

POLICE SPIES **OUT**of**LIVES**

Neither confirm nor deny: Neither truth nor justice

A guide to the use of 'NCND' around undercover policing

Introduction

The Metropolitan Police Service (MPS) state they have a 'policy' of 'Neither Confirm Nor Deny' (NCND) in relation to undercover officers. This means that when asked whether one of their officers is an undercover, they reply to the effect of "We can neither confirm nor deny that XXXX was an undercover officer".

NCND is first and foremost a stance adopted by the security and intelligence services whose officials are deployed in intelligence gathering operations. It doesn't have any legal standing. The police's use of it is much more recent, and no evidence has been presented of it as a written MPS policy, despite being ordered to present it by a court. The police have used it as a tactic to delay and maintain secrecy in cases being brought by people affected by relationships with undercover officers. They sought to use NCND to avoid accountability in the Public Inquiry into Undercover Policing, and though were forced to drop it there, they are seeking it through the back door via 'Restriction Orders'.

The Inquiry into Undercover Policing has come about through the hard work of the people affected, activists, and a whistle blower. The police have fought at every turn in court, to avoid having to give any information publically about their secret political policing units. They use NCND as a shield to avoid proper scrutiny of their actions, and to cover up the illegal and immoral activities of political undercover police officers.

Is NCND a real policy?

The police seemed to have adopted the policy of NCND whilst defending a case (known as DIL) brought by eight women sued the MPS over relationships with undercover officers. Previous to this they had openly revealed tactics, and confirmed that people were undercover officers.

In 2002, the Met supported a BBC program called 'True Spies', where undercover officers revealed the groups they infiltrated and significant details of undercover operations. The police were happy to reveal their tactics at this time, as it suited them for PR purposes, whereas when they were later being investigated for serious human rights abuses, they started using NCND to try to cover them up.

When the Undercover Policing Scandal broke, they were willing to confirm in the media, and even in writing that people such as Mark Kennedy and Jim Boyling, were undercover officers. The Commissioner of the Metropolitan police, and their ethical standards unit, the Directorate of Professional Standards, openly confirmed Jim Boyling was an officer.

In May 2012, in the case of DIL the MPS suddenly started to refer to NCND. From then "Neither Confirm Nor Deny" became the standard response to every request for information or compliance with the court proceedings. They started to use "Neither Confirm Nor Deny" to create a wall of silence around the undercover policing scandal.

DIL NCND ruling – a partial victory

In July 2014, Mr Justice Bean ruled in the DIL case that the Met could not use NCND as a blanket response to all the claims pleaded.

He stated ‘There can be no public policing reason to permit the police neither to confirm nor deny whether an illegitimate or arguable illegitimate operational method has been used as a tactic in the past.’ He also said that where officers had been publically confirmed, like Bob Lambert, Mark Kennedy and Jim Boyling, they could not use NCND to avoid admitting they were officers.

The effect of NCND on core participants

Allowing the MPS to use NCND means that people who have been abused by undercover officers cannot get to the truth of what happened to them. This compounds the original injustice.

Helen Steel, who had a relationship with undercover officer John Dines, said “It took me 24 years to get acknowledgment of wrongdoing from the Metropolitan Police and from John Barker, my former partner. Other core participants should not have to wait that long, nor should they have to risk never finding out the truth and being left with permanent doubt about who people really were in their lives.”

Use of NCND in Undercover Policing Inquiry

In a preliminary hearing relating to ‘restriction orders’, the police applied to be able to use their policy of NCND, seeking a ruling that all their evidence would be provided behind closed doors.

Non-police, non-state core participants responded that they did "not accept that NCND is consistently or genuinely applied by the MPS." They contended rather that NCND had been seized on by the MPS as a means through which misconduct by undercover officers has, at worst, been encouraged and, at least, been allowed to go unchecked, resulting in a lack of accountability. They contended that the misuse of NCND should itself be a matter to be examined by the Inquiry and that Pitchford would need to make recommendations in relation to it at the conclusion of the Inquiry.

Pitchfords ruling on NCND (in the Restriction Orders Ruling)

In his ruling, Pitchford was prepared to give some weight to the Police's policy of NCND, but he did allow the blanket application the police were asking for.

He said what matters is "the weight of the underlying public interest in the protection of information from disclosure... rather than the utility of the policy itself." meaning that all public interests need to be taken into account when deciding whether to disclose a piece of information, rather than just accepting a blanket use of NCND. He said that NCND "...does not in all circumstances depend on blanket application for its effectiveness", which the police had submitted as an argument.

The police at that point tacitly dropped their reliance on NCND in relation to the Inquiry, though they continue to rely on it elsewhere, refusing to admit known officers. However, they are still seeking to effect the same restriction on information through other tactics, such as applying for restriction orders.

Disclaimer: This briefing was prepared to the best of our ability by the support group, Police Spies Out of Lives, and if it contains any factual errors we will endeavour to correct them. Please contact us by email, contact@policespiesoutoflives.org.uk or twitter @out_of_lives