

Report by the Secretary General of the Department of Justice and Equality

Recordings of telephone calls in Garda stations

Background

In its statement of 25 March 2014, the Government asked for a report on all aspects of this matter from An Garda Síochána and the Department of Justice and Equality, so that an informed decision could be made on the legal and other consequences of the emergence of recordings of telephone calls into and out of Garda stations, with the assistance of the Attorney General.

Procurement of equipment

The on-going understanding of the Department of Justice and Equality has always been that Garda radio messages and calls routed through Garda control rooms, for example emergency calls, have been recorded for operational purposes. This is the basis on which the provision of new recording equipment was considered in the course of limited discussions with the Garda authorities in 2007/2008, and at no stage was the Department alerted to the fact that more extensive recording was being, or was proposed to be, undertaken. In the event the relevant equipment was procured directly by the Garda authorities, it seems in 2008, under delegated arrangements, and the Department was not involved.

Urgent inquiries are being made in relation to any earlier papers concerning any previous procurement of the equipment used for the recording of telephone calls, but on the basis of the material inspected to date there is no indication that any intention to engage in the type of recording now the subject of controversy was brought to the attention of the Department.

The Holness case

There has been public comment to the effect that the result of an investigation by the Garda Síochána Ombudsman Commission (GSOC) into a complaint by

Mr Anthony Holness should have alerted the Department to the existence of the practice of recording telephone calls into and out of Garda stations. The report by GSOC, which was not submitted to the Minister but rather was published in summarised form on the GSOC website, referred to a ruling by the court before which a number of Gardaí were tried (and convicted) in which evidence consisting of a telephone call to Waterford Garda station was held to be inadmissible, because neither of the parties to the call were apparently aware that it was being recorded. The GSOC report went on to invite the Garda Commissioner to re-evaluate the practice regarding the recording of such calls and the consents required.

In fact, however, what was at issue here was a call by one of the Gardaí dealing with Mr Holness at the scene to a Garda colleague in the control room in Waterford Garda station (using a mobile phone, it is understood), the contents of which would have been very damaging for the Gardaí concerned. The purpose of the suggestion in the GSOC report that the Garda Commissioner might wish to re-evaluate practice in the light of this was, therefore, to ensure that Gardaí were fully aware that calls to and from control rooms were recorded. This case did not, therefore, suggest any practice of recording telephone calls outside of control rooms.

The Bailey case

Mr Ian Bailey and his partner initiated civil proceedings against the Garda Commissioner, the Minister, Ireland and the Attorney General in 2007. It is normal practice for the Minister to be included as a defendant in cases where plaintiffs allege Garda wrongdoing, and officials from the Department are routinely copied with documentation in such cases and attend some consultations.

In the Bailey case, a very considerable amount of documentation, with extensive appendices, was circulated over a period of time. While there were references in some appendices to recordings made during this investigation, this did not give rise to an appreciation that there was in place a system of

routine recordings of telephone conversations, and there was no indication that there was any wider system in place in Garda stations generally.

On 28 February 2014 the Department of Justice and Equality was advised by the Garda Síochána that they had received legal advice from senior counsel in relation to recordings, and that they would have implications for the defence of the case. Later that day the Chief State Solicitor's Office circulated transcripts of conversations involving Gardaí in Bandon Garda station. This was the first sight that the Department had of any transcripts, had an appreciation of the nature of the recordings and knowledge of their contents.

Garda Commissioner's letter of 10 March 2014

On 10 March 2014 the Garda Commissioner sent a letter to the Secretary General of the Department of Justice and Equality entitled "*Recording of Telephone Conversations made and retained in Garda Stations. Data Protection Acts – Retention of Data*". The contents of the letter covered the Ian Bailey case and issues arising, and the fact that following enquiries into the Bailey case it had transpired that systems would appear to have been installed during the 1980s in some Garda stations to allow for the recording of incoming and outgoing calls from designated extensions. The Commissioner explained that the rationale behind this was the recording of Garda radio traffic to and from control rooms, and 999 calls, and the gathering of evidence around calls made to Garda stations regarding bomb threats and other code messages. This practice had continued in some stations over the years, with the recordings being retained within each station, and the original recorders were replaced in the 1990s and again in 2008.

The Commissioner stated that he had directed that the routine recording of non 999 calls to Garda stations should cease, and that this had happened nationally on 27 November 2013.

The letter also stated the issue was now what action the Commissioner as Data Controller should take in relation to the tapes that had come to light and that there would be ongoing consultation with the Office of the Attorney

General and the Data Protection Commissioner. It also stated the Attorney General's office had advised that all the outstanding recordings should be brought together and some inventory made of them, identifying them by station, date of recording and if they were in a condition which could be played or not. The Commissioner stated that he was awaiting confirmation from each Divisional Officer that all recordings (2,485 at the time of the letter – now 2,693) had been collected and were being stored securely in Garda Headquarters pending finalisation of legal advice.

