



24 September 2014

Report by the Garda Síochána Ombudsman Commission
following its fact-finding investigation into
possible disclosure of confidential information

Background

In May 2014, Mr Mark Connaughton S.C. was engaged by the Garda Síochána Ombudsman Commission (GSOC) to conduct, on its behalf, a fact-finding investigation into the circumstances in which confidential Commission information relating to a security sweep process conducted by/on behalf of a UK firm for the Commission in 2013 and the follow up actions/investigation taken by the Commission, may have been disclosed to a third party. The Commission received Mr Connaughton's report in September 2014. The Commission is of the view, supported by the opinion of Mr Connaughton, that the content of the report in terms of operational, investigative and personal detail renders publication extremely difficult. In the interests of transparency, what follows is as much detail from Mr Connaughton's report as is possible having regard to the foregoing considerations, in order to alleviate any public concerns. The layout follows that of Mr Connaughton's report to the Commission.

1.0 Introduction

- 1.1 On 21 May 2014, Terms of Reference were agreed for the purpose of facilitating a fact-finding investigation. These stipulated that: “The fact finding exercise should determine insofar as is reasonably practicable, and on the balance of probabilities, the facts relating to a suspected disclosure on an unknown date prior to 9 February 2014 to a third party of confidential Commission data which may have been derived from the “[security sweep] Documents”” and “the report completed by a Designated Officer pursuant to Section 101 of the Garda Síochána Act 2005 and dated 17 December 2013”. That disclosure was “suspected of having been made directly or indirectly, verbally and/or by disclosure of copy documents on an unknown date prior to 9 February 2014, which suspicion is grounded on an article published in the *Sunday Times* on 9 February 2014”.
- 1.2 Mr Connaughton stated: “It is clear from the Terms of Reference that this investigation depends on the voluntary co-operation of those asked to participate. It is without a statutory footing and, obviously, without any power of compellability. It is akin to the kind of fact-finding exercise that an employer sometimes undertakes when it suspects that an act or acts of misconduct have been committed by an employee”. He added “That necessarily limits the capacity of the investigation to establish certain facts but I wish to record at the outset I received co-operation from all persons requested to assist, with one exception dealt with below”. (See paragraph 2.9)
- 1.3 Prior to the appointment of Mr Connaughton and immediately following the publication of the said article in the *Sunday Times*, an internal

investigation was commenced, at the instigation of the Commissioners, into the possible leak of the material published in that article (or any part thereof). Mr Connaughton was furnished with a copy folder containing details of all decisions taken on foot of that investigation until the Commissioners determined that a third party would be appointed.

1.4 Principal among those decisions was an early decision (made on 10 February 2014) to preserve a number of data sources related to the conduct of the security sweep/investigation, including the report prepared pursuant to section 101 of the Garda Síochána Act 2005 (as amended and hereinafter “the section 101 Report”), electronically stored records of building access during a period thought likely to be a relevant time frame for any subsequent investigation and other potentially useful information dealing with records of third party contacts. One of the electronic data folders contained details of some press communications on behalf of GSOC since its establishment.

1.5 The Terms of Reference allowed for extension of scope in the event that Mr Connaughton should form the opinion that other issues required investigation. Mr Connaughton availed of that option. Any such extension that was sought was facilitated fully by the Commission.

2.0 Methodology for Mr Connaughton’s Investigation

2.1 Following an initial briefing from a designated officer of GSOC, Mr Connaughton considered the relevant documents in order to familiarise himself with the chronology of events likely to be material to the investigation and also to confirm a written chronology for the purpose of his report. The accuracy of that chronology was verified by Mr

Connaughton through confirmation of material events by examination of documentation and interviews.

