

An Coimisiún Imscrúdúcháin
(Nithe Áirithe i dtaobh an Gharda
Síochána agus daoine eile)



Commission of Investigation
(Certain Matters relative to An Garda
Síochána and other persons)

The Hon. Mr. Justice Nial Fennelly
Sole Member

Private and Confidential

Interim Report

November 2015

A request for the revision of the timeframe for submitting a final report
under Section 6(6) of the Commissions of Investigation Act 2004

Third Interim Report of the Commission of Investigation (certain matters relative to an Garda Síochána and other persons).

A request for the revision of the timeframe for submitting a final report under Section 6 (6) of the Commissions of Investigation Act 2004.

1. Introduction

1.1 On March 25th 2014 the Taoiseach, Mr Enda Kenny, announced to the Dáil that the Government had agreed to establish a Commission of Investigation under the Commissions of Investigation Act 2004 (hereinafter referred to as ‘the Act’). The Commission was charged with investigating a number of matters of significant public concern that had recently been brought to the attention of the Government, including:

- the practice of recording of telephone calls, other than 999 emergency calls in certain Garda Stations over a 30 year period,
- the apprehension that telephone recordings to and from Bandon Garda Station might indicate unlawful and improper conduct by Gardaí involved in the investigation into the death of Sophie Toscan Du Plantier in 1996,
- the furnishing to the Minister for Justice of a letter dated 10th March 2014 sent by the former Garda Commissioner, Mr Martin Callinan, to the Secretary General of the Department of Justice and Equality.
- the sequence of events leading up to the retirement of the former Garda Commissioner, Mr Martin Callinan, on the 25th March 2014

1.2 The Order of the Government establishing the Commission is set out in S.I. No. 192 of 2014, Commission of Investigation (Certain Matters relative to An Garda Síochána and other persons) Order 2014. This Statutory Instrument is attached to this Interim Report for ease of reference.

1.3 This Interim Report is submitted to the Taoiseach pursuant to Section 33(3) of the Act, which provides:

If a commission requests that the time frame for submitting its final report be revised under section 6(6), the commission shall submit an interim report to the specified Minister with the request.

1.4 Section 6 (6) of the Act states:

Even though a commission's terms of reference are not amended, the specified Minister may, at the commission's request, revise the time frame for the submission of its final report to the extent consistent with the objective of having the investigation conducted and the report submitted as expeditiously as a proper consideration of the matter referred to the commission permits.

1.5 Under the Order of the Government which established the Commission, the Taoiseach was appointed as the specified Minister pursuant to section 3(3) (b) of the Act.

1.6 Although the Commission was directed to conduct the task assigned to it and to report to the Government no later than the 31st December 2014, it was always the view of the Commission that the scale of the investigation required by the terms of reference would require an extension of time under Section 6 (6). On November 14th 2014, Mr Justice Nial Fennelly submitted a first Interim Report requesting an extension of time until 31st December 2015¹. This Interim Report, (hereinafter referred to as the November 2014 Interim Report) outlined in some detail the work that the Commission had done and also outlined what remained to be done.

¹ [Fennelly Commission Interim Report](#)

- 1.7 By letter dated the 20th November 2014, the Taoiseach, as specified Minister, confirmed his agreement to the extension sought. The Interim Report upon which this request for an extension was based was published by the Taoiseach.
- 1.8 The purpose of this Interim Report is to set out what has been achieved by the Commission since the submission of the November 2014 Interim Report seeking an extension of time, to outline the work that remains to be done with a view to identifying as accurately as possible the time required to complete the task, and accordingly, to seek a further extension of the time frame under Section 6(6) of the Act.

2. Preliminary

- 2.1 On 30th day of April, 2014, the Government appointed the Honourable Mr Justice Nial Fennelly, then of the Supreme Court, as Sole Member of the Commission – hereinafter referred to as ‘The Fennelly Commission’, or ‘the Commission’.
- 2.2 As outlined in the November 2014 Interim Report, the Commission identified three tranches of work:
- (1) To investigate and report on the operation of Garda Síochána telephone recording systems as outlined in Terms of Reference 1(a) to (l).
 - (2) To identify and review all recordings in the possession of An Garda Síochána emanating from the Garda recording system at Bandon Garda Station or otherwise which relate to the Garda investigation into the death of Sophie Toscan du Plantier and to establish whether those recorded phone calls, and any other acts or events in the course of the said Garda investigation, disclose any evidence of unlawful or improper

conduct by members of An Garda Síochána in connection with that investigation - Term of Reference 1 (m).

