



**AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS
DEPARTMENT OF JUSTICE AND EQUALITY**

The Honourable Ms Justice Mary Ellen Ring
Chairperson
Garda Síochána Ombudsman Commission
150 Upper Abbey Street
Dublin 1

15 January 2018

Dear Chairperson,

Arising from your interview on the 'This Week' programme yesterday, I thought it might be useful if I set out for you my understanding of the position in relation to the main issues that you raised.

First, in relation to the staffing of the Protected Disclosures Unit, the Department sought sanction from the Department of Public Expenditure and Reform (DPER) for five additional staff. As you will recall, there were at that time a small number of Protected Disclosures (PDs) on hand in GSOC and in the absence of a more solid justification for 5 staff, not to mention the 12 that you had sought together with other support measures, it was a considerable challenge to convince DPER of the merits of the case and after a great deal of work on the part of my Department, DPER reluctantly gave sanction for 5 additional staff, making it a condition of the sanction that they were provided within three months with specific information regarding staffing ratios for current caseloads, typical staffing requirements per case, per type of case, etc. They also pointed out that it would be useful if some form of workforce planning analysis was available. This was communicated to you but my Department has not to date received this information from GSOC.

Furthermore, the sanction was provided on the clear understanding that GSOC would revert should the evolving situation indicate that greater resources were required. It is disappointing that eight months later it would appear that you have not yet succeeded in recruiting the staff concerned. I would suggest that it is only when these staff are fully operational, that an assessment can be made as to what, if any, additional resources might be required and the sooner we reach that point the better. I might add that I see no prospect of DPER sanctioning more posts until the information previously requested has been provided.

Second, in relation to the overall resourcing requirement of GSOC, you will recall that we discussed this issue when we met in early September. I invited you to set out your requirements for me. I understand that you have not yet finalised this work but I can assure you of my support for you having the resources you need. However, no more than any public service body, resources can only be provided on the basis of a solid business case and there has to be an understanding on everyone's part that doing our work efficiently and effectively is a *sine qua non* for the continued provision of existing resource levels, not to mention increasing those resources. In the meantime, I look forward to receiving your submission in early course.

Third, I received your proposals for legislative reform in late December and they are being considered in my Department. Again you will recall that your first engagement on this issue was with my predecessor in September 2016 when you made a formal submission along the lines of a speech you had made in NUIG and submissions to the Justice Committee. You met with officials in May 2017 on foot of which you undertook to set out your plan for more extensive changes to GSOC's remit. This was to be submitted within six weeks. In the meantime, the Government approved the drafting of Heads of Bill to give effect to the September 2016 proposals and that work is well advanced and I will be updating my Cabinet colleagues on progress shortly. However, your December submission is for far more fundamental reforms and must therefore be considered in the context of the work of the Commission on the Future of Policing in Ireland. As you know, that Commission is required to bring forward proposals to address *inter alia*: the appropriate structure for governance, oversight and accountability, to ensure that there are open, accessible and independent means of investigating and adjudicating fairly upon complaints against the police.

Clearly your detailed proposals will be a very useful input to the Commission's deliberations on this point and I am sending the Chair a copy of your submission for consideration.

Fourth, I want to specifically address the question of independence. GSOC is independent and it is important that nothing is said or done which might suggest otherwise. Public confidence in the complaints system is hard won but easily lost. I am unaware of any instance of interference in the work of GSOC by any Minister for Justice and Equality or any other official of the Department and I would expect that you would deal firmly with such interference if it were to occur. Having said that, I have no objection to, and will actively consider in the context of changes to the legislation, GSOC having its own Vote and an officer of GSOC being Accounting Officer. This change, if agreed by Government, would require legislation.

To summarise, we await an update on the position in relation to PDs, ideally once you have the approved complement in place and fully operational. We await your overall assessment of your resource requirements. And I will be sending your proposals for legislative change to the Commission on the Future of Policing in Ireland for their consideration.

In the meantime, if you wish to meet to discuss any of this or any other issues, please feel free to contact my office to make the necessary arrangements.

Finally, I want to wish you, Kieran and all the staff in GSOC a Happy New Year.

With best wishes.

Yours sincerely,



Charlie Flanagan, T.D.

MINISTER FOR JUSTICE AND EQUALITY

Mr. Charlie Flanagan T.D.
The Minister for Justice and Equality
51 St. Stephen's Green
Dublin 2.



18th January 2018

Dear Minister

Thank you for your comprehensive letter of the 15th inst. which the Commission has read and noted with interest.

You will have been aware that Mr. John Burke of RTE's "This Week" programme had raised a Freedom of Information Request in November 2017 which was answered on the 20th of December last. Copies of the documents were provided to the Department at the same time as a matter of courtesy which included all documentation which was relevant to the FOI request.

Mr. Burke decided to centre on the issue of the protected disclosures as a result of the documentation which was provided to him. He and his colleagues were also interested in the issue of independence which was raised in the letter of the 9th of May 2017 to the former Minister and provided as part of the FOI response.

Clearly the issue of updating the Department on the workings of the protected disclosure unit is an open issue as, to date, none of the four investigators has commenced work with GSOC. As stated publicly three of our current personnel have been dealing with the protected disclosures which have arisen over the last year in particular while the posts allocated have been going through the process of being filled. All of the successful candidates have been in vetting since the 28th of November 2017.

The Commission anticipates challenges from the outset for this unit as no ancillary monies were allocated to the Protected Disclosures Unit and in particular an allowance for an increase in our vehicles. We can at this remove state that four extra personnel seeking to use GSOC vehicles to meet disclosers throughout the country will cause problems and delays. Therefore while the allocation of five posts with the conditions as set out in the letter of the 5th of May 2017 from the Department of Public Expenditure and Reform to Mr. Martin Power in the Department may be seen as an initial allocation, no reference has been made to the supports required to the increased personnel.

The Commission also notes that discussions on staffing of this Unit began in or around October 2016. In particular on the 20th of October 2016 a meeting was held between GSOC personnel and Department personnel where the initial personnel that GSOC proposed was a total of eight. However at that

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meeting Department personnel encouraged an increase in both numbers and grades, in particular noting that such a unit should be overseen by a person at Principal Officer grade. In light of this suggestion the final proposal of 12 persons was forwarded to Mr. John O'Callaghan on the 23rd of November 2016. The discussions thereafter were between the Department of Justice and the Department of Public Expenditure. The Commission can't help you as to what transpired between the parties. Had GSOC been directly dealing with DPER during this process perhaps expectations as to time frames and workloads could have been discussed in detail and the outcome could have been more productive for both ourselves and DPER.

