 orders

[6] The purpose of the Act is well understood to be two-fold: to help reduce the chances of preventable deaths and to promote justice. These purposes are met through inquisitorial investigations into the cause and circumstances of reportable deaths, and the making of recommendations or comments that, if drawn to public attention, may reduce the chances of future deaths in similar circumstances.

[7] The Act also provides, by way of s 74, an express but limited power for a Coroner to prohibit the making public of: (i) any evidence given or submissions made at or for the purposes of any part of the proceedings of an inquiry, and (ii) the name, and any name or particulars likely to lead to the identification, of any witness or witnesses, if satisfied it is in the interests of justice, decency, public order or personal privacy to do so.

[8] The High Court in *B v Coroners Court at Auckland* observed that underlying the statutory purpose of coronial inquiries, and the Act as a whole, is the importance

---

Medical Response to the Mass Homicide of 15 March 2019" was initially made publicly available online in November 2021 by Judge Marshall but is now only available upon request. A 'First Responder timeline' was sent to Interested Parties and is also available to the public on request.

[5] https://www.police.govt.nz/about-us/publication/formal-police-debrief-operation-deans-first-48-hours.

[6] As categorised in Appendix A to Judge Marshall's Minute re Scope of Inquiry dated 28 October 2021.

of transparency and open justice.[7] The exercise of such a statutory power to prohibit publication, including s 74, must start with the fundamental principle of open justice and the right of the media to report open judicial proceedings fairly and accurately as 'surrogates of the public'.[8] The principle of open justice is well established and has been reiterated many times in case law. The principle was eloquently stated by Fisher J in *M v Police* as follows:[9]

> In general, the healthy winds of publicity should blow through the workings of the Courts. The public should know what is going on in their public institutions. It is important that justice be seen to be done.

[9] The High Court in *Matenga v Coroners Court at Dunedin* emphasised the importance of the coronial system being seen to work in public and exceptional nature of a s 74 order, Kós J stating:[10]

> I note that it is an essential feature of the coroner's inquest process that it work in public, so that the community is fully informed of circumstances that led up to and were causative of the death being inquired into. An order under section 74 should be exceptional.

[10] In *Fardell v Attorney-General* Heath J observed that the approach to suppression issues in the Coroners Court, while informed by the principles of open justice and freedom to receive and impart information guaranteed under s 14 of the New Zealand Bill of Rights Act 1990, do not solely turn on those considerations. The interests of justice generally and the need to preserve the reasonable privacy interests of the family of the deceased are among other matters to be considered.

[11] In approaching a s 74 determination, Whata J in *Gravatt v Auckland Coroner's Court*[11] set out the following three-step[12] threshold inquiry:

---

[7] *B v Coroners Court at Auckland* [2020] NZHC 2278 at [43].

[8] *R v Liddell* [1995] 1 NZLR 538 (CA) at 546. Although concerned with name suppression in a criminal context this statement of principles applies equally to the coronial context.

[9] *M v Police* (1991) 8 CRNZ 14 (HC).

[10] *Matenga v Coroners Court at Dunedin* [2014] NZHC 2994, [2015] NZAR 289 at [8].

[11] *Gravatt v Auckland Coroner's Court* [2013] NZHC 390, [2013] NZAR 345, at [43].

[12] In the later decision of *Stuff Ltd v Coroners' Court at Palmerston North* [2018] NZHC 2556, [2019] 3 NZLR 243 Grice J said that there are 'two limbs' to be addressed:

> [8] In line with the decision in *Gravatt*, the power in s 74 must be interpreted and exercised as consistently as possible with the right to freedom of expression. As such, two limbs must be addressed before a prohibition order is granted:
>
> (a) Whether the Coroner is satisfied the prohibition is in the interests of one of the specific grounds set out in s 74 of the Coroners Act 2006, and
>
> (b) Whether the prohibition of publication on that ground is a demonstrably justified limit on open justice and the right to impart information, having balanced the competing interests