- (3) To investigate and report on the furnishing to the Minister for Justice of a letter dated 10th March 2014 sent by the former Garda Commissioner, Mr Martin Callinan, to the Secretary General of the Department of Justice and Equality – Term of Reference 1 (n) , and
To investigate and report on the sequence of events leading up to the retirement of the former Garda Commissioner, Mr. Martin Callinan, on the 25th March 2014 - Term of Reference 1 (o).

The Commission prioritised number (3), whilst continuing to investigate all the other matters that came within its remit. By letter dated 31st of July 2014, the Commission informed the Taoiseach that it believed it would be possible to submit an Interim Report on terms of reference 1(n) and 1(o) in advance of the Final Report of the Commission. The Taoiseach, by letter dated October 2014, requested that the Commission submit such an Interim report.

3. Terms of Reference 1(n) and 1(o).

- 3.1 Following the submission of the November 2014 Interim Report, the Commission continued to hear oral evidence from witnesses in relation to both the issues encapsulated by paragraphs 1(n) and 1(o) of its terms of reference.

The final witness in this tranche of work was scheduled for hearing on January 15th 2015.

- 3.2 The Commission commenced to draft its Interim Report in relation to paragraphs 1(n) and 1(o) based on the documentary evidence and oral evidence that had been presented to it. In April 2015, as the drafting process was nearing completion, a document came to the attention of the Commission which required further investigation. This necessitated taking

further oral evidence, requesting and reviewing additional documentation and ultimately, redrafting sections of the Interim Report.

- 3.3 On June 11th 2015, in accordance with Sec 34 of the Act, the Commission circulated either the full draft report or excerpts from it to over 60 persons who were named or capable of being identified in the text. These persons were allowed periods of either three or four weeks, as appropriate, pursuant to s. 34(2) of the Act to make written submissions to the Commission as provided by s. 35 of the Act. Twenty persons made submissions or suggested amendments to the text; these were carefully considered by the Commission and amendments were made in some cases.
- 3.4 As required by s. 35(4) of the Act, written notice of relevant amendments was given to all persons identifiable from the Report who were affected by those amendments. This was done on or around 26th August 2015.
- 3.5 The completed Interim Report on paragraphs 1(n) and 1(o) was submitted to the Taoiseach, as specified Minister in accordance with s. 32 of the Act on 31st August 2015. The Interim Report was hand-delivered in hard copy, together with an electronic version.
- 3.6 The Taoiseach, as specified Minister, published the Interim Report of the Commission on Terms of Reference 1(n) and 1(o) on 1st September 2015.

4. Garda Recording of Non-999 Telephone Calls.

- 4.1 From August 2014 until December 2014, the Commission sought and received extensive documentation from An Garda Síochána, the Department of Justice, the Chief State Solicitors Office, The Office of the Garda Ombudsman and the Office of the Attorney General in relation to its core task as outlined in paragraph 1 of its terms of reference:

“1. The Commission is directed to investigate and to make a report to the Taoiseach in accordance with the

provisions of Section 32 of the Commissions of Investigation Act, 2004 (No. 23 of 2004) on the operation of Garda Síochána telephone recording systems and on the following matters in particular:"

The process of seeking and receiving documentation has continued throughout 2015 and has included the Department of Communications and the Department of Finance.

- 4.2 As outlined in the November 2014 Interim Report, sub-paragraphs 1 (a) to (l) of its terms of reference require the Commission to investigate the installation, authorisation, legality, operation, maintenance, repair, removal and replacement of telephone systems at an unspecified number of Garda stations over a period of more than 30 years. The Commission must also investigate the use, reporting, retention and destruction of telephone recordings and information obtained from telephone recordings, as well as reporting on the level of knowledge of the existence, operation and use of the said telephone recording systems within An Garda Síochána and in a number of State institutions (see paragraph 5.1 below.)
- 4.3 Between 1st January 1980 and 27th November 2013, telephone recording systems were installed and / or operated in the Garda Communications Centre, Dublin Castle (later moved to Harcourt Square) and at each Divisional Headquarters outside of the Dublin Metropolitan Region. The Commission is required to establish, in the first place, whether any of these systems were used to record calls other than 999 calls.
- 4.4 The November 2014 Interim Report outlined in some detail the two principal telephone systems that have been identified as relevant in this investigation.
- 4.5 There was a Digital Audio Tape system (DAT) which operated between 1995 and 2008. In 2008 it was replaced by a computer-based system known as the NICE system.