We were then notified on the 5th of May 2017 of the allocation of five people, with the highest ranking person to be at Assistant Principal grade. It is unfortunate that it took some six months to get to a decision on the allocation of extra personnel and has taken a further eight months to this stage, still without one person in situ.

The Commission would hope that you can see in light of the passage of fifteen months between discussions, sanction and filling of the posts that the prospect of commencing this whole series of events to fill further posts is not one we look forward to with any great optimism. [REDACTED]

[REDACTED] These investigations await the new complement of five, having been managed by the current three existing members of staff.

At this stage it is the intention of GSOC to move forward and we will of course update you and your Department when a full unit is in existence and functioning.

GSOC has undertaken a whole review of how we work under the current legislation and how we can take back, under the current provisions, some of the cases currently being investigated by gardaí on behalf of GSOC. In doing that we have also reviewed current resources and future resources. We have also seen this as part of a transition process in the event of legislative change of a more fundamental nature.

In this review GSOC has also had regard to developments of a general nature that will impact on the work of the organisation. All organisations, large and small, public and private, will this year come under the legislation arising out of the country's obligations under the GDPR. This is an area where GSOC is under considerable pressure at the moment and this will only increase from May 2018 onwards. Therefore in considering our working requirements these legal changes were included in our overall review, along with other matters such as the obligations resulting from the victim's legislation and the Children First measures.

GSOC is putting the finishing touches on our report on the resources required for the organisation into the future under the current legislative process. However it is important to note that this work has been done with a view to working into a new process, thereby reducing the impact of the legislative change we have proposed. This information should be with your department in the next number of days.

GSOC has already provided the proposals for change that we think will assist in moving the organisation forward and meeting the public's requirement for an effective and fair and independent way of resolving complaints about garda misbehaviour, whether criminal or disciplinary in nature. We have made these proposals available across the political spectrum to allow us to have as full a debate as possible and we have indicated that submissions are welcome.

It has been the position for some time of the Commission that our interest is moving towards a stand-alone organisation, with the appropriate reporting and accountability requirements attaching to a body in receipt of public monies and performing a public function. When I wrote to the former Minister on the 21st of December 2015, shortly after taking up this post, I included the speech I had given at NUIG some weeks previously. The thrust of that letter was about independence and that was clear in the letter and the speech.

In meeting with the previous Minister and officials from the Department this has been the GSOC preference. In particular the previous Minister was very open to a separate piece of legislation at the meeting of the 11th of January 2017, although it was clear some of the officials were more interested in short term amendments.

In that regard GSOC had provided to the Department issues and suggested solutions over the years that required statutory amendments. The whole area of informal resolution in particular had been well discussed between both organisations and requirements to change sections of the Garda Síochána Act 2005 were highlighted.

On the issue of the provision of documentation from the gardaí to GSOC I had suggested a similar provision to s. 66 of the Police (Northern Ireland) Act 2000 but the officials in your department felt that the provisions of s. 103A of the Garda Síochána Act 2005 as inserted by the Garda Síochána (Amendment) Act 2015 provided the same legislative imperative. It did not appear that we had reached common ground on this issue.

The Commission also wrote to John O'Callaghan on the 3rd of March 2017 including a summary of issues arising from Senior Counsel's advice in relation to investigations where members have retired from the Garda Síochána. You will have seen from that letter it was with a view of being considered by the Department when considering amendments to the 2005 Act. The Commission is unaware of what regard, if any, was had to that submission.

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On the 24th of April 2017 a diagram was provided with a letter to John O'Callaghan under the reference "New Legislation" to assist him and his colleagues in understanding the complexity of the current 2005 Act. The letter ended as follows

Therefore the Commission would hope that this document will assist you and your colleagues in understanding the desire of GSOC for more straightforward legislative changes which will allow for investigations to proceed more expeditiously.

I understood that this made it clear that the desire of GSOC at all times continued to be for new legislation, and not just tinkering with the 2005 Act. This may not have been the case.

It is unfortunate that there are no agreed minutes of the meetings held between the Department in January and May 2017 to assist on what was, or was not, agreed at the meetings. No one on the Commission has any recollection of a six week reporting period with regard to new legislation arising from the May meeting in particular. However I note from a letter of the 17th of July 2017 Mr. Martin Power wrote confirming that the Policing Division had commenced work on proposed amendments to the 2005 Act and Mr. Power was looking for our proposals at that stage for the amendments.

GSOC at this stage had commenced both its business improvement scheme and related legislative changes process. However you will recall that in July 2017 GSOC was attempting to put together an investigation team to deal with the CEPOL investigation that had been sent to us on the 19th of June 2017 by the former Garda Commissioner.

This unexpected significant investigation and the putting together of a team expeditiously using the provisions of s. 74 of the Garda Síochána Act 2005 took a considerable amount of time from the work of the Commission over a number of weeks to resolve this matter.

This had followed the correspondence earlier in the year when on the 7th of March 2017 GSOC received a request from the former Secretary General of the Department to make available to the Disclosures Tribunal at short notice two investigators to assist Mr. Justice Charleton. You will recollect that GSOC met this request immediately and by letter of the 20th of March 2017 the former Secretary General expressed his thanks for our cooperation in dealing with the Departments requirements so expeditiously.

It is perhaps an opportune moment to update you on this matter as it is only on last Monday, the 15th of January 2018, the second of the two replacements for the investigators started with GSOC. In meeting the Department's request we have operated at a loss of personnel for a number of months and this impacts, as I am sure you can understand, on the daily work of the organisation.

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Therefore our ability to deal with the demands of loss of personnel to assist a request from the Department and to deal with an unexpected high profile investigation during 2017 has impacted on our ability to complete the proposals provided in December 2017 to you.

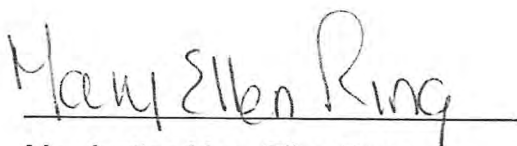
You will also be conscious that the Commission itself has been down a member since the 6th of November 2017 and is currently involved in the process of replacing Mr. Mark Toland.