> In my view, therefore, the proper observance of freedom of expression (and open justice) demands a three-step threshold inquiry. First, there must be express statutory authority to suppress. Second the authority must be, where possible, interpreted and exercised consistently with freedom of expression. And third, even where those two qualifying conditions exist, any discretionary infringement of that freedom must be justified. [footnote omitted]

[12] It is clear that by virtue of s 74, the Act provides an express statutory authority to suppress, thereby satisfying the first step. As to the second and third steps, the Coroner must be satisfied of the prerequisite conditions before a power to infringe the fundamental right of freedom of speech can be authorised: that prohibition is in the interests of justice, decency, public order or personal privacy, either individually or in combination. These are not statutorily defined. In *Gravatt* Whata J commented that, for a non-publication order to be justified, one or more of those grounds must be made out and represent an authorised and justified limitation of a fundamental right, stating:[13]

> I can see nothing in either the language used in s 74, or the scheme or purpose of the Act that would obviate the duty on the Coroner to observe the affirmed right to impart information and/or the principle of open justice, unless suppression is demonstrably justified in terms of the listed grounds. Nor is it sufficient to simply identify a basis for suppression under s 74. It must represent an authorised and justified limitation of a fundamental right.

[13] Whether prohibition is a demonstrably justified limitation on the right to open justice and freedom of expression, requires the relevant factors for and against to be assessed and balanced. As Whata J in *Gravatt* observed:[14]

> … suppression is not a matter that can be approached in a broad brush way. The relevant factors weighing for and against publication must be assessed on a fine grained basis, so that there is surety that the statutory grounds for suppression are present, and that the principles applicable have been applied appropriately and the proper balancing exercise undertaken.

[14] In making any prohibition orders it is incumbent on the Coroner to articulate clear and specific reasons for the orders which demonstrate why he or she is persuaded that the principles of open justice and freedom of expression are outweighed.[15]

---

[13] *Gravatt v Auckland Coroner's Court*, above n 12, at [58].

[14] At [82].

[15] *Stuff Ltd v Coroners' Court at Palmerston North*, above n 13, at [10], and *Gravatt v Auckland Coroner's Court*, above n 12, at [82].

The relevance of the Royal Commission of Inquiry's s 15 Orders to disclosure in the Coronial Inquiry

[15] In respect of its permanent orders prohibiting public access and publication made under s 15 of the Inquiries Act 2013, the Royal Commission's Minute 4[16] makes clear that "independently existing documents"[17] do not lose their status as official information by reason of it being provided in evidence to the Royal Commission.[18] While recognising the s 15 orders made were broad the Royal Commission did not consider there was much lost in the effect of those orders where a document provided in evidence to it was an independently existing document. That is, the s 15 orders restricting public access and publication apply only to the copy of the document held in the Royal Commission's records at the conclusion of its inquiry (referred to as "inquiry held documents") and not to the independently existing copy held by the public sector agency who supplied it in evidence. The Royal Commission observed:

> … the key question will be whether the information requested was brought into existence independently, and not for the purposes, of the Royal Commission.[19]

[16] In providing a relevant example of this position, the Royal Commission's Minute 4 records at [59]:

> We accept that wide-ranging non-publication orders should not lightly be made. We have taken into account the matters listed in section 15(2) of the Inquiries Act, and to section 14 of the New Zealand Bill of Rights Act. But not much will be lost by the orders we intend to make being broad. This is for three reasons.
>
> a) First, to the very large extent to which the evidence provided to us consisted of independently existing documents, the orders we make apply only to the documents we received and not the copies of those documents held by Public sector agencies. For example, the extensive files of New Zealand Police which cover much of the same ground as us in relation to, for instance, the firearms licensing system and the Bruce Rifle Club allegations. …

---

[16] See Minute 4 of the Royal Commission of Inquiry available at https://christchurchattack.royalcommission.nz/about-the-inquiry/minutes/minute-4/.
[17] Supporting documents held by the Public sector agency which were produced in evidence to the inquiry but which were brought into existence independently, and not for the purposes, of the inquiry.
[18] At [45].
[19] At [72].