- 4.6 There were other limited, tape-based recording systems in operation between 1980 and 1995, but the Commission has found no tapes or recordings from that period. Although investigations into this period are not complete, the evidence obtained to date suggests that these early systems were intended solely to record 999 calls and / or Garda radio traffic.
- 4.7 As far as the telephone recording systems in place between 1995 and 2013 are concerned, the evidence obtained to date shows a variation between stations as to what was being recorded and how the systems were being operated. For this reason, a proper investigation of the matters set out in paragraphs 1(a) to 1(l) of the Terms of Reference requires that the Commission take evidence in relation to the installation, operation, management, use and level of knowledge of these systems at every Garda Divisional Headquarters outside of Dublin over a near-20 year period. This, it need hardly be said, is an extremely onerous and time-consuming task.
- 4.8 The Commission commenced oral hearings into the Garda Recording issue in January 2015. There are approximately 23 Garda Divisional Headquarters in which the DAT and NICE systems were installed. The Commission sent a questionnaire to all Garda technicians who could be identified as having worked in any of these Divisional Headquarters, in order to gain some preliminary information as to the operation of the recording systems. A total of 42 letters were issued by the Commission to Garda technicians, both active and retired, and 38 of these were subsequently called to give evidence.
- 4.9 To date, 19 other witnesses have also been called to give evidence on this aspect, including members of the Telecommunications Section in Garda Headquarters, Dublin and lay witnesses who had advised An Garda Síochána on telecommunications technology from the 1970's onwards.
- 4.10 The work of assimilating and assessing the evidence obtained from these hearings is ongoing. In many instances, the hearings also revealed the existence of further relevant documentation, which was then requested from

An Garda Síochána and other State bodies. The Commission appreciates the considerable amount of time and effort invested by those bodies in locating and assembling relevant materials.

- 4.11 Paragraph 1(e) of the Terms of Reference requires the Commission to report on “the level of knowledge of the existence, operation and use of the said telephone recording systems within An Garda Síochána.” In effect, the Commission is being asked to ascertain what was known about the recording of non-999 calls and the use of such recordings at every level of An Garda Síochána, from rank-and-file members up to the Garda Commissioner, over a period of some 20-30 years. Of its nature this is a hugely wide-ranging inquiry.
- 4.12 The Commission has communicated with four former Garda Commissioners to date; all of these have provided statements to the Commission and three have attended for an oral hearing. The fourth is scheduled to attend later this month.
- 4.13 Questionnaires have been developed for both serving and retired Chief Superintendents and Superintendents. The Commission intends to call a representative sample of these Garda Members in order to obtain as complete a picture as possible of the operation of both the DAT and the NICE systems, and the level of knowledge of those systems amongst District and Divisional Officers.
- 4.14 A survey of rank and file Gardai is also underway through the Garda Portal. This will give the Commission an insight into the understanding of serving Gardaí regarding telephone recording. The Commission is exploring ways in which it might be able to communicate with retired Garda members in order to extend its area of inquiry as far as possible.
- 4.15 The Commission has met with experts in the field of telecommunications and recording technology and will continue to ensure that it has appropriate specialist expertise available to it.

4.16 Drafting of the Report on the Garda Recording module of the Commission's terms of reference has commenced. It is anticipated that it will be completed in outline form by the end of the year. Completion of this outline report should assist the Commission in identifying and prioritising areas in which further information must be sought, or existing evidence reviewed.

5. State of Knowledge of Garda Recording Systems in State and Semi-State Bodies.

5.1 Paragraph 1(f) of the terms of reference requires the Commission:

To investigate and report on the level of knowledge of the existence, operation and use of the said telephone recording systems within the Office of the Minister for Justice and Equality, the Department of Justice and Equality, the Office of the Attorney General, the Chief State Solicitor's Office, the Office of the Director of Public Prosecutions, the Office of the Data Protection Commissioner and the Garda Síochána Ombudsman Commission.