Further advices sought by Garda Commissioner

As indicated in his letter of 10 March 2014, the Garda Commissioner sought the advice of the Data Protection Commissioner and the Attorney General's Office. On 19 March the Department of Justice and Equality was copied with an email from Garda Headquarters to the Office of the Attorney General in which Garda Headquarters conveyed the advice received by them from the Data Protection Commissioner.

Essentially, the Data Protection Commissioner advised that, while there did not appear to be a lawful basis for the retention of the Bailey recordings, the discovery process in the civil proceedings had to be respected. As regards other recordings unconnected with the Bailey case, the advice was that, whatever about the lawfulness of the original recordings, there did not appear to be lawful grounds for their retention now. However, the Data Protection Commissioner pointed out that the consent of the National Archives Office had to be obtained to destroy the recordings. The Data Protection Commissioner did also acknowledge that the Garda Commissioner had taken steps to remedy the situation as soon as the matter came to his attention.

This email of 19 March 2014 from Garda Headquarters to the Office of the Attorney General concluded by asking for confirmation and direction that it was in order to seek the relevant consent from the National Archives Office for the destruction of the remaining (non-Bailey) recordings.

On 20 March 2014, Garda Headquarters copied the Department of Justice and Equality with the reply they had received that day from the Office of the Attorney General. The advice of that Office was that it did not agree with the Data Protection Commissioner that all non-Bailey recordings could be destroyed. The advice pointed out that if recordings were capable of being of value in the Bailey case, they might be relevant to other cases in which discovery is ordered. The Office stated that a submission was being prepared for the Attorney General, but that in the meantime the Garda Síochána should not write to the National Archives Office. The Office also advised that the Director of Public Prosecutions needed to be informed and her views canvassed.

10 - 24 March 2014

On the same day as the letter (10 March 2014), there was a legal consultation on the Bailey case held at Garda Headquarters to discuss the implications of the recordings in that case, chaired by the Garda Commissioner and attended also by other Garda personnel, the senior counsel representing the State, the Department of Justice and Equality, the Office of the Attorney General and the Office of the Chief State Solicitor.

The following day, 11 March 2014, there was a follow-up meeting between the Garda Commissioner, officials from the Department of Justice and Equality and officials from the Office of the Attorney General and the Chief State Solicitors Office.

During the course of the consultation on 10 March and the meeting of 11 March the emphasis was firmly concentrated on the Bailey case, in particular the content of the transcripts of the telephone conversations between members of An Garda Síochána at Bandon Garda Station, between members of An Garda Síochána and Journalists and between members of An Garda Síochána and a third party who was ostensibly providing information to the Gardaí. Even though the Commissioner's letter of 10 March had referred to the systemic issue, there was little discussion of that particular issue and certainly not in any red flag manner. It may be the case that the explosive

nature of the recordings in the context of the high profile Bailey case deflected attention from the systemic issue. From the 10 March onwards, the matters covered in the Commissioners letter were being considered by officials in the Department of Justice in the context of the ongoing legal consultation in relation to the specific case in question, It should be also noted that the following day, 12 March we published the Garda Síochána Inspectorate Report into the Fixed Charged Processing System. On the morning of 12 March the Minister was taking Committee Stage of the DNA data Bill. He was scheduled at 1:30pm to attend a meeting of Fine Gael Ministers and at 2:15 pm to attend the Cabinet meeting. After the Cabinet meeting the Garda Inspectorate report together with an accompanying statement was issued and at 6pm that evening the Minister was scheduled to launch a book on divorce law at the Distillery Building. It is understood that he was present at the book launch until 8pm that evening. The day after that, 13 March the Secretary General was appearing at the Public Accounts Committee, the Minister was in the Department of Defence on 14 March and he left for Mexico on 15 March to fulfill his Government duties for St Patricks Day. Subsequently, on 19 and 20 March 2014 Garda Headquarters copied the Department with correspondence between the Garda Síochána and both the office of the Attorney General and the office of the Data Protection Commissioner. Further legal correspondence was received in the Department on 24 March. Due to a family bereavement the Secretary General was away from the Office from Saturday 15 March and did not return to work until Monday 24 March. The Secretary General briefed the Minister on the matter on Monday evening. Subsequently, the Minister, and then the Secretary General, was called over to the Office of An Taoiseach to discuss the matters at hand. As the Minister has indicated he received a copy of the actual letter of 10 March at 12:40 the following day.