The Commission is encouraged as to your views on statutory independence for GSOC, both stated publicly and in your letter of the 15th inst. The document provided in December 2017, and circulated more publicly today, will hopefully provide a path to that outcome.

Thank you for forwarding same to the Commission on the Future of Policing and I can confirm that it is part of the submission provided by GSOC to the Commission in any event.

Finally thank you for your kind wishes to the Commission and the staff for the new year and we look forward to working together for a productive 2018.

Yours sincerely



Ms. Justice Mary Ellen Ring
Chair, Garda Síochána Ombudsman Commission



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OFFICE OF THE MINISTER FOR JUSTICE AND EQUALITY

Ms. Justice Mary Ellen Ring
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Received in GSOC Secretariat

DATE 23/1/18

INITIALS RC TIME 11.00

Minister Reference: 0119173615

19 January, 2018

Dear Ms. Justice Ring,

I wish to acknowledge receipt of your letter dated 18 January, 2018.

Yours sincerely,

Alan McGreevey
Private Secretary to the Minister
for Justice and Equality

Mr. Charlie Flanagan T.D.
Minister for Justice and Equality
51 St. Stephen's Green
Dublin 2.



**Garda
Ombudsman**

RE: GSOC BUSINESS CASE PROPOSAL

20th of February 2018

Dear Minister

On behalf of the Garda Síochána Ombudsman Commission I enclose herein three copies of the GSOC Business Case Proposal.

You will see in the Executive Summary the background set out which has led to the proposal being drawn up by the Commission. In particular the Commission has been concerned with the issue of timeliness in investigations and greater efficiency in meeting the public demands. These goals have been shaped and revised having regard to different legislative requirements that have arisen in the ten years plus of GSOC's operation.

As you will be aware, GSOC has already sent to you, and published widely, our case for legislative change. Over the past twelve months the organisation has undertaken its own Business Improvement process where we have internally looked at and reviewed all our workings and practices. It is intended in 2018 to bring in an external review of how GSOC works to confirm best practice. This is combined with an internal Quality Assurance Review process already in place to meet, and keep, our work to the highest standards possible in the current working environment. Finally the Commission has committed itself to more transparency in its workings, having regard always to the nature of the work we do, and will be using our website more frequently to allow the public to see what we do.

Of particular concern to the Commission is the issue of building resilience within the organisation. A review of our work over the past ten years has seen a steady number, give or take particular spikes, of about two thousand complaints per year. What has changed however is the serious nature of some of our criminal investigations. The introduction of the Protected Disclosures Act 2014 has seen a slow but steady increase in such complaints with the final number at the 31st of December 2017 standing at twenty five. The complex investigation around the CEPOL/Templemore allegations brought the need to utilise the provisions of s. 74 of the Garda Síochána Act 2005 to allow GSOC to work with members of the Garda Síochána to concentrate its effort full time on this case. The final garda member joined the team at the beginning of December last but the painstaking efforts of reviewing paperwork, including such documents as bank statements, has dictated the pace of progress in this case. This team, including the garda members, is professional in its approach and the Commission has no concerns but that all of the team will seek out and follow the evidence, no matter where it leads. However there is no doubt that issues arise with the public perception of the combining of garda members with GSOC personnel in such a case and cast a shadow over independent oversight of the gardaí. GSOC will endeavour to achieve and confirm the highest

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standards in this investigation which may include an external review in time to confirm that this combined method of investigation has maintained independence throughout the process.

Building resilience within the organisation will allow GSOC to cope with the unexpected – the unexpected disclosure, the case arising from judicial concerns

[REDACTED]

[REDACTED] At present GSOC investigators would not be able to deal efficiently with these "unknowns" which ultimately undermines public trust in GSOC with further distrust in the Garda Síochána.

The Commission has put forward a realistic business case to allow for growth in the short term, accepting that in reality the implementation of our proposals will include medium term outcomes as well. The long term is envisaged to include legislative initiatives in line with the GSOC proposal of December 2017 and in completing the Business Case the growth envisaged will allow for movement into a new legislative framework.

The Commission is available to meet to discuss this proposal at any stage. We will in due course be making this available on our website as the Commission is happy to have public discussion on a proposal that ultimately involves public expenditure.

An electronic version of the Business Case Proposal will be made available to Mr. John O'Callaghan, Policing Division, Department of Justice and Equality to allow for dissemination to the appropriate parties.

The Commission thanks you for your consideration.

Yours sincerely



Ms. Justice Mary Ellen Ring
Chair, Garda Síochána Ombudsman Commission

Encl.



Garda
Ombudsman
INQUIRY INDEPENDENCE IMPARTIALITY

Business Case Proposal

Additional Staff in the Garda Síochána Ombudsman Commission

Issue/Publication Date: 19/02/2018

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1. Executive Summary

1.1 Background

Since the establishment of the Garda Síochána Ombudsman Commission (GSOC) in 2007, the Commissioners have laid great emphasis on the need for timeliness in dealing with our complaint/referral caseload. We have striven for greater efficiency, effectiveness and customer service, and staff have embraced considerable change and greater workloads to achieve these goals.

Nevertheless, the reduction in our staffing level over the period 2009 – 2016 coupled with an expanding set of legal obligations and an increasingly complex investigations environment has had an adverse effect on GSOC's ability to provide the service and meet the objectives set for the organisation at its foundation.

The Commission has for some time been concerned about the organisation's resilience and capacity to deal with its workload.

In March 2017—ten years after GSOC became operational – the Commission initiated an internal strategic review of the organisation's processes, people and structures. The intention was to identify how best to structure and equip the organisation to meet existing demands and to anticipate and assess risks in the years ahead.

A Business Improvement Team (BIT) comprising staff from all grades and business areas in the organisation was established to conduct this review which was overseen by a steering group, chaired by then-Commissioner Mark Toland. The work programme included numerous meetings and workshops at which contributions were made by a significant number of GSOC's staff.

The review examined how GSOC operates under existing legislation and what our current staffing requirements are. It also assessed what our requirements will be should significant legislative changes sought by GSOC (and detailed in a separate submission¹ to the Department of Justice and Equality) be made.

Developments which have had, or are likely to have, an impact on GSOC's operations were considered. Changes to the organisation's legal obligations towards children and victims of crime, for example, have already added to the workload but there has not been a corresponding increase in staff numbers.