5.2 The Commission has requested documentation from each of these bodies to help it to establish whether any of them had any information relating to recording of garda telephone calls. In some cases, oral hearings have been arranged and it is anticipated that more such hearings will be scheduled over the coming weeks.

6. Solicitor/Client Calls

6.1 Terms of Reference 1(h) and (i) require the Commission to establish whether any telephone conversations between Solicitors and their clients

were recorded by the telephone recording systems and whether any information from these recordings was used for any purpose whatsoever.

- 6.2 The Commission considers this to be one of the most important elements of its work. Solicitor/Client confidentiality has long been regarded as a cornerstone of our legal and judicial system and any taint of impropriety on the part of An Garda Síochána would be extremely serious.
- 6.3 Initial attempts to contact Solicitors who had clients in custody in Garda Stations during the relevant period² through advertisements and notices in the Law Society e-zine and the Law Society Gazette did not produce a satisfactory response. Fewer than 35 solicitors responded to the Commission with their telephone numbers.
- 6.4 Using the Law Society Digest for 2014, the Commission then contacted every solicitor firm located within the 23 Garda Divisional areas outside of the Dublin Metropolitan Region. The initial contact was by telephone and was then followed up by email. As a result of this process, the Commission obtained telephone numbers from over 500 of these firms, limited to those who had a criminal practice, who were asked for their details. Both landline and mobile phone numbers were provided – in other words, any number which was likely to have been used in a call to a Garda Station or to have received a call from a client in custody in a Garda Station.
- 6.5 With technical assistance from the Garda Telecommunications Section and from the company responsible for installing and maintaining the NICE system, these telephone numbers were then tested against the NICE database in Garda Headquarters to ascertain: i) whether any of these numbers had been recorded at any time between 2008 and 2013, and ii) whether any such recorded calls had been accessed at any stage. This work is being continued by the Commission and it is hoped that this will be completed by the end of 2015. A certain number of technical difficulties have been encountered, most of which have now been resolved. The task of

² The relevant period is from the mid 1980's until November 2013.

inputting the phone numbers and gathering data has now been completed for almost all Divisional stations. A difficulty with the data base as regards one particular station has required the Commission to suspend this work temporarily but this is expected to be resolved in the coming weeks and this aspect of the work will then be completed.

- 6.6 In the meantime, the Commission has begun the process of analysing the data received and seeking to match it with information from other sources, such as access records kept by relevant Garda technicians in order to establish whether there are any instances of Solicitor Client calls being recorded and/or accessed.
- 6.7 As previously indicated, the NICE system, which has operated since 2008, is computer-based. It is thus relatively easy to search for information about what recordings were made and accessed. The task of searching for solicitor / client recordings, if any, on the tape-based DAT system (1995-2008) is a great deal more difficult. A full search for this period would involve listening to approximately 13 years' worth of recorded telephone calls from 23 stations, something which is clearly beyond the scope of this Commission.
- 6.8 It should be noted that paragraph 2 of the Terms of Reference requires the Commission to "exercise discretion in relation to the scope and intensity of the investigation it considers necessary and appropriate, having regard to the general objective of the investigation." In particular, the Commission has discretion to limit its investigation to samples of recordings, "in the light of what is disclosed as the investigation progresses." The Commission will continue to consider how and in what context such sampling strategies might best be employed, in light of its overall task of reporting within a reasonable time on the matters of significant public concern set out in the Terms of Reference.
- 6.9 In relation to solicitor / client recordings, there is a further line of inquiry which is being pursued by the Commission. When the issue of Garda

telephone recordings first came into the public domain in March 2014, any person with a concern that his or her call to a Garda station might have been recorded was invited to contact An Garda Síochána. An internal ‘Helpdesk’ team was set up at Garda Headquarters to investigate all such cases and to report on whether any of the calls in question were in fact recorded or accessed. An Garda Síochána has furnished the Commission with copies of the file for each query which include details of the query received, the actions taken in response, and the results of those actions. These are being reviewed in conjunction with other information and documentation available to the Commission.

- 6.10 Taking all of the above into consideration, it is very difficult to estimate a timeframe for completing this aspect of the Commission’s work, but the Commission aims to have it substantially completed by March / April 2016.

