

Louise O'Meara

From: Secretariat
Sent: 23 May 2018 17:08
To: 'jjocallaghan@justice.ie'
Subject: Correspondence regarding the Coroners Bill 2017
Attachments: Letter issd Minister for Justice and Equality.pdf

John,
Commissioner Kieran Fitzgerald has requested that I provide you with a copy of correspondence regarding the Coroners Bill, that was forwarded to the Minister by post today.

Please see the accompanying attachment.

Regards,



Roland Gowran

Higher Executive Officer - Policy & Secretariat
Garda Síochána Ombudsman Commission
150 Upper Abbey Street, Dublin 1
D01 FT73

T [01-8716687](tel:01-8716687)

E rgowran@gsoc.ie

W <https://www.gardaombudsman.ie>

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GSOC Reference: COMM-EXEC-010-17

PRIVATE AND CONFIDENTIAL

Minister for Justice & Equality
Mr Charles Flanagan TD
51 St Stephen's Green
Dublin 2

22 May 2018

Re: Coroners (Amendment) Bill, 2017

Dear Minister,

We write in relation to a problem that we have identified and that may be resolved by legislative intervention. The problem relates to the level of assistance that the Garda Síochána Ombudsman Commission (GSOC) is legally entitled to offer to coroners who request assistance during the coronial process.

The Commission is aware of the Government intention to make progress on the Coroners (Amendment) Bill 2017. We have written to Mr Brendan McNamara of your department outlining our views. We wrote to your department on 10th July 2017 seeking discussion of the issues of concern to us. We were asked to hold off making a formal submission until we received a draft of the legislation. To date, we have not received such a draft. We again wrote to Mr. Brendan McNamara on 2nd May 2018. We have had no response to our most recent letter and we attach a copy for reference.

The Commission is writing to you following discussions we have had on 10th May 2018 with representatives of the Coroners' Association- Dr Myra Cullinane, Dublin City Coroner and Association President, Mr. Eugene O'Connor, Laois County Coroner. We outlined our concerns to them and made them aware of our intention to write to you.

Our issues are set out in the attached letter. We interact with coroners following investigations where, for one reason or another, it is inappropriate for gardaí to conduct the investigation. Commonly, such investigations examine death following Garda contact e.g. deaths in Garda custody, deaths following discharge of firearms by gardaí, deaths in road traffic collisions where the gardaí are involved. During such investigations GSOC designated officers may operate under section 98 of the Garda Síochána Act

Coimisiún Ombudsman an Gharda Síochána, 150 Sráid na Mainistreach Uachtarach, Baile Átha Cliath 1, D01 FT73
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☎ (01) 871 6727 ☎ 1890 600 800 📠 (01) 814 7023 ✉ info@gsoc.ie 🌐 www.gardaombudsman.ie


2005. In such cases, GSOC designated officers enjoy all the powers and immunities, duties and responsibilities of a member of the Garda Síochána. At the end of our investigations we may present a file to the coroner. By that time our investigation is necessarily complete. The police powers do not endure beyond the investigation. However, it is common for coroners to seek the assistance of designated officers in the same way as they seek the assistance of gardaí during the coronial process. Gardaí providing assistance to coroners has been the practice long before GSOC came into existence. We are unaware of any legal basis for it. But it has been custom and practice for many years. Many coroners do not have support staff and seek the assistance of GSOC designated officers in such things as empanelling a jury. Designated officers have been asked to 'swear in' juries and have done so in an effort to oblige the coroner. However and worryingly for the Commission, we can identify no legal basis for our designated officers to carry out these functions.

The Commission is particularly concerned because in many of our cases Article 2 of the European Convention on Human Rights is a consideration. Our investigations focus on the conduct of gardaí in sometimes highly contentious and very public cases. We are very concerned that a legal challenge could expose flaws or weaknesses in the coronial process. We are concerned that such a challenge could be mounted against GSOC, the Coroner and/or the Minister for Justice and Equality.