Onerous new obligations arising from the General Data Protection Regulations (GDPR) pose a further challenge to GSOC (and other organisations), and the impact will intensify from May 2018 when the associated legislation comes into force.

This business case stems from the now-completed strategic review and is submitted by GSOC to the Department of Justice and Equality (DJE), and if necessary for consultation with the Department of Public Expenditure and Reform (DPER), in support of our proposals for increased staff resourcing.

¹ See Garda Síochána Ombudsman Commission Proposal for Legislative Change, submitted to the Department of Justice and Equality, December 2017

The proposal outlines the urgent need for additional staff to allow the organisation fulfil its current remit, and also provides detail of further resources in the event that some or all of the legislative changes recommended by GSOC come to pass.

This document is concerned chiefly with GSOC's immediate requirement for an additional 37 staff, 24 of whom are needed for the organisation's core function of complaint handling and investigation, and 13 for administrative and support roles which have arisen in recent years. The payroll cost of employing these 37 additional staff in a full year is estimated at €1,707,855.

In summary, the additional 37 staff for which approval is now being sought is made up as follows.

1.2 Investigations/Operations (24 Additional Staff)

- 1 post of Deputy Director of Investigations (Principal Officer Standard Scale) – to function as a second Deputy Director of Investigations;
- 2 posts at Assistant Principal Officer level (AP Standard Scale) – one to act as an additional Senior Case Officer in Casework Unit and the other to lead a new Quality Assurance and Review Unit which is being established within GSOC;
- 4 posts of Investigations Officer (HEO Standard Scale Equivalent);
- 4 posts of Assistant Investigations Officer (EO Standard Scale Equivalent);
- 2 posts at Higher Executive Officer level (HEO Standard Scale) – to function as case managers in the new Quality Assurance and Review Unit;
- 5 posts at Executive Officer level (EO Standard Scale) – 4 to function as case officers for section 94 (1) unsupervised investigations and 1 as a case officer in the new Quality Assurance and Review Unit;
- 6 posts at Clerical Officer level (CO Standard Scale) – to function as case officers providing administrative support to the Investigation Teams.

1.3 Administration (13 additional staff)

- 1 post of Principal Officer (Principal Officer Standard Scale) – to function as Data Protection Officer and provide strategic support;
- 1 post at Higher Executive Officer (HEO Standard Scale) – to meet additional demands expected on GSOC's Corporate Services and Finance Units;
- 6 posts at Executive Officer Standard Scale – to meet additional demands expected on GSOC's HR/Training/ICT/Data Protection/FOI/Legal Units;
- 5 posts at Clerical Officer Standard Scale – to meet additional administrative demands on GSOC's Corporate/HR/Training/DP/FOI Units).

1.4 Cost & Budget

More detailed business cases for these posts can be found in the remainder of this document.

The initial costs of the additional 37 staff being sought immediately can be met by GSOC from within its budget for 2018—the time taken to recruit and get security clearance for staff means we would not incur a full year's cost in terms of salaries for these people. The Commission will, however, require an adjustment to its budget for 2019 and future years to meet the cost of the additional resources.

The additional resources now being sought by GSOC should, the Commissioners respectfully suggest, be seen in the context of the greater cost to the Exchequer of an inadequate garda oversight regime.

The Morris Tribunal which inquired into the activities of gardaí in the Donegal Division cost €68.7m; the Barr Tribunal which examined the facts and circumstances surrounding the fatal shooting by gardaí of John Carthy in Abbeylara, Co Longford cost €20.7m, and the Smithwick Tribunal which investigated allegations of collusion by members of the Garda Síochána and other agents of the State in the murders of two senior RUC officers in 1989 cost €19.4m. The cost of the Disclosures Tribunal is not known as that Tribunal is on-going.

2. Background to GSOC's Staffing Requirements

GSOC has expressed concerns about the staffing levels in the organisation almost from its inception.

In 2007, the first Commission sought a staffing complement of 102 which it believed was the minimum staffing level required at that time to enable GSOC fulfil its legislative mandate. A staffing level of 98 was subsequently sanctioned and agreed by the Department of Justice and Equality and the Department of Finance respectively. That number was never achieved due to the extraordinary economic situation which developed at that time and GSOC's staffing complement peaked at 94 (excluding the three Commissioners) in mid-2009 but fell to as low as 74 at the end of 2014.

In 2010, GSOC's staffing level was capped at 87 through the introduction of the Employment Control Framework (ECF). Since 2010, GSOC has consistently operated at below approved staffing. The public sector-wide moratorium on recruitment and promotion during the period 2010 to 2016 meant that at no stage was the ECF figure of 87 reached. During the five years up to December 2016 the average staffing level was just 77, 24 per cent below the minimum sought by the Commissioners at the founding of the organisation, an overall shortfall of 21.5 per cent on the 2007 agreed staffing level, and an 11.5 per cent shortfall on the ECF set in 2010.

Since early 2016, an improvement in the economic environment and in sanctions for GSOC's approved staffing level has meant that GSOC currently has a total strength of 85 staff.²

In June 2017, GSOC received sanction to recruit an additional five staff (four Investigations Officers and one administrative support person) for the specific purpose of creating a new Protected Disclosures Unit (PDU) required to investigate protected disclosures made to the Commission by employees in the Garda Síochána under the Protected Disclosures (PD) Act 2014.³

While the agreement to allow recruitment to the PDU and the retention of the two investigators replacing the two on secondment to the Disclosures Tribunal increased GSOC's sanctioned staffing level to 94, it should be noted that GSOC has agreed to provide for these additional posts within our existing pay budget. As of February 2018, none of the successful candidates for the PDU has commenced work (because security clearance is still awaited)

² Included in this number are two GSOC Investigation Officers seconded to the Disclosures Tribunal under the Chairmanship of Mr Justice Peter Charleton in March 2017: they will not return to GSOC until the completion of the Tribunal's work. At the time of agreeing these secondments, GSOC was authorised to back-fill those two posts in the short-term and at the end of the Tribunal to retain those two additional investigators. This agreement effectively increased GSOC's sanctioned staffing level to 89, however the operational level remains at 87 pending the return of the two officers at the conclusion of the Tribunal.