- 2.2 The investigation also examined the content of the said article in the *Sunday Times* in order to compare/contrast the information set out therein with any relevant information from the security sweep/investigation and the section 101 Report.
- 2.3 Certain policies and procedures operated by GSOC and relevant to the subject matter of this investigation were also reviewed.
- 2.4 Mr Connaughton requested further specific information from GSOC regarding the allocation and use of mobile phones and this in turn led to a request that certain phones be made available for technical analysis. The services of a UK company specialising in the analysis and recovery of digital data was retained. Analysis was conducted on certain phones as the investigation considered appropriate, practicable and proportionate.
- 2.5 Following interviews (in some instances more than once) with 15 people, all of whom are either present or past staff of GSOC, Mr Connaughton sought and obtained further information, particularly with reference to the timeline for the security sweep/investigation. He also considered the extent to which any information of and concerning the matter might have otherwise come into the hands of the *Sunday Times* journalist (ST journalist), i.e. other than through a leak from within GSOC.
- 2.6 As the investigation was most interested in dealings between GSOC and the ST journalist, it focused on the relationship between GSOC and journalists generally, including how (and through whom) business was

habitually conducted but with a particular focus on dealings with the ST journalist.

- 2.7 The expert analysis carried out on certain mobile phones advised that where records had been deleted there was no guarantee they could be recovered. From an examination of billing records for those phones it was clear that in some instances there was a record available (however basic) of communications that may have been relevant but some of these communications did not appear on the expert summary. They had therefore been deleted. However, Mr Connaughton had available extensive records of calls and texts including those related to contact with the particular journalist. The call records and text messages that were recovered largely confirmed the course of events which had already been established following interviews, particularly for the period between the end of January 2014 and the publication of the article on 9 February 2014.
- 2.8 Mr Connaughton's report states that "throughout the course of my investigation I was afforded co-operation from personnel within GSOC and persons who have recently left. I express my gratitude to them. ... I wish to also thank the Commissioners who responded positively to every request for assistance".
- 2.9 Despite Mr Connaughton's requests, the ST journalist credited with the relevant article declined invitations to meet.
- 3.0 **The publication in issue i.e. article in *Sunday Times* 9 February 2014**
- 3.1 On 9 February 2014, the *Sunday Times* published the said article, bearing the title "*GSOC Under Hi-Tech Surveillance*" which purported to outline

details of what is described within the body of the article as a “*sophisticated surveillance operation*” allowing persons using “*government-level technology*” to “*steal emails, data, confidential reports and possibly eavesdrop on mobile phone calls*” (ST). Mr Connaughton observed: “It is not a commentary or an opinion piece grounded on established facts. Rather, it boldly asserts alleged facts.”

3.2 Mr Connaughton concluded: “I am satisfied that [the ST journalist] did not have a copy of the Report when writing the article. Indeed, I might observe that had its content informed the said article, the exaggerated and incorrect claims made therein could not have been made”. This was based on his comparison of the *Sunday Times* article and the section 101 report prepared at the conclusion of the GSOC [section 102] investigation which “sets forth very succinctly the steps in the [security sweep/investigation] and the conclusions under each of the headings of concern. It was concluded on 17 December 2013 and put into limited circulation within GSOC on that date”.

3.3 It appeared to Mr Connaughton that the ST journalist did have available confidential details of and concerning the security sweep/investigation when writing that article. In order to identify what that confidential information may have been and whether it might have been otherwise available to the ST journalist (by means other than through disclosure from within GSOC), Mr Connaughton carried out a brief comparison of the content of the said article with details of the security sweep and the section 102 Investigation. This included the content of the section 101 Report prepared at the conclusion of that investigation.

4.0 The essential elements of the article

Mr Connaughton set out in his report under the heading “The essential elements of the article”:

4.1 “They are as follows:

- “a) That GSOC was actually targeted for the purpose of hacking into its emails, WIFI and phone systems through a sophisticated surveillance operation using “*government- level technology*”;
- b) That evidence of espionage was uncovered in 2013 following the retention by GSOC of a British Security Consultancy which included among its personnel “*former counter surveillance-specialists with Britain’s GCHQ spying agency*” and they were retained following concerns within GSOC that its offices were being bugged;
- c) That the British surveillance experts found evidence that a phone in a conference room on the upper floor of the GSOC Building was bugged and that a test of the line confirmed “*the phone was being used to eavesdrop on meetings*”. This alleged finding was attributed to sources;
- d) The Investigation also allegedly found that those responsible for the surveillance had compromised GSOC’s WIFI network in order to steal email, data and confidential reports and possibly eavesdrop on mobile phone calls;

It does not actually allege that material was stolen but the inference is that this is what occurred”;