As mentioned earlier, we have to date followed the custom and practice of assisting coroners where possible. However we do not believe that it is legally safe for us to do so into the future. We are conscious that many coroners, particularly in rural areas, have little support staff and we do not wish to make the discharge of their duties any more difficult for them. However we may not be able to continue to assist without some legal basis for so doing.

We hope you will be able to give this matter some consideration in the context of the Coroners (Amendment) Bill 2017. We are of course available for discussion of this and other matters relating to our relationship with coroners at your convenience.

Yours faithfully,


Kieran FitzGerald
Commissioner



COPY

Mr. Brendan MacNamara
Coroner & Gambling Policy
Department of Justice and Equality
Montague Street
Dublin 2

Date: Wednesday 2nd May 2018

Dear Mr. MacNamara,

RE: INITIATION OF NEW CORONERS BILL

I refer to the above, to my earlier letter to you dated 10th July 2017 and to our numerous telephone conversations since that date. I write to confirm that GSOC has many interactions with Coroners and inquests during the fulfilling of its statutory duties. Such interactions often involve GSOC being requested to perform coronial duties normally fulfilled by members of the Garda Síochána.

When GSOC becomes the lead agency in a death investigation then it falls to GSOC to submit the inquest file to the Coroner following any criminal investigation that GSOC may have undertaken up to that point in accordance with S.98 of the Garda Síochána Act (2005). There are also instances where no such criminal investigation has taken place but rather an investigation by GSOC into the circumstances surrounding a death pursuant to S.95 of the aforementioned Act.

In either case, GSOC are often requested by Coroners to effectively perform the function of "Coroner's Officer" and in the past this has required us to undertake such duties as the empanelling of a jury, the "swearing in" of jury members and witnesses (particularly in rural areas where coronial support is limited or non-existent), the presenting of the evidence and other such duties as may be requested of us. There may also be occasions where additional enquiries are requested of GSOC Designated Officers by Coroners in the fulfilment of their functions.

In instances where Article 2 ECHR may have engaged following a death during the deceased being in the care or custody of the Garda Síochána or after having some form of contact with its members (this is often the case in GSOC investigations by their very nature) it is particularly desirable in the interests of independence and transparency that the Garda Síochána are not the agency utilised by Coroners for assistance during any subsequent inquest proceedings. Typical examples of such cases would involve deaths in Garda custody, deaths following Garda vehicle pursuits and fatal shootings involving Garda members.

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Garda Síochána Ombudsman Commission, 150 Upper Abbey St, Dublin 1, D01 FT73

Unfortunately, and due to the historic nature of the present Coroners Act (and it pre-dating GSOC's existence), GSOC currently finds itself with no firm statutory footing on which to conduct any of the above functions. GSOC Designated Officers accrue the same powers, privileges and immunities as a member of the Garda Síochána when designated pursuant to S.98 of the 2005 Act. When this investigation phase has concluded (as is generally always the case when an inquest begins), GSOC Designated Officers no longer enjoy any of these powers. They thus find themselves in the precarious position of being asked to undertake certain duties by Coroners with no firm statutory footing on which to do so. It is a concern for GSOC that in doing so (and in good faith) our staff may be acting ultra vires and leave both GSOC and the related inquest proceedings open to legal challenge.

In addition, matters such as the seeking of inquest adjournments pending the completion of any criminal proceedings that may be contemplated pursuant to a S.25 application are also problematic for GSOC given the specific wording of the 1962 Act. As you are aware, the 1962 Act states specifically as follows (my emphasis):

"Where, at an inquest in relation to any death, a member of the Garda Síochána not below the rank of inspector requests the coroner to adjourn the inquest on the ground that criminal proceedings in relation to the death are being considered, the coroner shall adjourn the inquest for such period as he thinks proper and shall further adjourn the inquest for similar periods so often as a member of the Garda Síochána not below the rank of inspector requests him on the ground aforesaid so to do."