[17] As set out in the General Information Disclosure Minute No. 1, much of the source material now available for disclosure to Interested Parties is drawn from Police documents prepared for the criminal investigation independent of the Royal Commission of Inquiry process. While some or all of those same documents may have been provided in Police evidence to the Royal Commission of Inquiry, that has no bearing on my jurisdiction to require the information held by Police to be made available to this Inquiry.

[18] Notwithstanding that, the source materials provided by Police include, at least for now, some redactions of names and identifying particulars of people which Police consider provides for a consistent approach with the Royal Commission's s 15 orders.

Is prohibition on publication in the interests of any of the s 74 grounds?

[19] The nature of the information now available for disclosure to Interested Parties, as set out in detail in the General Information Disclosure Minute No. 1, is wide ranging and variously sourced from the Police investigation, the CDHB, St John and Dr Hick, a medical expert engaged to provide expert opinion for the purposes of the Inquiry. Once the issues for the Inquiry are settled and the Inquiry moves into the substantive inquiry additional relevant disclosure will be identified and made available to Interested Parties.

[20] As noted above, the s 74 grounds of interests of justice, decency, public order and personal privacy are not defined in the Act. Whether prohibition of publication of the disclosure that is now available, and will become available in due course, is in the interests of any of those grounds requires consideration of how each ground might be interpreted and engaged in this context, and the balancing of factors in favour and against publication given the nature of the relevant information being disclosed.

Interests of justice

[21] In *Gravatt*, Whata J considered the meaning of 'interests of justice' in s 74. He stated:[20]

> I do not accept the plaintiff's contention that the reference to 'interests of justice' is solely concerned with the 'administration of justice' in the narrow sense of protecting fair trial rights. Plainly fair trials are one

[20] *Gravatt v Auckland Coroner's Court*, above n 12, at [64].

> very important aspect of the 'interests of justice'. Nevertheless justice by definition encompasses 'the administration of law or equity'. In modern parlance, this includes judicial vindication of all justiciable rights, interests and legitimate expectations.

[22] The High Court has emphasised that a holistic approach to determining the 'interests of justice' should be adopted. Of relevance to the present situation is that the interests of justice may be triggered where there are allegations which have not been the subject of a full hearing – for example, where proceedings have been discontinued; or where unfair publicity might flow from procedural unfairness.[21]

[23] I am conscious that the Inquiry is still in its very early stages and is at a point where the issues for the inquiry have yet to be finally determined nor has a decision has been made as to whether an inquest hearing into any of those issues will be necessary as part of the Inquiry.

[24] Limited information was available to families of the deceased in the course of the criminal proceedings and notwithstanding its extensive public report, the Royal Commission of Inquiry undertook much of its work in private. Given that history, the information disclosure now available to Interested Parties, and that which will follow, will be the first substantive opportunity they will have had to consider source information from the Police investigation and more detailed information about the response efforts on the day.

[25] In this context, and notwithstanding the findings of the Royal Commission of Inquiry, it cannot yet be known whether the actions or inactions of any person or agency may be called into question; that potential remains extant. Unless or until actions or inactions are fully explored and potentially tested in an inquest hearing forum, and the natural justice process required in respect of any proposed adverse comment under s 57A of the Act is completed, there would seem be a real risk of unfair prejudice and irreversible damage to the reputations of people and/or agencies should untested allegations be published. As I made clear in my Minute of 2 December 2021, I am concerned to ensure that the issues for the Inquiry, and potentially for examination in an inquest hearing, are not played out in the media ahead of time.[22]

---

[21] At [66]–[67].

[22] Minute of 2 December 2021 at [40].

[26] The information available for disclosure includes details of the response efforts to the events of 15 March 2019 and some of the identities of those undertaking those efforts. In light of the stage of the Inquiry, and at least the potential for allegations to be levelled at those people ahead of an opportunity to fully consider such matters and accord natural justice rights, I consider the interests of justice are engaged with respect to prohibiting, at least on an interim basis, the publication of all materials which detail the medical and emergency response to the 15 March 2019 masjid attacks or the names and/or identifying particulars of the people involved. Given the publicly available information as to the Police and St John's response to the 15 March 2019, the prohibition exempts the publicly available documents referred to in paragraph [3] above which, in my view, is sufficient to meet the public interest at this time.