7. Research Projects

- 7.1 Paragraph 1(g) of the terms of reference requires the Commission to *“establish whether the installation, operation and use of the said telephone recording systems was authorised by law.* Furthermore, under paragraph 1(i), the Commission is required to *“establish whether any information obtained from the said telephone recording systems by An Garda Síochána was used by it either improperly or unlawfully...”*

- 7.2 These and other paragraphs of the terms of reference require the Commission to examine and consider a wide range of areas of law relevant to the activity of An Garda Síochána in recording telephone calls to and from Garda Stations. In particular, the Commission is required to investigate and to report on whether the installation operation and use of the Garda Síochána telephone recording systems:

1. Involved members of An Garda Síochána in the commission of the offence of interception of telecommunications messages contrary to s.

98 the Postal and Telecommunications Services Act, 1983 as amended by the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

2. Infringed the rights of persons to the protection of their personal data contrary to the provisions of the Data Protection Acts, 1988 to 2003;
3. Infringed the rights of individuals to personal privacy as guaranteed and protected by the Constitution;
4. Infringed the right to the protection of personal data declared by Article 8 of the Charter of Fundamental Rights of the European Union, the relevant EU Directives and relevant national implementing provisions;
5. Infringed the rights of individuals to respect for private and family life, home and communications or correspondence protected respectively by Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention on Human Rights and Fundamental Freedoms and the European Convention on Human Rights Act 2003 ;
6. Whether the installation, operation and use of the Garda Síochána telephone recording systems was “*in accordance with law*” for the purposes of Article 8.2 of the European Convention on Human Rights;
7. Whether, and to what extent, the respective provisions of the Charter of Fundamental Rights of the European Union and of the European Convention on Human Rights are or were applicable at the relevant times in Irish law.

7.3 The Commission has engaged with legal experts both in this country and abroad to assist it in this work.

8. Matters Relating to the Garda Investigation into the Death of Madame Sophie Toscan du Plantier

8.1 The Commission has considered carefully the wording of paragraph 1 (m) of its Terms of Reference. Paragraph 1 of the terms of reference of the Commission provides:

1. The Commission is directed to investigate and to make a report to the Taoiseach in accordance with the provisions of Section 32 of the Commissions of Investigation Act, 2004 (No. 23 of 2004) on the operation of Garda Síochána telephone recording systems and on the following matters in particular:

(m) “In particular, to identify and review all recordings in the possession of An Garda Síochána emanating from the Garda telephone recording system at Bandon Garda Station or otherwise, which relate to the Garda investigation into the death of Sophie Toscan du Plantier and to establish whether those recorded phone calls, and any other acts or events in the course of the said Garda investigation, disclose any evidence of unlawful or improper conduct by members of An Garda Síochána in connection with that investigation.”

8.2 The Commission believes that it is appropriate that it give formal notice of its interpretation of paragraph 1(m) of its terms of reference as follows:

Having regard to the fact that the Commission was established to investigate “the operation of Garda Síochána telephone recording systems” and that the matters listed in the lettered sub paragraphs of paragraph 1, including (m) are expressed to be “particular” aspects of that matter, the Commission interprets sub paragraph 1(m) as meaning:

1. The Commission is required to establish whether the recorded calls which it identifies and (in the sense of combined with) other acts or events in the course of the said Garda investigation, disclose evidence of unlawful or improper conduct by members of An Garda Síochána in connection with the Garda investigation into the death of Madame Sophie Toscan du Plantier.

2. The Commission is not required to conduct an investigation of possible unlawful or improper conduct by members of An Garda Síochána in connection with that investigation generally, but is required to do so only where the recorded calls disclose evidence of such unlawful or improper conduct.
3. The Commission is required to establish only whether those recorded calls, in conjunction with such “other acts or events” disclose evidence of unlawful or improper behaviour. It is not required to establish whether such unlawful or improper behaviour in fact took place.

8.3 The first task required of the Commission under this heading is to identify all relevant recordings in the possession of An Garda Síochána. The Commission has received transcripts of all the recorded calls that were identified by An Garda Síochána as being related to the investigation of the murder of Madame du Plantier. These include all of the recordings that were disclosed as part of the discovery process in the Bailey case³, as well as other calls that were deemed by An Garda Síochána to be relevant to the murder investigation, but which were considered not to fall within the specific categories of discovery set out in the relevant court order in the Bailey case. As part of the process of finding relevant material for the discovery order, over 45,000 recorded telephone calls to and from Bandon Garda station were examined by An Garda Síochána, but less than one per cent of them were considered relevant to the murder investigation. The Commission is currently investigating the methodology used by An Garda Síochána for identifying relevant recordings. This includes examining documentation and taking oral evidence from persons involved in identifying and transcribing relevant recordings. The Commission will then proceed to an examination of the identified calls, with a view to establishing whether any evidence of improper or unlawful conduct is disclosed.