In GSOC parlance, the only persons recognised at this rank formally within legislative terms are the three GSOC Commissioners. In reality, it is the GSOC Senior Investigating Officer (of AP grade within the Civil Service) who is best placed to brief the Coroner on the circumstances of any particular investigation and to seek an adjournment as they have carriage of the case. In practical terms, our SIO's operate at the level of a Garda Superintendent and it is at this level within the Garda Síochána that our SIO's frequently engage.

Given the size of GSOC relative to the Garda Síochána, our small numbers in terms of staff and our limited geographic base (we currently have three offices in Dublin, Longford and Cork), the need for a GSOC Commissioner to appear before a Coroner for the sole purpose of making a S.25 adjournment application is both problematic in logistical terms and in the use of our resources. Happily, some Coroners are content to adjourn inquests of their own volition and using their Common Law powers following a briefing from a GSOC SIO, but this is not universally the case.

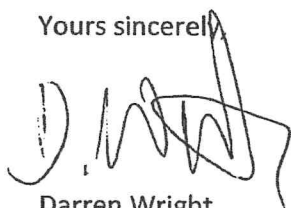
Whilst GSOC does not wish to withdraw any of the services outlined above and has always enjoyed an excellent relationship with the Coroners at both a local and National level, I consider that to continue doing so with no firm statutory footing and no specific procedural or legislative change is to burden GSOC, Coroners and the State itself with a level of unnecessary risk.

Given the slow progress currently being made in the passage of the proposed Coroners Bill, GSOC are anxious to attempt to get the above matters remedied at the earliest opportunity

and prior to any change in the present Act. The Department may be of the view, for example, that some of the above concerns could be adequately dealt with by the insertion of an explanatory paragraph into the Bill that wherever "Garda Síochána" or a "member of the Garda Síochána" features in the context of inquests and the types of coronial duties outlined above, that this is also to be read as "GSOC" or "a Designated Officer of GSOC" in circumstances where GSOC find themselves the lead agency in the investigation of a death involving members of the Garda Síochána in some capacity.

It is my view that the above concerns and related matters would best be dealt with by way of a meeting with the Department and to this end I am seeking your assistance with this. I can be contacted as outlined below when you have had the opportunity to consider this submission and I look forward to hearing from you further so that this important matter may be given the attention that it deserves.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Wright', with a stylized flourish at the end.

Darren Wright
Director of Investigations

T: 01 871 6651

M: 08660 79 444

E: darren.wright@gsoc.ie



OIFIG AN AIRE DLÍ AGUS CIRT AGUS COMHIONANNAIS
OFFICE OF THE MINISTER FOR JUSTICE AND EQUALITY

Kieran FitzGerald
Garda Síochána Ombudsman Commission
150 Upper Abbey St
Dublin 1
D01 FT73

Minister Reference: 0524105748

24 May, 2018

Dear Commissioner FitzGerald,

I wish to acknowledge receipt of your letter dated 22 May, 2018 regarding Coroners (Amendment) Bill, 2017.

Yours sincerely,

Charlie Flanagan, T.D.
MINISTER FOR
JUSTICE AND EQUALITY

Received in GSOC Secretariat
DATE 25/05-18
INITIALS PC TIME 11.00



Mr. Brendan MacNamara
Coroner & Gambling Policy
Department of Justice and Equality
Montague Street
Dublin 2

Date: 28th May 2018

Dear Mr. MacNamara,

RE: INITIATION OF NEW CORONERS BILL

I refer to the above, to my letter to you dated 2nd May 2018 and to our telephone conversation on Friday 25th May 2018. [REDACTED]

I also write to confirm that at this stage, GSOC has nothing further to add beyond my letter to you dated 2nd May 2018 as far as outlining the types of engagements with Coroners and Inquests that this office has had over the years. To this end, I also welcome your intention to call the meeting, requested by me in that correspondence, between GSOC and representatives from the Department of Justice in mid-June to ensure that the issues now effecting this organisation and impacting on Coroners as outlined in my earlier letter to you can be more fully considered.

If you require anything further from this office at this present moment in time then please do not hesitate to contact me as outlined in this letter.