³ A recruitment competition run on GSOC's behalf by the Public Appointments Service (PAS) to recruit candidates for the four investigating positions in the Protected Disclosures Unit (PDU) was completed in November 2017. However a delay in receiving the necessary security vetting clearance has meant that the first two of these candidates will only take up employment in GSOC on 5 March 2018. The remaining two candidates are expected to join shortly after that date.

and a number of GSOC's current personnel have been dealing with the protected disclosures which have arisen in the meantime.

Notwithstanding these recent developments, the shortfall in staffing numbers, particularly in the period 2009 to 2016, has had a cumulative adverse effect on GSOC's activities and has placed considerable pressure on staff across the organisation.

The organisation has had to resort to the use of overtime in every year of the past decade to clear backlogs in tasks, chiefly in the initial complaint processing area, which we do not have the capacity to complete in normal working time.

- GSOC has been unable to undertake work which it considers crucial to its roles—since 2016, for example, we have been able to undertake just two examinations of Garda practices, policies or procedures (as provided for under s106 of the Garda Síochána Act 2005)
- There is insufficient capacity in GSOC to take on public interest inquiries without creating unacceptable delays in completing other investigations already in train.
- GSOC investigators are currently managing caseloads of, on average, 28 cases per person with some individuals managing an even higher number of cases due to the need to cover for current vacancies and absences because of illness in the investigation teams. Following consultation with GSOC's counterpart organisations, the Police Ombudsman for Northern Ireland (PONI) and the Police Investigations & Review Commissioner (PIRC) in Scotland, the Strategic Review recommended 12 to 15 cases at any one time as being the optimum number for any one person to manage effectively, allowing for a mixture of complex cases and relatively straightforward investigations.
- A shortage of clerical support has reduced the quality of file management and has forced investigating officers to carry out administrative functions (in addition to their investigative roles), a situation GSOC views as poor use of the investigations officer resources.

Additional legislative obligations relating to child protection, victims of crime and protected disclosures, and the undertaking of high-profile and resource-intensive investigations (such as the investigation into allegations relating to accounts in Templemore) have led to increased and unsustainable workloads on GSOC's operations staff. GSOC has had to bring in outside investigators from the Garda Síochána in order to be able to investigate the Templemore accounts.

Little consideration appears to have been given to progressive/incremental changes to staffing levels to meet these demands.

These pressures have affected the timeliness and quality of service at key stages of the complaints process, and GSOC's capacity to conduct investigations and undertake our statutory functions generally.

In GSOC's Administrative Directorate, which is the area responsible for policy, finance, human resources, corporate affairs, communications/research and ICT, the impact has been felt on the Commission's ability to maintain the high standards of governance which have been developed since GSOC was established.

GSOC believes that even when the currently sanctioned staff complement of 94 is achieved, the organisation will not have the capacity to properly fulfil its expanded remit which includes promoting public confidence in the garda oversight sector.

A Governance Framework Agreement entered into by GSOC with the Department of Justice and Equality in July 2016 delegated sanction to GSOC to fill posts up to and including Principal Officer (PO level) provided it remained within budget.

This new delegated sanction has allowed GSOC some leeway and facilitated an improvement in recruitment since mid-2016. Nevertheless, such recruitment is still constrained by pay costs, which have to be estimated within the annual budgetary provision for GSOC from the Department's Vote.

For the present, the sanctioned staffing level of 89, plus the additionally sanctioned 5 staff for the PDU, continues to provide the baseline for GSOC's staff resource requirement and our estimated pay costs which are factored into GSOC's annual budgetary calculations.

3. Workload

3.1 Introduction

GSOC operates in a dynamic environment with limited control over the number of complaints or investigations it must take on. This section describes the main areas that generate complaint and investigative activity.

3.1.1 Complaints Concerning Garda Conduct

GSOC receives an average⁴ of just over 2,000 complaints a year, containing an average of 5,000 allegations (any one complaint may contain allegations against a number of gardaí or several allegations about one garda). Of those complaints, between 60 per cent and 70 per cent are deemed admissible and move into various investigative processes.

Investigations may also be commenced following referrals to GSOC from the Garda Síochána under s.102(1) of the Garda Síochána Act 2005 which requires the Garda Commissioner to refer matters where it appears that the conduct of a garda member may have resulted in the death of, or serious harm to a person. An average of 55 such referrals a year were made from 2012 to 2016.

3.1.2 Public Interest Investigations

In addition, GSOC undertakes public interest investigations, sometimes at the request of the Minister (12 such investigations were opened in 2016, for example) and sometimes by GSOC's own decision (7 were opened in 2016).

3.1.3 Examinations of Practices, Policies or Procedures of the Garda Síochána

GSOC considers such examinations an important part of its remit, but because of limited resources it has been able to launch only two such examinations since the beginning of 2016.

3.1.4 Protected Disclosure Investigations

We are currently dealing with approximately 20 disclosures, work that is resource intensive and complex.

3.2 2017 Workload

It is worth noting that GSOC has many cases that date back several years and this also needs to be taken into consideration when examining GSOC workloads.

Table 1 is a snapshot of the investigations on hand at 31 December 2017.

⁴ Average figures as reported in GSOC's Five Year Report 2012-2016

Table 1: Work on hand Dec 2017

Case Type	Number on Hand
s.94(1) – Garda investigations of complaints of a disciplinary nature which come to GSOC and which are unsupervised by GSOC	484
s.94(10) – Reviews by GSOC of Garda investigations described above	34
s.94(5) – Garda investigations, supervised by GSOC, of complaints of a disciplinary nature	179
s.95 – Investigations conducted by GSOC into complaints of a disciplinary nature	76
s.97 – Reports by GSOC for the Garda Commissioner arising out of GSOC investigations described above	28
s.98 – Criminal Investigations conducted by GSOC	234
s.101 – Files prepared for the DPP arising from criminal investigations conducted by GSOC	54
s.90 – Informal Resolutions of complaints conducted by GSOC	32
Complaints awaiting admissibility decision	56
Total	1,177

Source: GSOC data (Approximations until 2017 Annual Report Data Finalised)

As this data shows, there are currently 1,177 cases on hand of which there are 234 criminal investigations which are being directly investigated by GSOC. While the overall number of cases provides a basis for analysis, it cannot reflect the complexity of some of the cases that GSOC investigates. For example, GSOC is currently dealing with a number of major investigations that are proving to be very resource intensive. In addition, as highlighted earlier, protected disclosures (which are not included in these figures) by their very nature are likely to be complex cases with protracted investigations.

