

Final report to the Secretary General, Noel Waters, Department of Justice and Equality, Monday 27 November 2017.

Re: Trawl of Records – Department of Justice and Equality, November 2017

Discovery to date

- The Department has fully complied with the discovery orders made by the Disclosures Tribunal regarding records of the O’Higgins Commission of Investigation, certain cases which had been considered by the Independent Review Mechanism and records related to Garda Keith Harrison. The Department has also made voluntary disclosure of other matters including three protected disclosures, reports from the Garda Commissioner under section 41 of the Garda Síochána Act and most recently the email correspondence of 15 May 2015 which are or may be relevant to the Tribunal’s terms of reference. This cooperation has been acknowledged by the Charleton Tribunal last week (copy also attached).

Background to the examination of records

- On 22 November, a communication issued from the Office of the Secretary General to 11 officials in the Department of Justice and Equality requesting them to engage in a trawl of their electronic and hard copy files. One further official was identified on 24 November and the email account of a retired official was also examined¹ (following relevant authorisation). A range of officials from Secretary General to Higher Executive Officer level were encompassed by this request, which was targeted at a number of key officials in the Department either currently in or formally assigned to Policing Division, the Office of the Minister or Secretary and Deputy Secretary General².
- The purpose of the trawl was to establish if there is any additional information that may be of relevance available and in the possession of the Department of Justice and Equality that has not yet been passed to the Disclosures Tribunal. Officials were asked to engage in this search as a matter of urgency and to focus their attention to any records that might be in their possession in connection with the *“legal strategy taken by the Commissioner at the O’Higgins Commission of Investigation”*. A wide ranging search was largely completed by close of business on Friday 24 November 2017; however, a number of returns to the office were still awaited at that time and the search continued over the weekend.

¹ It should be noted that the requester of the information (AP in the Corporate Secretariat) also undertook a search of relevant databases.

² Deputy Secretary General Ken O’Leary retired in June 2017 and access was sought to his email archive.

Scope of the trawl of documentation

- The search involved the manual review of thousands of emails across numerous email accounts from the date of 19 December 2014 (the date on which the Government laid the resolution to establish the Commission of Investigation before both Houses, although the Order was not made until 3 February 2015) until 11 May 2016 (the date of publication of the Report of the O’Higgins Commission of Investigation).
- A thorough approach was taken to the search and retrieval process with officials informed that if they were unsure as to whether a record fell under the scope of the request, they were to ensure that it be included in the return to the Office of the Secretary General.

Results to date

- An interim report was submitted to the Secretary General to the Government on the evening of Friday 24 November, attached at **Appendix A**. Copies were also provided to the Minister for Justice and Equality and Tánaiste and Minister for Business, Enterprise and Innovation.
- When reported to the Secretary General on Friday 24 November, the only other relevant records that had been found to date – and which will today be disclosed to the Tribunal - relate to a press query received by An Garda Síochána from RTE’s This Week programme in July 2015 which related in part to the Commissioner’s approach at the Commission. The then Minister was scheduled to appear on the same programme (on a different topic) the following day. In this context, material for reply was forwarded to the Minister in case it was required – the material indicated that the approach taken by the Commissioner at the Commission was solely a matter for the Commissioner, in the context of the legal advice she was receiving, and that any disclosure of evidence heard in private by the Commission would be unlawful.
- The press query was subsequently forwarded to the Department for information and also sent onto the Minister for information with a clarification about the query. These emails were subsequently forwarded as part of the same thread (the official looped back to the Commissioner for her information and sent it onto the Press Officer on call for information).
- As indicated in briefing notes furnished last week, in the course of the wider trawl for records, a former senior official has also provided information regarding his recollection of a telephone conversation the former Garda Commissioner made to him at this time. Similar to the email of 15 May 2015, this conversation involved the former senior official being informed that a legal dispute had arisen between Senior Counsel at the Tribunal. Similarly to the email, his memory of the call reaffirms that the Department had no prior knowledge of the legal approach of the Commissioner at the Commission of

Investigation. No written record has been located of this call and there is no indication that the Minister was informed about it. **A full schedule of additional records located is attached at Appendix B.**

Actions taken by Monday 27 November

- This search and retrieval exercise of material from 19 December 2014 to 11 May 2016 has now been completed. Officials have been advised to ensure that in the unlikely event that any further relevant records should emerge, that the Secretary General be notified at the earliest opportunity and that they be delivered to the Disclosures Tribunal without delay.

Further immediate action to be taken

- The additional records which have been uncovered are to be provided to the Secretary General to the Government as well as the Minister for Justice and Equality. These records are being provided to the Disclosures Tribunal today, Monday 27 November 2017.

Possible future action

- The solicitor at the Disclosures Tribunal has informed the Department that the Tribunal is writing to relevant officials seeking statements to the Tribunal concerning the email of 15 May 2015 which was sent to them on 21 November.
- The Tribunal will sit from Monday 8 January 2018 in relation to terms of reference (a), (b), (c), (e), (f), (g), (i), (j), (k), (l) and (m). It will also seek to determine any pattern under term of reference (o). In considering those terms of reference, the tribunal is mandated by the Oireachtas, under term of reference (h), to “investigate contacts between members of An Garda Síochána” and “any relevant person” which the tribunal “may deem necessary to carry” out its work. This includes, but is not limited to, “members of the Government”, the media, social services and “any other State entities”.

Department of Justice and Equality
27 November 2017

**Schedule of records uncovered by the search and retrieval process in the
Department of Justice and Equality – November 2017**

1. Email from Michael Flahive to Christopher Quattrociochi – 15/05/2015 (16:57). “CONFIDENTIAL: Commission of Investigation”. (cc’d SecGenOffice, Ken O’Leary, and Martin Power).
2. Email from Ken O’Leary to Michael Flahive – 15/05/2015 (17:00) – content – thanking him for the message.
3. Email from Christopher Quattrociochi (forward of “CONFIDENTIAL: Commission of Investigation”.) – 15/05/2015 (17:04) to William Lavelle, Marion Mannion, Frances Fitzgerald.
4. Email from Christopher Quattrociochi to Michael Flahive – 15/05/2015 17:05 reply to “CONFIDENTIAL: Commission of Investigation”. Indicating that he would “flag to the Minister”.
5. Email from Denis Griffin to Secretary General “CONFIDENTIAL: Commission of Investigation” – 15/05/2015 (17:16). Forward – no message.
6. Email from Denis Griffin to Michael Flahive - “CONFIDENTIAL: Commission of Investigation” – 18/05/2015 17:38. Content – “Noted by Acting SG”.
7. Email from Christopher Quattrociochi to Michael Flahive – 25/05/2015 (12:21) Content “Minister has noted the below”.
8. Email thread – entitled “This week” – 04/07/2015
 - 20:05 – Email from Ken O’Leary to Frances Fitzgerald , Marion Mannion, William Lavelle, Noel Waters, Dale Sunderland, Fiona O’Sullivan, Michael Flahive, Christopher Quattrociochi. Content – “The Garda Commissioner phoned me to let me know that they had received queries from Colm O’Mongain.....”
 - 21:30 – Email from Ken O’Leary to Frances Fitzgerald, Marion Mannion, William Lavelle, Noel Waters, Dale Sunderland, Fiona O’Sullivan, Michael Flahive – content - “Clarification that the queries actually came from John Burke.....”
 - 20:20 and 21:31 - both emails forwarded from Ken O’Leary to Noirin O’Sullivan – Content: “FYI”
 - 05/07/2015 – 09:37 and 09:40 - forwarded to duty press officer by Ken O’Leary