Yours sincerely,

Darren Wright
Director of Investigations

T: 01 871 6651

M: 08660 79 444

E: darren.wright@gsoc.ie

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Louise O'Meara

From: Louise O'Meara
Sent: 02 July 2018 12:00
To: 'Steven P. Doyle'
Cc: George O'Doherty; Secretariat
Subject: RE: Coroners (Amendment Bill) 2018

Follow Up Flag: Follow up
Flag Status: Completed

Hi Stephen,

I've forwarded this on to the Commissioner and he will look at this today.

With kind regards,

Louise O'Meara
 Policy & Secretariat Manager



P: 725 | M: +353 87 1602207

From: Steven P. Doyle [mailto:spdoyle@justice.ie]
Sent: 02 July 2018 10:43
To: George O'Doherty ; Louise O'Meara
Subject: Coroners (Amendment Bill) 2018
Importance: High

George, Louise,

The attached proposed amendments along with a letter were sent to Commissioner FitzGerald on Friday seeking observations.

The Coroners Division have expressed some urgency in relation to this, could you relay this to Commissioner Fitzgerald and ask that any observations be sent to me by email.

Thanks.

| Steven Doyle | Policing Division | Department of Justice & Equality, 51 St Stephen's Green, Dublin 2, D02HK52
 ☎ IP 608305
 ☎ t: +353-1-6028305 | ✉ spdoyle@justice.ie

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Louise O'Meara

From: Oireachtas
Sent: 04 July 2018 18:06
To: 'Steven P. Doyle'
Cc: 'Paul M. McGuire'; 'Stuart X. Nolan'
Subject: FW: Coroners (Amendment Bill) 2018

Importance: High

Hi Steven,

Please find the obs of the Commission below in relation to the above:

- [REDACTED]
- [REDACTED]

[REDACTED]

Please come back to me in the morning if you have any queries in relation to our response.

With kind regards,

Louise O'Meara
 Policy & Secretariat Manager



P: 725 | M: +353 87 1602207

From: Steven P. Doyle [<mailto:spdoyle@justice.ie>]
Sent: 02 July 2018 10:43
To: George O'Doherty <george.odoherty@gsoc.ie>; Louise O'Meara <lomeara@gsoc.ie>
Subject: Coroners (Amendment Bill) 2018
Importance: High

George, Louise,

The attached proposed amendments along with a letter were sent to Commissioner FitzGerald on Friday seeking observations.

The Coroners Division have expressed some urgency in relation to this, could you relay this to Commissioner FitzGerald and ask that any observations be sent to me by email.

Thanks.

| Steven Doyle | Policing Division | Department of Justice & Equality, 51 St Stephen's Green, Dublin 2, D02HK52

☎ IP 608305

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[Garda Síochána Ombudsman Commission \(GSOC\).](#)

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Louise O'Meara

From: Steven P. Doyle <spdoyle@justice.ie>
Sent: 05 July 2018 16:54
To: Oireachtas
Cc: Paul M. McGuire; Stuart X. Nolan
Subject: RE: Coroners (Amendment Bill) 2018

Categories: Louise

Hi Louise,

Thanks for this.

Brendan MacNamara from the Coroner's division has come back with clarifications and questions below:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Can you clarify that GSOC will supply the necessary files, evidence, etc. (as with any inquest with a Garda file) to the coroner preparing for inquest and attend as necessary as witnesses? It would be useful for us to have a list of the number of GSOC "inquests" and their locations over the past few years.

Kind regards,

Steven

Louise O'Meara

From: Garda Obs <gardaobs@justice.ie>
Sent: 19 June 2018 14:02
To: amhealy@policingauthority.ie; directorgeneral@fsi.gov.ie; sdmcdermott@fsi.gov.ie; tjmaguire@gsinsp.ie; pxshields; Oireachtas
Subject: Re: Draft Memorandum for the Information of the Government - Review of the Protected Disclosures Act 2014
Attachments: Draft Review of the Protected Disclosures Act 2014.pdf
Follow Up Flag: Follow up
Flag Status: Completed
Categories: Ellen

Colleagues

Please see attachment regarding Protected Disclosures. Please provide any observations (including 'nil obs') by close of business Thursday 21st June 2018.