- e) Mr Connaughton also stated that the article then goes on to allege that the investigators discovered a second WIFI system which had been created to harvest GSOC data and that it was operated using an IP address in Britain which electronically concealed the identities and whereabouts of those spying on the Garda Watchdog. Mr Connaughton stated that this assertion is attributed to unidentified sources;
 - f) Mr Connaughton identified that the final assertion as to the “spying” allegedly undertaken was to the effect that another device, which worked off GSOC’s broadband network, was also found to have been compromised. However, it was wiped of all data by those involved in the spying operation when it became clear their activities had been detected.
- 4.2 Mr Connaughton stated: “The content of the article cannot be reconciled with the content of the Section 101 Report. At most, the content of the Section 101 Report supports the existence of two concerns, one relating to the conference phone instrument in the Chairperson’s office and the second relating to the so called *IMSI catcher* but the text of the Section 101 Report is very careful and certainly does not support the conclusion expressed by [the ST journalist] that the phone was being used to eavesdrop on meetings or indeed that the *alert test* conducted on the line confirmed this”.
- 4.3. Mr Connaughton queried: Was there a time when there was a belief, i.e. supporting the content of the article, that such might have been the case? Mr. Connaughton states that such a belief may have existed at some stage.

He refers to the fact that personnel charged with the section 102 investigation were alert to the possibility of surveillance in light the issues identified during the sweep/investigation.

5.0 Discussion of the content of the article in context

- 5.1 Mr Connaughton stated that: "There are both inaccurate and confused passages in the article. If, as the author of the article contends, the information contained therein was informed by sources and if, assuming he has accurately transcribed the information provided by the source or sources indicated, then they were very poor factual historians if the information was conveyed at any time after the Section 101 Report was completed".
- 5.2 Mr Connaughton stated: "The article clearly refers to a hitherto unknown (at least to the extent that it was not in the public domain) investigation by GSOC directed to testing the integrity of its systems and the possibility that any of its communications systems may have been compromised".
- 5.3 Mr Connaughton stated: "It also accurately referred to the fact that external experts had been employed and it contained some details - however confused their expression - that probably relate both to the identification of anomalies in the AMX device and the apparent existence of an *IMSI catcher* or fake UK 3G network identified in the vicinity of GSOC offices".
- 5.4 Mr Connaughton stated: "Finally, the article refers to quite specific information concerning some of the detail of the threat identified during the first sweep between the period 23 and 27 September 2014 in relation to

the conference phone in the Chairperson's office on the fourth floor of the building".

- 5.5 Mr Connaughton stated: "[The ST journalist] was certainly aware of certain steps taken in the sweep by [the UK firm]."
- 5.6 Mr Connaughton concluded that "certain of the content of the article, to which I shall turn in a moment, is so inaccurate that one must surmise that either the actual findings of that *Sweep* were deliberately exaggerated and conveyed that way to [the ST journalist] or there was a lack of understanding on the part of the source or sources and [the ST journalist] simply reported what had been revealed".
- 5.7 Mr Connaughton stated: "I believe the latter to be much closer to the truth of the matter and while I have not had the opportunity of meeting with [the ST journalist], for the reason stated, I would expect that such an experienced journalist would be slow to paraphrase apparent technical information that might have been conveyed to him for fear of inaccurately reflecting the position".
- 5.8 Mr Connaughton stated: "It follows that it is unlikely that the source or sources were persons who would have been technically competent or indeed at the very heart of the investigation. It is difficult to conceive of the possibility that someone who was directly concerned with the investigation and aware by no later than 25 November 2013 that there was no conclusive evidence of bugging would have contributed to such an inaccurate article. To this must be added the important qualification... that some of the information contained in the article certainly comes close to

identifying concerns that did exist, however inaccurate the expression in the article, at an earlier stage in the investigation”.

5.9 Mr Connaughton stated: “However, as of the end of November the position had been significantly clarified”.

5.10 Mr Connaughton cited some specific allegations made by [the ST journalist] by way of illustration which, Mr Connaughton believed, made it clear that the article did not reflect the position as it was understood within GSOC at the end of November 2013.

5.11 There was a general allegation in the opening sentence of the article that GSOC’s systems were actually compromised which is then elaborated upon in two later passages, i.e. *“Investigators discovered that a second wi-fi system had been created to harvest GSOC data. It was operated using an IP address in Britain, which electronically concealed the identities and whereabouts of those spying on the garda watchdog, say sources”*. Mr Connaughton stated that the section 101 report “did not support the conclusion expressed” in the article. “It was also never suggested that there was a second Wi-Fi system in operation.”