[27] On balancing the factors weighing in favour of and against publication, in particular the extent of the legitimate public interest in publication, I consider prohibition on publication in this way, and on an interim basis, to be a demonstrably justified limitation on the right to open justice and freedom of expression.

Decency and public order

[28] Whata J in *Gravatt*, the facts of which were concerned with a death in hospital, said that public order means 'an orderly state of affairs in which people can pursue their normal occupations of life'[23] and on the facts of that case considered an efficient and effective health system would be an example of public order or public affairs.[24]

[29] Additional guidance about the definition of 'public order' can be found in the Supreme Court of Victoria decision in *Magee v Delaney*. Having considered various authorities from Australia, New Zealand and the United Kingdom the court took the view that 'maintaining public order' means, in broad terms, giving effect to rights or obligations that facilitate the proper functioning of the rule of law. This is a wide and flexible concept and includes measures for peace and good order, public safety and prevention of disorder and crime.[25]

---

[23] *Gravatt v Auckland Coroner's Court*, above n 12, at [60], *r*eferring to Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at 476.
[24] At [60]
[25] *Magee v Delaney* [2012] VSC 407, (2012) 39 VR 50.

[30] With respect to the decency ground, some guidance may be imported from the criminal jurisdiction and the proscribed offences involving indecency which is to be given its ordinary and objective meaning in penalising conduct that offends against 'a reasonable and recognised standard of decency which … ordinary and reasonable members of the community ought to impose and observe'.[26]

[31] Within the coronial jurisdiction, the notion of decency is more difficult to interpret. However, based on its ordinary meaning, 'decency' could be considered as representing an objective understanding of reasonable and recognised good morals that ordinary members of the community would observe.

[32] The extent to which the online investigation bundle source materials now available to Interested Parties disclose information the publication of which might facilitate the promotion or performance hate crime or other unlawful activities, then publication would, in my view, be contrary to both decency and public order. There is a compelling public interest in minimising the possibility of these materials, and moreover, this Inquiry being used in such a way.

[33] On balancing the factors weighing in favour of and against publication of the online investigation bundle materials that are now available for disclosure, I consider prohibition on publication in this way, and on an interim basis, to be a demonstrably justified limitation on the right to open justice and freedom of expression.

Personal privacy

[34] The personal privacy ground for non-publication of evidence was an expansion of the grounds for non-publication of evidence under the preceding statute. The rationale for its introduction can be found in the Law Commission report:[27]

> The Law Commission acknowledges the importance of the requirement that inquest hearings be in public. Notwithstanding this fact, in some instances we consider that the interests of justice are best served by restricting access to particularly sensitive information. Intensely private information is not disclosed in cases of natural death and so should not be easily accessible in coronial cases. We agree with the Office of the Privacy Commissioner that privacy should be added to the grounds in section 25 for a coroner to prohibit publication of evidence. However, it is important that the power to prohibit publication of evidence is used sparingly and that practices around the country are consistent. We envisage that a

[26] *R v Dunn* [1973] 2 NZLR 481 (CA) at 482–483.
[27] Law Commission *Coroners* Report 62, July 2000, at [403].

> Chief Coroner would develop guidelines to assist coroners to strike an appropriate balance between the interests of the public in accessing information and the rights of individuals to privacy.