Regards and thanks
 Policing Division
 Val
 6028437

Date :19/06/2018

Subject:Re: Draft Memorandum for the Information of the Government -
 Review of the Protected Disclosures Act 2014

Draft Memorandum for the Information of the Government		

Review of the Protected Disclosures Act 2014		

Colleagues,

Please see the enclosed attachment in relation to the above for your observation.

Please provide any observations (including 'nil obs') by close of business Thursday 21st June 2018.

Thank you for your cooperation.

(See attached file: Draft Review of the Protected Disclosures Act 2014.pdf)

Is le haghaidh an duine nó an eintitis ar a bhfuil sí dírithe, agus le haghaidh an duine nó an eintitis sin amháin, a bheartaítear an fhaisnéis a tarchuireadh agus féadfaidh sé go bhfuil ábhar faoi rún agus/nó faoi phribhléid inti. Toirmisctear aon athbhreithniú, atarchur nó leathadh a dhéanamh ar an bhfaisnéis seo, aon úsáid eile a bhaint aisti nó aon ghníomh a dhéanamh ar a hiontaoibh, ag daoine nó ag eintitis seachas an faighteoir beartaithe. Má fuair tú é seo trí dhearmad, téigh i dteagmháil leis an seoltóir, le do thoil, agus scríos an t-ábhar as aon ríomhaire. Is é beartas na Roinne Dlí agus Cirt agus Comhionannais, na nOifigí agus na nGníomhaireachtaí a úsáideann seirbhísí TF na Roinne seoladh ábhair cholúil a dhícheadú.

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Louise O'Meara

From: Mary Ellen Ring
Sent: 21 June 2018 16:12
To: Oireachtas
Subject: FW: Draft Memorandum for the Information of the Government - Review of the Protected Disclosures Act 2014
Attachments: Draft Memorandum for the Information of the Government.docx; Draft Review of the Protected Disclosures Act 2014.pdf
Importance: High

For your information. The below has been sent to Paul Maguire.



Ms. Justice Mary Ellen Ring

Chair, Garda Síochána Ombudsman Commission
 Garda Síochána Ombudsman Commission
 150 Upper Abbey Street, Dublin 1
 D01 FT73

T [018716710](tel:018716710)

E maryellenring@gsoc.ie

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From: Mary Ellen Ring
Sent: 21 June 2018 16:11
To: 'pmmcguire@justice.ie'
Cc: Commissioners ; 'SXNolan@justice.ie' ; 'spdoyle@justice.ie'
Subject: FW: Draft Memorandum for the Information of the Government - Review of the Protected Disclosures Act 2014
Importance: High

Paul

It is very disappointing that we have been given only two days to provide observations on such an important issue as protected disclosures in light of the passage of time since we put in our original submission last year.

Therefore the matters referred to below are just by way of quick – but perhaps not complete – response.

1. Following receipt of a disclosure under the Protected Disclosure legislation GSOC undertakes an assessment of the disclosure. The nature of this assessment is, at times, fettered by an inability to share information and discuss the disclosure with other relevant agencies who may be in a position to assist with the assessment phase or confirm whether another agency could, more appropriately, deal with the protected disclosure e.g.

the Garda Inspectorate, the Policing Authority or the Data Protection Commissioner where for example inappropriate access of PULSE or GDPR breaches are being identified. Such a mechanism would greatly assist in a joined up oversight approach to protected disclosures.

2. Where a protected disclosure from a worker in the AGS relates to a civilian employee GSOC is essentially restricted to investigating criminal matters only as s95 investigations are ultimately investigations of potential disciplinary breaches and civilian members of the Garda Síochána are not subject to the Garda Disciplinary regulations.
3. GSOC is precluded from investigating matters relating to Security and Intelligence and the suggested solution is (at the bottom of page 23) that the recipient would refer the matter to the most appropriate body for investigation. This seems to be a chicken and egg argument as GSOC is the most appropriate body to investigate such matters, however, is precluded from doing so.