³ Ian Bailey –v- The Commissioner of An Garda Síochána, The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General. High Court Record No. 2007/3424P.

8.4 Hearings have commenced on this module and will continue into 2016.

9. Final Report of the Commission and Extension Sought.

9.1 The Commission does not employ a large team to assist it in its work, preferring instead to work with a small, dedicated number of persons who have now built up a significant body of knowledge and acquired a considerable expertise in the areas covered by the terms of reference. It may be required to engage further assistance for certain specific tasks over the coming months.

9.2 To summarise the outstanding work to be done:

- To continue to investigate the installation, operation, maintenance, repair, removal and replacement of telephone systems in certain Garda Stations.
- To continue to investigate the use, reporting, retention and destruction of telephone recordings between 1980 and 2013.
- To continue to investigate the level of knowledge of the existence, operation and use of telephone recording systems in An Garda Síochána.
- To continue to investigate the level of knowledge of the existence, operation and use of telephone recording systems within the Office of the Minister Justice and Equality; the Department of Justice and Equality; the Office of the Attorney General; the Chief State Solicitor's Office; the Office of the Director of Public Prosecutions; the office of the Data Protection Commissioner and the Garda Síochána Ombudsman Commission.
- To establish whether any Solicitor/client calls in to or out of Garda Stations had been recorded and/or accessed.
- To examine and consider a wide range of areas of law relevant to the activity of An Garda Síochána in recording telephone calls to and

from Garda Stations including national and European legislation and conventions.

- To continue to investigate whether calls recorded in Bandon Garda Station in conjunction with other acts or events disclose evidence of unlawful or improper behaviour.
- There is a further term of reference at 1(p) which requires the Commission to report on any matters that arises from the Report of the Inspector of Prisons, Judge Michael Reilly into all circumstances surrounding the recording of telephone conversations between prisoners and their solicitors which appear to require further investigation in the public interest.

9.3 As outlined above, although much has been achieved, there is a considerable body of work yet to be completed in relation to certain aspects of the Commission's Terms of Reference, with a number of time-consuming and labour-intensive tasks still to be concluded. For this reason, the Commission seeks an extension of the time frame for completion of its investigation and submission of a Final Report, until **30th September 2016**.

10. Personnel Requirements.

10.1 As has already been pointed out, the work that remains for the Commission is both time consuming and labour intensive. As outlined in the November 2014 Interim Report, the Commission continuously balances the need for comprehensiveness against the need for effectiveness and timeliness. The Commission currently employs three full time junior counsel and a further four junior counsel who are not available on a full time basis. The Commission anticipates that it will need a further three junior counsel to allow it to complete its work in the timeframe indicated.

10.2 The Commission has used Senior Counsel as required to assist it in the conduct of oral hearings and it will continue to do this as required.

10.3 The Commission does not require any additional administrative staff.

11. Possible Delays

- 11.1 Issues may arise outside of the control of the Commission which may impact on the ability of the Commission to deliver within the timeframe indicated.
- 11.2 Section 11(2)(c) of the Act permits cross-examination of witnesses “*as the Commission so directs*”. Section 11(2)(c) of the 2004 Act permits cross-examination of witnesses “*as the commission so directs*”. If the Commission identifies a conflict of evidence that needs to be resolved, the Commission will be obliged by the requirements of fair procedures to permit the cross-examination of a witness by the legal representative of the other person or persons involved in the conflict.
- 11.3 It should also be noted that under Section 35 of the Act, any person who receives a draft report or part of a draft report from the Commission and who believes that the Commission has not observed fair procedures may request the Commission to review the draft *or* may apply to the Court for an order directing that the draft be amended before its submission to the specified Minister. Such an application could delay publication to the Taoiseach by at least a year. This applies to interim reports as well as the final report of the Commission.
- 11.4 In addition, the Commission is at all times subject to the possibility of an application for a Judicial Review.
- 11.5 Both of the provisions outlined above and a Judicial Review application, have the potential for increasing both the cost and the timeline of the Commission.