GSOC has asked for legislative change which would facilitate an increase in the use of informal resolution in dealing with complaints. Positive intervention to deal with service level complaints and greater use of informal resolution are areas that could significantly reduce the numbers of disciplinary investigations (section 94) that are required. GSOC believes that 20 per cent of less serious complaints could be resolved at a much earlier stage, with more satisfactory outcomes for members of the public and gardaí complained of.

3.3 Other Workload

Not all complaints received by GSOC result in the investigations or processes described above – yet all need to be assessed and managed. In 2017, for example, caseworkers (who are the first point of contact for members of the public), opened almost 3,000 case files, each of which reflects engagement with complainants. Caseworkers dealt with 2,517 telephone calls last year and met 282 people who attended the GSOC public office; further contacts were made by post, email or through the GSOC website.

GSOC received almost 400 requests for information, requiring various levels of work, last year. The requests include Parliamentary Questions (52 in 2017 compared to 20 in 2016), requests under the Freedom of Information Act (44 in 2017 compared to 31 the previous year), data access requests (which are likely to increase with the introduction of the GDPR legislation), and applications for disclosure of documents. These types of enquiries need to be completed within certain timeframes and can be resource intensive. GSOC also manages media requests for information and updates on cases. Following a serious or high-profile case, this can result in a significant number of enquiries that need to be managed.

GSOC's work in relation to child protection is also increasing. Assessments must be carried out if children are involved or potentially at risk (for example, in reports of violence in the home) in cases which are brought to GSOC's attention, and where appropriate, notifications must be made to Tusla or other agencies. The mandatory reporting requirements introduced in 2017 have placed an increased obligation on GSOC which dealt with 286 cases involving child protection issues in 2016 and 339 in 2017.

4. Current and Proposed Staff Complement

4.1 Current GSOC Staff Complement

At full strength, GSOC since 2017 has sanction for a total of 94 staff (excluding the 3 Commissioners). Currently, GSOC has a strength of 84 staff working in the organisation with 5 vacancies. The additional 5 staff for the newly established Protected Disclosures Unit (PDU) are now expected to take up their employment with GSOC from March 2018.

4.1.1 Investigations/Operations and Administration

Based on the current sanction for posts, GSOC has a total of 75 staff in the operations hub dealing with the core activities of complaint handling and investigations. In addition, GSOC has 19 staff who work in a number of administrative business units such as Policy and Secretariat, Corporate and Finance, HR and Training, ICT and Communications.

The work of investigations staff has been referred to in some detail in Chapter 3. The term 'casework staff' or 'caseworker' refers to the staff who are the first point of contact for members of the public with GSOC. Caseworkers are responsible for processing each complaint or inquiry received to ensure the appropriate admissibility decisions are made in accordance with the legislation. Staff in this area operate the informal resolution mechanism, liaising between complainants and garda members to resolve the issues which are the subject of complaints. In addition, they manage those complaints which are admissible and which have been sent for unsupervised investigations by a Garda Síochána Investigating Officer.

The staffing structures of the organisation are outlined below (and illustrated by charts in Appendix A):

- 1 Director of Investigations (Asst. Sec equivalent)
- 1 Deputy Director of Investigations (PO equivalent)
- 8 Senior Investigations Officers (AP equivalent)
- 19 Investigations Officers (HEO equivalent)
- 4 PDU Investigations Officers (HEO equivalent)
- 3 Casework (APs)
- 7 Casework (HEOs)
- 6 Casework (EOs)
- 1 PDU (EO)
- 9 Casework (COs)
- 2 Analysts (HEO equivalent)
- 9 Assistant Investigations Officers (EO equivalent) level

Legal and Librarian staff which provides support to Operations:

- 1 Head of Legal Unit (PO equivalent)
- 2 Solicitors (AP equivalent)
- 1 Legal Assistant (CO grade)
- 1 Librarian (Engineer Grade III)

The administrative staff are as follows:

- 1 Director of Administration (Asst. Sec level)
- 3 Assistant Principal Officers (1 Corporate/HR/Finance, 1 ICT, 1 Policy & Secretariat)
- 6 Higher Executive Officers (1 HR Manager, 1 Corporate/Finance, 1 Training, 1 ICT, 1 Policy & Secretariat, 1 Communications)
- 5 Executive Officers (1 Finance, 1 Corporate Services, 1 ICT, 1 Communications)
- 4 Clerical Officers (1 Finance, 1 Corporate Services, 1 ICT, 1 Policy & Secretariat).

GSOC currently has three vacancies in the investigative directorate (one at SIO level, one at IO level and one at AIO level) and two vacancies in the administration directorate. In addition and as previously mentioned two of GSOC's Investigating officers (IO) have been seconded to the Disclosures Tribunal. Those two posts and the two which GSOC was authorised to back-fill are included in the numbers above.

GSOC is currently working with the Public Appointments Service (PAS) to run fresh open competitions which will enable GSOC to fill the current vacancies arising in our Investigations Directorate. These posts were advertised on 2 February 2018 and it is expected that panels from which appointments can be made will be finalised by the end of April 2018.

4.2 Additional Staff Resources Required

The business case for each of the 37 additional staff, identified in the Strategic Review as the minimum required to deal with current and expected workload, is set out in the sections below.

Table 2 shows the cost per person, with the total cost in a full year estimated at €1,707,855,

4.2.1 Additional Principal Officer – Deputy Director Investigations (1 additional PO post)

There is currently one Principal Officer assigned as the Deputy Director (DDI) in this Directorate – GSOC believes there is now a need for two such positions.

The DDI has a staff team of approximately 60 people with direct line management responsibility for eight Senior Investigators and three Senior Case Officers, all of whom are at Assistant Principal Officer grade. The DDI provides leadership, management and direction to these officers to ensure that their teams are processing complaints and completing investigations, in a professional and timely manner.

The increased complexity of investigations, additional legislative commitments as previously outlined, the introduction of a new specialist unit (Protected Disclosures Unit) and a number of significant high-profile, resource intensive investigations will necessitate more monitoring and supervision for the Deputy Director role. The number of case reviews (currently conducted after 90 days in the timeline of all investigations) required will increase as will the number of reviews of case files conducted prior to submission to the Commission.

