

## What information can GSOC disclose about its investigations?

In deciding what and to whom certain information is disclosed, GSOC must balance its confidentiality and privacy obligations with its duty to be transparent and open in its work.

People directly involved in GSOC investigations—including the people who make complaints and the gardaí who are the subject of investigations—have a legal right to be kept informed of the progress of the investigation which relates to them. The attached document, *Policy on Keeping People Informed*, sets out how GSOC keeps interested parties informed.

GSOC has a duty of confidentiality to people who make complaints to GSOC and to the Garda members who are under investigation. That duty is underpinned by legislation, specifically section 81 of the Garda Síochána Act, 2005 which deals with the confidentiality of information obtained by GSOC. In short, it is an offence for people working with GSOC to disclose a wide range of information obtained through their work except where that information is disclosed to certain specified parties.

GSOC is also bound by the General Data Protection Regulation (GDPR) which obliges GSOC to consider the privacy of all concerned in a case and which may prohibit the publication of information which could potentially lead to the identification of a person.

So while matters relating to a GSOC investigation may be the subject of comment in the media or elsewhere, GSOC, with some exceptions, is generally not at liberty to provide public ‘updates’, particularly on an ongoing investigation.

### Interested Parties

GSOC provides updates to the interested parties (section 103 of the 2005 Act refers to persons with ‘sufficient interest’), usually the person or people who have made the complaint, the member of the Garda Síochána complained of, and the Garda Commissioner.

Interested parties may also include family members of a person who has died in circumstances where the conduct of a garda or gardaí is being investigated, or where as a result of injury a person is unable to engage with GSOC. Social workers and/or health workers of a child or vulnerable adult may also be considered to be interested parties and provided with updates. The Minister for Justice and Equality may, in some cases, be provided with updates.

There may also be times when GSOC believes that the public has a sufficient interest in an investigation, and on those occasions, GSOC may publish information (on the GSOC website and/or through social media or through press releases) relating to that investigation.

In such instances, the decision to publish information will be decided on a case by case basis, and GSOC will take into account matters such as the right to privacy, the public interest and whether any harm would be caused by the disclosure of the information.

During an investigation, GSOC has to constantly balance the requirement for updates to interested parties with the need to preserve the integrity of the investigation itself and to ensure that no information disclosed by GSOC during its investigation might have a “harmful effect” (as outlined in section 81 (1) of the 2005 Act). GSOC has interpreted the phrase “harmful effect” to include anything that may damage, or otherwise undermine, its investigation, statutory duty or the integrity of the statutory process itself.

In some circumstances, GSOC may decide not to provide information to the interested parties if, for example, the provision of information would interfere with the investigation of an alleged offence; prejudice ongoing or future proceedings in respect of an alleged offence; or for any other reason not to be in the public interest.

In providing information on the progress of investigations, GSOC provides as much information and details as possible to interested parties while balancing the rights and entitlements of all parties.

#### Conclusion of Investigations

Confidentiality and privacy obligations remain in place, with some exceptions, at the conclusion of investigations.

At the conclusion of a criminal investigation, for example, GSOC may send a file to the Director of Public Prosecutions (DPP). It is important to underline here that GSOC is **not** a prosecutorial authority—GSOC’s functions are restricted solely to “evidence gathering” and the presentation of this evidence to the DPP who is the independent prosecutorial authority for the State. If the DPP decides to prosecute based on the evidence provided to it by GSOC, the trial will generally take place in open court and the outcome of the investigation will become public. Prior to the DPP making a decision or prior the matter coming to court, GSOC cannot make public any information which might be seen to prejudice legal proceedings.

If GSOC does not send a file to the DPP at the conclusion of a criminal investigation, or a decision is made not to continue with an investigation, it may be because there is insufficient evidence to prove a specific offence (a crime) has been committed and/or insufficient evidence that a specific person committed an offence. If a decision is made not to continue with an investigation, the person who has made the complaint, the garda member concerned and the Garda Commissioner will be informed of the decision and provided with the reasons. But again, GSOC is obliged to consider the privacy of all concerned in a case before publishing information that could potentially identify an individual. This could include reasons why GSOC has or has not proceeded with a particular course of action.

#### Disciplinary Proceedings

GSOC conducts investigations into possible disciplinary breaches by Garda members of the Garda Síochána Discipline Regulations 2007. GSOC’s role here is to conduct the investigation but GSOC does not have a role in bringing disciplinary proceedings against a garda or in imposing sanctions which are the responsibility of the Garda Commissioner.

At the conclusion of a disciplinary investigation, GSOC submits a report on its investigation to the Garda Commissioner. The report will either:

- set out the evidence that suggests there has been a breach or breaches of the regulations and recommend disciplinary proceedings be instituted by the Garda Síochána, or;
- say there is no or insufficient evidence of a breach of discipline.

The disciplinary action that may be taken on foot of the GSOC report is a matter for the Garda Commissioner. When GSOC is notified by the Garda Síochána of the outcome of its

(the Garda Síochána's) disciplinary proceedings, GSOC informs the person who made the complaint of that outcome.

All of the above explains the restrictions on GSOC making information on the progress of specific individual cases.

#### Publication of Information

However, GSOC does produce reports, including our annual report, which provides information to the public on the number and types of investigations GSOC is undertaking as well as information on the outcomes.

Anonymised case studies also feature in the annual reports and, from time to time, are published on GSOC's website. And in certain circumstances, described above, where the public is considered to have 'sufficient interest' and the privacy rights of people (legally underpinned by the General Data Protection Regulation (GDPR)) are not infringed, GSOC does publish reports or issue updates on particular cases.