12. Projected Costs

12.1 It is not possible to estimate the full cost of the Commission for the coming year. The Commission has ensured that it has operated within budget since its establishment in May 2014 and will continue to do so. There are additional resources that are required and they are itemised below:

13. Additional Staff

- Additional legal staff: 3 additional Junior Counsel: **€312,000**
- Senior Counsel as required **N/A**

14. Witnesses Vouched Expenses

14.1 A very preliminary estimate of this element of expenditure may be indicated thus: 50 witnesses @ approximately €330 per day - **€17,150**

15. Cost of Hearings

- **Contested Hearings:**
A week of contested hearings would cost the Commission **€40,000** approximately.⁴
- **Non-Contested Hearings:**
A week of non-contested hearings would cost the Commission between **€10,000** and **€20,000** depending on whether Senior Counsel is retained for the hearings.⁵

16. Additional Expenses

16.1 The Commission may incur additional expenses in area such as:

- Expert assistance relating to any matter within its terms of reference

⁴ 3SC@€1000 per day plus one reading day = €6000 per day
Stenography services @ €2000 per day. This is €8000 per day's hearing or €40,000 per week.

⁵ Stenography services @€2000 per day. 1 SC @ €1000 per day plus preparation days €10,000 per week.

- Temporary additional staff to deal with discovery documentation
- Legal costs associated with a legal application.

17. Final report of the Commission and Extension Sought.

17.1 Subject to the caveats outlined above, the Commission proposes a delivery date for its final report of September 30th 2016 and formally requests that the Taoiseach as specified Minister revise the time frame for the Commission's investigation to reflect this.



Mr Justice Nial Fennelly

Sole Member

November 12th 2015.



STATUTORY INSTRUMENTS.

S.I. No. 192 of 2014



COMMISSION OF INVESTIGATION (CERTAIN MATTERS RELATIVE
TO AN GARDA SÍOCHÁNA AND OTHER PERSONS) ORDER 2014

COMMISSION OF INVESTIGATION (CERTAIN MATTERS RELATIVE TO AN GARDA SÍOCHÁNA AND OTHER PERSONS) ORDER 2014

WHEREAS pursuant to section 3(1) of the Commissions of Investigation Act 2004 (No. 23 of 2004) the Taoiseach, with the approval of the Minister for Public Expenditure and Reform, made a proposal to the Government for the establishment of a commission to investigate the matters specified in Article 3 of the following Order and to make any reports required under that Act in relation to its investigation;

AND WHEREAS the Government by decision made on 15 April 2014 considered those matters to be of significant public concern;

AND WHEREAS a draft of the following Order has been laid before each House of the Oireachtas, together with a statement of the reasons for establishing the commission, and a resolution approving that draft has been passed by each such House;

NOW, the Government, in exercise of the powers conferred on them by section 3 of the Commissions of Investigation Act 2004 (No. 23 of 2004), hereby order as follows:

1. This Order may be cited as the Commission of Investigation (Certain Matters relative to An Garda Síochána and other persons) Order 2014.
2. In this Order “Act” means the Commissions of Investigation Act 2004 (No. 23 of 2004).
3. A commission is hereby established to—
 - (a) investigate the matters, which are considered by the Government to be of significant public concern, referred to in the terms of reference (the text of which is, for convenience of reference, set out in the Schedule) of the commission, and
 - (b) make any reports required under the Act in relation to its investigation.
4. The Taoiseach is specified as the Minister of the Government responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for performing any other functions given to him under the Act.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 6th May, 2014.

SCHEDULE

TERMS OF REFERENCE FOR COMMISSION OF INVESTIGATION REGARDING CERTAIN
MATTERS RELATIVE TO AN GARDA SÍOCHÁNA AND OTHER PERSONS

1. The Commission is directed to investigate and to make a report to the Taoiseach in accordance with the provisions of Section 32 of the Commissions of Investigation Act, 2004 (No. 23 of 2004) on the operation of Garda Síochána telephone recording systems and on the following matters in particular:

- (a) To identify all Garda Stations in which telephone recording systems, to record calls other than 999 calls to the Emergency Call Answering Service, were installed and/or operated by An Garda Síochána between 1st January 1980 and 27th November 2013 and to establish an inventory of those Garda Stations so identified to include:
 - (i) the date of initial installation, where such installation occurred at a date between 1st January 1980 and 27th November 2013;
 - (ii) to report whether any such installations were already in existence on the 1st January 1980;
 - (iii) the duration for which telephone recording systems continued in operation in each such Garda Station;
 - (iv) the date on which telephone recording systems were terminated or removed from each such Garda Station.
- (b) To establish the immediate circumstances surrounding the installation of telephone recording systems operated by An Garda Síochána at the said Garda Stations referred to at (a) above and to establish what authorisation was sought or obtained by An Garda Síochána for such installation and, including the funding, installation, maintenance and / or upgrading of those telephone recording systems, to include the public procurement procedure followed in 1996 and further in relation to the installation of the NICE recorder system in 2008.
- (c) To establish how the said telephone recording systems operated by An Garda Síochána were managed and to establish what use (if any), was made by An Garda Síochána of any information collated by the said telephone recording systems.
- (d) To identify the organisation and structures in place for the installation, operation and management of the said telephone recording systems and in the storage, access, analysis and use of any information obtained from them.
- (e) To investigate and report on the level of knowledge of the existence, operation and use of the said telephone recording systems within An Garda Síochána.

- (f) To investigate and report on the level of knowledge of the existence, operation and use of the said telephone recording systems within the Office of the Minister for Justice and Equality, the Department of Justice and Equality, the Office of the Attorney General, the Chief State Solicitor's Office, the Office of the Director of Public Prosecutions, the Office of the Data Protection Commissioner and the Garda Síochána Ombudsman Commission.
- (g) To establish whether the installation, operation and use of the said telephone recording systems was authorised by law.
- (h) To establish whether any telephone conversations between solicitors and their clients were recorded by the said telephone recording systems.
- (i) To establish whether any information obtained from the said telephone recording systems by An Garda Síochána was used by it either improperly or unlawfully and, in particular, whether any recordings as may have been made by An Garda Síochána of Solicitor / Client telephone conversations were used for any purpose whatsoever.
- (j) To establish where the recorded information obtained from the telephone recording systems operated by An Garda Síochána was stored since the creation of same and to establish how such information was accessed and analysed by An Garda Síochána.
- (k) To establish whether any of the recorded information has been destroyed.
- (l) To establish any instances during the relevant period where the Office of the Director of Public Prosecutions made use of the data and information produced by the said telephone recording systems for any purpose.
- (m) In particular, to identify and review all recordings in the possession of An Garda Síochána emanating from the Garda telephone recording system at Bandon Garda Station or otherwise, which relate to the Garda investigation into the death of Sophie Toscan du Plantier and to establish whether those recorded phone calls, and any other acts or events in the course of the said Garda investigation, disclose any evidence of unlawful or improper conduct by members of An Garda Síochána in connection with that investigation.
- (n) To investigate and report on the furnishing to the Minister of a letter dated 10th March 2014 sent by the former Garda Commissioner, Mr. Martin Callinan, to the Secretary General of the Department of Justice and Equality.
- (o) To investigate and report on the sequence of events leading up to the retirement of the former Garda Commissioner Mr. Martin Callinan on the 25th March 2014.

- (p) In the event that any matter arises from the Report of the Inspector of Prisons Judge Michael Reilly pursuant to section 31 of the Prisons Act 2007 into all the circumstances surrounding the recording of telephone conversations between prisoners and their solicitors, which appears to require further investigation in the public interest the Commission may investigate and report on same.
- (q) To report on any other matters of concern arising from its investigation of recordings to and from Garda Stations and to make any further recommendations as it sees fit.

2. The Commission shall exercise discretion in relation to the scope and intensity of the investigation it considers necessary and appropriate, having regard to the general objective of the investigation. In particular, the Commission shall have the discretion to decide to limit its investigation to samples of recordings in the light of what is disclosed as the investigation progresses.

3. The Government has appointed the Honourable Mr. Justice Nial Fennelly, Judge of the Supreme Court, to act as the Sole Member of the Commission of Investigation.

4. The Commission of Investigation is directed to conduct the task assigned to it under these Terms of Reference and to report to the Government no later than the 31st December 2014, subject to section 6(6) of the Commissions of Investigation Act, 2004.



GIVEN under the Official Seal of the Government,
30 April 2014.

ENDA KENNY,
Taoiseach.

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