It is also important to note that the issues we have raised above and previously are real practical challenges that our investigators and GSOC as an organisation have to face regularly. Hopefully we will be able to progress matters in the interim but the fact that so many bodies can receive protected disclosures within the policing area is causing difficulties across the board regularly.

Regards.

Mary Ellen Ring



Ms. Justice Mary Ellen Ring

Chair, Garda Síochána Ombudsman Commission
Garda Síochána Ombudsman Commission
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From: Paul M. McGuire [<mailto:pmmcguire@justice.ie>]

Sent: 19 June 2018 10:43

To: Oireachtas <Oireachtas@gsoc.ie>

Cc: Stuart X. Nolan <SXNolan@justice.ie>; Steven P. Doyle <spdoyle@justice.ie>

Subject: FW: Draft Memorandum for the Information of the Government - Review of the Protected Disclosures Act 2014

Roland,

Please see below request for observations. If GSOC have already provided observations on any review of the 2014 Act previously to the Department or to D/PER, would it be possible to forward a copy of the observations on in response to the below request, please?

Any assistance would be appreciated.

Regards,

Paul McGuire

Higher Executive Officer | Policing Division

An Roinn Dlí and Cirt agus Comhionannais

Department of Justice and Equality

51 Faiche Stiabhna, Baile Átha Cliath 2, D02 HK52

51 St Stephen's Green, Dublin 2, D02 HK52

T +353 (0)1 602 8421 Internal VOIP 60 8421

E pmmcguire@justice.ie W www.justice.ie twitter.com/DeptJusticeIRL

From: govtmemo

Sent: 19 June 2018 09:52

To: Subject: Re: Draft Memorandum for the Information of the Government - Review of the Protected Disclosures Act 2014

To

All Divisions

Management Board (for information)

Draft Memorandum for the Information of the Government
Review of the Protected Disclosures Act 2014

Colleagues,

Please see the enclosed Draft Memorandum for Government with one attachment in relation to the above for your observation.

Corporate Secretariat Coordination Unit requires your observations (including 'nil obs') **via the email address govtmemo@justice.ie by close of business Thursday 21st June 2018.**

Divisions are requested to seek a response from the Agencies under their remit.

Thank you for your cooperation.

(See attached file: Draft Memorandum for the Information of the Government.docx)(See attached file: Draft Review of the Protected Disclosures Act 2014.pdf)

Kind regards

David

Coordination Unit

Corporate Secretariat

If you have any queries regarding this circulation please contact:

Colm Rath - 01 602 8251

David Brown - 01 602 8291

Marilyn Reilly - 01 602 8250

Is le haghaidh an duine nó an eintitis ar a bhfuil sí dírithe, agus le haghaidh an duine nó an eintitis sin amháin, a bheartaítear an fhaisnéis a tarchuireadh agus féadfaidh sé go bhfuil ábhar faoi rún agus/nó faoi phribhléid inti. Toirmisctear aon athbhreithniú, atarchur nó leathadh a dhéanamh ar an bhfaisnéis seo, aon úsáid eile a bhaint aisti nó aon ghníomh a dhéanamh ar a hiontaoibh, ag daoine nó ag eintitis seachas an faighteoir beartaithe. Má fuair tú é seo trí dhearmad, téigh i dteagmháil leis an seoltóir, le do thoil, agus scrios an t-ábhar as aon ríomhaire. Is é beartas na Roinne Dlí agus Cirt agus Comhionannais, na nOifigí agus na nGníomhaireachtaí a úsáideann seirbhísí TF na Roinne seoladh ábhair cholúil a dhíchheadú. Más rud é go measann tú gur ábhar colúil atá san ábhar atá sa teachtaireacht seo is ceart duit dul i dteagmháil leis an seoltóir láithreach agus le mailminder[ag]justice.ie chomh maith.

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