Areas outside of core work which require attention on a continuous basis include; development and implementation of Operations policy, ensuring consistency in procedures/processes/decision-making, Case Management System (CMS) governance, quality assurance and submission of files for strategic direction to the Commission. The ongoing inability to address these areas sufficiently or in a timely manner may result in GSOC being increasingly exposed to risks and being unable to fulfil its strategic objectives.

While this document is primarily concerned with the immediate needs of the organisation, GSOC believes it is prudent strategic workforce planning to anticipate and plan for the impact of amendments to the Garda Síochána Act 2005 (which GSOC has sought) on the structure and scope of the Investigations Directorate.

The need for a redistribution of the substantial existing workload between two permanent Deputy Directors is sufficient justification for the appointment of a second DDI; the need for the work of the Investigations Directorate to proceed seamlessly while structural change takes place brings an added urgency to the appointment of a second DDI. Going forward, such an appointment will ensure an on-going strategic capability in the planning, deployment and management of GSOC's operational resources.

4.2.2 Immediate Requirement for Additional Investigations Staff - 8 in Total (4 Investigations Officers at HEO Equivalent and 4 Assistant Investigations Officers at EO Equivalent)

The cost of these eight additional investigative staff in a full year is estimated at €451,176.

The requirement for additional investigators arises from the unacceptably heavy workload currently borne by staff, and referred to in Chapter 2 in terms of the average number of cases per investigator. The complexity of many investigations adds considerably to the workload—noteworthy is the referral to the investigations units of a number of extensive and complex investigations in the public interest.

This workload is not sustainable and is having a negative impact on the organisation's capacity to conduct investigations in a timely manner. The pressure has been exacerbated by a significant level of unanticipated and long term sick leave absences among investigators in 2016 and 2017. These absences, along with the delay in filling vacancies which occurred during that time, have resulted in GSOC's resilience being challenged and tested to a degree not previously experienced.

GSOC has reached the point where we no longer have the resilience within our current investigative resources to enable us to maintain, let alone improve, the standards of efficiency and effectiveness which are demanded in our sector.

The addition of eight investigative posts at this time will allow GSOC to provide the standard of service required and address the issue of staff wellbeing.

4.2.3 Senior Case Officer – Casework Unit (1 Additional Post at AP Level)

GSOC currently has two Assistant Principal Officers who are assigned as Senior Case Officers (SCO) to manage the Casework Unit and the resources within it. These positions are important as the delegated authority given to the SCOs and the decision-making element of their work is central to the efficient and effective running of GSOC's complaints process.

The increased complexity of complaints and additional legislative commitments (in particular GSOC's Child Protection obligations) take up a large amount of SCOs' time and attention, constraining their capacity to engage in tasks outside the core work of the Unit.

Areas outside of core work which SCOs must deal with on a continuous basis include; development and implementation of Casework policy, ensuring consistency in procedures/processes/decision-making, Case Management System (CMS) governance, quality assurance and updating letter templates. The ongoing inability to address these areas

sufficiently or in a timely manner may result in GSOC being increasingly exposed to risks and being unable to fulfil its strategic objectives.

GSOC believes that the distribution of this substantial workload between three permanent SCOs, as opposed to the current two, would greatly enhance the functioning of the Casework Unit and improve the quality and quantity of its output. The addition of a third Senior Case Officer would also leave the unit better prepared for an increased workload which would flow from anticipated legislative change.

4.2.4 Additional Executive Officer Posts – Casework Unit (4 New Posts)

Four Executive Officers are currently deployed in GSOC's Casework Unit managing complaints referred to the Garda Commissioner for unsupervised investigations in accordance with section 94(1) of the Garda Síochána Act, 2005 as amended.

Since 2007 this small cohort of staff have had a consistent caseload of 70-90 files per individual staff member. Their role is to engage with Garda Síochána Investigating Officers to ensure compliance with the legislation and the Protocols agreed between the Garda Síochána and GSOC, and to assist them in circumstances where difficulties arise.

The time taken by the Garda Síochána to conduct these investigations continues to be unacceptable but the resources available to GSOC to pursue tardy GSIOs is entirely inadequate.

Sixteen weeks is the timeframe agreed in protocols between GSOC and the Garda Síochána but the median time taken to complete unsupervised investigations over the last four years is between 28 and 36 weeks. The proportion of investigations completed within the agreed time frame ranged from just 28 per cent to 37 per cent in last four years.

This situation makes it almost impossible for GSOC to meet the objective, set out in s.67 of the Act, of improving confidence in the complaints process. GSOC believes additional four Executive Officers are needed in this role if there is to be any prospect of reducing the time taken for these investigations to an acceptable level.

4.2.5 Additional Clerical Officers to Provide Administrative Support – Investigations Unit (6 New Posts)

Over the past ten years the administrative support available for the Investigations Unit has been reduced significantly due to the increasing demands placed on diminished staff numbers. This has reduced the quality of file management and has necessitated investigating officers carrying out administrative functions, a practice GSOC believes is a poor use of investigative resources.

The assignment of six additional Clerical Officers is required to provide the clerical support necessary for the effective administration of the investigative teams within the Investigations Unit.

4.2.6 Establishment of New Quality Assurance & Review Unit – Operations Directorate (4 Posts – 1 at AP, 2 at HEO and 1 at EO)

The Commission believes that a Quality Assurance and Review Unit is now an essential component of GSOC's statutory obligations under s.67 of the Garda Síochána Act, 2005, as

amended and in particular, s.67(1)(c) which is to promote public confidence in the process for resolving complaints.

The establishment of such a review and quality assurance process within the organisation will positively impact the public perception of GSOC particularly in relation to inadmissible determinations and decisions to discontinue investigations.

Our Statement of Strategy, 2017 – 2020, contains a public commitment to improve effectiveness, and the concept of assuring quality is an integral part of this goal.

The proposal contained in this business case follows consultation with other similar organisations. The establishment and resourcing of this unit cannot be achieved from within GSOC's existing staff resources.

This business case seeks approval for four additional Officers to support the resources currently deployed – one at AP level, two at HEO and one EO. The Commission believes this level of staff resource is necessary to enable the Unit to be effective.

4.2.7 Additional Principal Officer – GSOC Data Protection Officer (DPO) - Deputy Director of Administration (1 new post)

To date, GSOC's Director of Administration, at Assistant Secretary General grade, does not have the support of a Deputy Director and as a result has been required to combine line-management responsibilities with other senior management functions of a strategic nature.