[35] In *Gravatt*, Whata J considered it logical to assume that Parliament would seek to maintain consistency with extant privacy law in terms of what is meant by 'personal', 'privacy' and the relationship of those concepts to freedom of speech, open justice and public interest considerations. However, the potential dissemination of any personal information does not itself trigger the power to make an order under s 74. Whata J determined in *Gravatt* that the concept of personal privacy concerns personal facts in respect of which there is a reasonable expectation of privacy. A general claim to privacy will not be sufficient; the more intimate the facts, the more compelling the case will be for limits to be placed on freedom of speech and open justice principles. But even where the facts are particularly intimate, a genuine public interest or concern in those facts may outweigh a strong privacy interest and demand publication.[28] The High Court in *Stuff* confirmed that the focus is on the qualities of the specific information disclosed.[29]

[36] Notwithstanding there are a number of redactions of personal information in the source materials provided to the Inquiry by Police and which are now available for disclosure to Interested Parties, some personal information and identifiable particulars still feature. For example, the materials available for disclosure include personal information and identifying particulars about some of the deceased, individuals involved in the emergency and medical response, Mr Tarrant's private communications and identifying particulars, and the statements Mr Tarrant's family and friends/associates made to Police.

[37] It is of course the case that the Royal Commission of Inquiry's report includes extensive personal details about Mr Tarrant. In submissions to this Court, counsel for Mr Tarrant, Mr Mansfield QC, has asserted that the Royal Commission's report contains errors and that Mr Tarrant's intention is to seek to get those errors corrected. Mr Mansfield QC has also recorded in written submissions that: "[Mr Tarrant] also seeks that his privacy and confidentiality interests be respected, as

---

[28] *Gravatt v Auckland Coroner's Court*, above n 12, at [71]–[72].
[29] *Stuff Ltd v Coroners Court at Palmerston North*, above n 13, from [35].

they would for any individual, and that information disclosures only occur consistently with this".[30]

[38] The question then is not whether there is a public interest in relation to the evidence, names or identifying particulars, but whether the public interest served by having the information in the public domain outweighs the interest(s) weighing against that. The public interest served by publication must also be assessed with reference to the extent of information already in the public domain. As I have noted, significant reports detailing the response efforts have already been made public. The public interest in the identities of those involved in the response, and of Mr Tarrant's family members and friends/associates may be of interest to the public but is not, in my view, sufficient to outweigh their personal privacy at this stage. Given the assertion from Mr Tarrant that the Royal Commission's report contains factual errors, until the nature of those asserted errors are known, it is difficult to assess whether information about Mr Tarrant already in the public domain is potentially erroneous. Publication of Mr Tarrant's personal information as detailed in the documents now available to Interested Parties may serve to compound any such asserted errors.

[39] Given the pervasive nature of personal information over which a reasonable expectation of privacy might be said to be claimed, a granular 'line-by-line' approach to determining what material ought to be prohibited from publication on the grounds of personal privacy is likely to be time-consuming and risk a non-sensical end product which will be of little to no use in informing Interested Parties of matters relevant to the Inquiry.[31] A more pragmatic approach, at least until a claim to reasonable expectations of privacy over relevant parts of the materials can be stated by those whose information is at issue, is to prohibit publication of any materials which detail personal information of any of the deceased, the injured, the witnesses, the medical and emergency responders, Mr Tarrant, or his family or friends/associates.

---

[30] 'Submissions for Mr Tarrant as to Scope of Hearing', dated 11 February 2022, at 1.3.

[31] The police source documents underlying the online investigation materials contain extensive redactions originally applied by Police that reflect a granular approach that may be considered to give rise to that risk. In light of these orders, the extent of those redactions is currently being revisited.

[40] While this is acknowledged to be a relatively broad approach to non-publication, in the circumstances I consider the public interest, on balance, favours prohibition on publication in this way, at least on an interim basis, and that it represents a demonstrably justified limitation on the right to open justice and freedom of expression.

Interim orders to be revisited

[41] Again, at this early stage of the Inquiry, I consider the interim orders outlined above to be necessary on interests of justice, decency, public order and personal privacy grounds and a justified limitation on the right to open justice and freedom of expression. These orders will likely need to be revisited as the Inquiry progresses and further disclosure is made available, and in the event of an inquest.

[42] These interim orders may be revisited at any time prior to that on application by any Interested Party, any person whose personal information is at issue, or by a media organisation.

_____

CORONER B WINDLEY