In GSOC's Proposal for Legislative Change, submitted to the Department of Justice and Equality in December 2017, the Commission has sought to be designated as a fully independent body with its own voted financial resources and an autonomous Accounting Officer answerable to the Public Accounts Committee in its own right. The Commission considers that should this independence take place, it would be appropriate for GSOC's Director of Administration to take on this role.

The Commission recognises that its proposal for independence has significant ramifications for the stewardship of GSOC in the performance of its functions in an effective way. The designation of the Director of Administration as Accounting Officer would require the role of the Director to be re-aligned to operate at a more strategic level in support of the Commission and in leading the delivery of increased levels of governance and compliance which will need to be introduced across all aspects of GSOC's administration.

Such a development would in turn necessitate the recruitment of a Deputy Director (at PO level) to take over some of the Director's current responsibilities and would introduce an appropriate level of line management into the Administration Directorate for the following business units--Finance & Corporate Services/ICT/Human Resources and Training/Policy and Secretariat/Communications and Research.

More immediately, the Strategic Review BIT recommended that GSOC create an additional Principal Officer post and that this person would be assigned the important post of Data Protection Officer (DPO) for GSOC.

As is the case for all public service organisations, GSOC is currently planning how we will meet our obligations under the General Data Protection Regulation (GDPR) which comes into force in Ireland on 25 May 2018. A significant requirement introduced by Article 37 of

the GDPR is that the designation of a Data Protection Officer (DPO) is mandatory for all public authorities or bodies who carry out data processing. GSOC must also be cognisant of a further requirement in Article 37 to mandatorily designate a DPO where an organisation's core activities consist of processing special categories of data or personal data relating to criminal convictions and offences.

The GDPR also provides that the DPO must report directly to the "highest management level of the controller or the processor". This means that a DPO in GSOC will need to have a direct reporting line to the most senior level in GSOC, which is the Commissioners. GSOC will need to be able to demonstrate that such reporting lines exist, are transparent and do not compromise the DPO's independence. In order to ensure the independence and integrity of the DPO, it will be important for GSOC to demarcate the role of its DPO within the organisation's structure which means that the employee's performance as DPO cannot be managed in the normal way.

Taking these requirements into account, and given the highly sensitive and sometimes complex nature of data which comes under GSOC's control and is processed through its work, the Commission is proposing the creation of a new Principal Officer position with the responsibility as GSOC's Data Protection Officer to ensure all the statutory obligations of GSOC will be met.

The Commission believes the appointment of a DPO at Principal Officer grade is the appropriate high level for this position in GSOC. This proposal is determined by the personal data processing operations carried out, the complexity and scale of data processing, the sensitivity of the data processed and the protection required for the data being processed by GSOC. Given that the DPO will be reporting directly to the Commissioners, the person appointed will also need to have sufficient authority to carry out their critical role and promote a best practice data protection culture within the organisation.

It is important to take into account that while a DPO would be permitted to fulfil other tasks and duties, GSOC is required to ensure that any such tasks and duties do not give rise to a conflict of interests. Given the need to protect the independence of the DPO, and the fact that the majority of data is processed within GSOC's operations area, the Commission believes that the assignment of a Principal Officer to this role within the Administration directorate but with a direct line of reporting to the Commission will ensure that the requirements of the GDPR are met in this regard.

It is also the Commissioners' intention that a DPO appointed at Principal Officer level will in effect have responsibility for record management in GSOC and will oversee the functions and performance of GSOC's Unit dealing with Freedom of Information requests in addition to those made for data access.

In seeking approval for this post, the Commission believes the addition of a Principal Officer to the Administration Directorate is necessary to ensure that GSOC's statutory obligations under the GDPR are fully met. The Commission also believes the appointment of a DPO at Principal Officer level demonstrates GSOC's commitment to maintaining its entire record and data management processes to the highest standard.

4.2.8 Additional Resources – Data Protection & Freedom of Information Unit (4 Posts – 2 at EO and 2 at CO)

The GSOC Policy and Secretariat Unit performs a wide variety of business and governance functions for the organisation, one of which includes processing requests for information and access to personal data under the Data Protection Acts 1988 & 2003 and the Freedom of Information Act, 2014.

Requests for data and information have risen sharply in recent years to the point where the unit has not been in a position to meet all the demands placed upon it.

Our current staffing complement is restricting our ability to comply with statutory timeframes and allows for no corporate resilience. It is anticipated that the implementation of the GDPR, with the related increased obligations, will result in an even greater number of requests, further reducing our ability to respond. This presents a significant risk to GSOC as we are open to complaints to the Data Protection Commissioner which can lead to fines under the current legislation, compensation under the new legislation and the prospect of reputational damage.

The creation of an additional unit with the sole function of meeting GSOC's data protection obligations and complying with FOI legislation was one of the recommendations from the Strategic Review BIT.

GSOC views such a unit as a critical requirement to ensure all the statutory obligations of GSOC will be met, particularly in light of upcoming legislation arising from the GDPR. The Commission also believes that the establishment of a dedicated unit would meet the requirement under Article 38(2) of the GDPR which requires GSOC to support its DPO by providing resources necessary to carry out tasks and access to personal data and processing operations.

It is the Commission's intention that management of this new unit will come under the responsibility of the Data Protection Officer (DPO). This business case seeks approval for four additional posts in the new unit – two Executive Officers and two Clerical Officers – to meet the requirements of the GDPR and to ensure that GSOC's responses to data access and Freedom of Information requests are fully dealt with within the requisite statutory deadlines.

4.2.9 Additional Post for CMS Analyst – ICT Unit (1 EO Post)

The main GSOC ICT enterprise software application is the Case Management System (CMS) which is a bespoke system. It was first used in 2008, and has since undergone repeated and extensive modification to reflect the governing legislation (the Garda Síochána Act, 2005). It has diverged significantly in function from its original form.

A large body of cases (more than 30,000) has built up and now populates the CMS databases. For operational purposes, it is regularly necessary for complex queries to be made of these databases and resulting reports issued to GSOC senior management.

Currently, only one member of GSOC staff is proficient in this work and carries out this function along with other duties. The Commission is concerned not only that this individual is, from time to time, placed under undue pressure, but that dependence on him and the