5.12 Another illustration cited by Mr Connaughton was where the article stated:

“Another device, which worked off GSOC’s broadband network, was also found to have been compromised. However, it was wiped of all data by those involved in the spying operation... when it became clear their activities had been detected”. Mr Connaughton stated that: “This

passage is clearly at odds with the Section 101 Report and with the findings of the third [UK firm] Report”.

5.13 Mr Connaughton stated: “If [the ST journalist] had recent accurate ‘source’ information, around the date of publication, from someone then closely connected with the security sweep and investigation his article does not reflect this”.

6.0 Other potential sources of information available to the ST journalist

6.1 Mr Connaughton stated: “It appears that the information in the article that was accurate, at least in some respects, could have been available on a much earlier date than the date of publication”.

6.2 Mr Connaughton stated: “Third parties may have had some information which, if it came into the hands of [the ST journalist], would have assisted in the preparation of the said article”. Mr Connaughton alluded to the fact that a sweep/investigation of the type that was undertaken by GSOC necessitated interaction with external persons for various technical purposes.

6.3 Mr Connaughton concluded that: “the detail disclosed in the article is such that I am satisfied, on the balance of probabilities, that its content, however inaccurate it may be as to the facts at the date of publication, was prepared with some assistance from some person or persons connected with the [security sweep/ investigation]”.

7.0 Initial conclusions by Mr Connaughton

7.1 Mr Connaughton was satisfied that:

- i) Those directly charged with responsibilities at different stages of the [security sweep/investigation] followed careful procedures to maintain the confidentiality of the investigation. There is no basis for doubting their assertions that they did not disclose to any third party, including the journalist concerned, or indeed any journalist in the *Sunday Times*, any material that could have formed the basis of the said article.
- ii) The range of persons within GSOC who would have had some knowledge concerning the security sweep/investigation extended beyond those directly charged with responsibilities for any part of that investigation. Apart from the three Commissioners, other members of staff of GSOC had some knowledge of aspects of the investigation at different times prior to its informal conclusion on 25 November 2013 and its formal conclusion on foot of the section 101 report on 17 December 2013.
- iii) There is no evidence to suggest that GSOC personnel who saw the section 101 report made any disclosure of or concerning the matters that were covered in the said article. "For completeness, I should deal with one matter in particular, namely the Section 101 Report and the circulation of the only copy of the Report apparently taken following its completion. Prior to storage, it was handled by various GSOC personnel. There is no evidence that any further copy of the Report was taken. There is no evidence that the original

or the copy of the Report were taken from the respective safe storage in which they were held in separate locations within the GSOC building“.

- iv) Mr Connaughton dealt with various other GSOC personnel, including Commissioners, who may have had some knowledge of the sweep/investigation and concluded that there was no evidence to suggest that they disclosed any confidential information leading to the publication of the article.

8.0 Communications with the ST journalist

- 8.1 Mr Connaughton analysed carefully contacts between GSOC and the ST journalist over a considerable period of time. These were communications undertaken in response to journalistic queries made by the ST journalist in relation to various matters. Mr Connaughton focussed particularly on contacts with the ST journalist in the weeks preceding the publication of the article on 9 February 2014. Not all these contacts related to the sweep/investigation. Mr Connaughton interviewed persons who, with authorisation, spoke directly with the ST journalist in advance of the publication date and who denied emphatically giving any information of or concerning the security sweep/investigation to the journalist. Mr Connaughton concluded: “There is no reason to doubt their statements”.

9.0 Overall conclusions

- 9.1 Mr Connaughton stated: “I am satisfied that at some juncture after the commencement of the [security sweep/investigation], [the ST journalist] received confidential information from some person or persons associated

with the [security sweep/investigation] that assisted in the preparation of the article published on 9 February 2014. I have not been able to establish when he received such information, from whom he received it or indeed the exact nature of the information disclosed. Indeed, it is possible that he had a number of sources, some of which may have been external. However, I am satisfied, on the balance of probabilities, that he did not have a copy of the confidential report prepared pursuant to Section 101 of the 2005 Act... While I am unable to confirm to the Commissioners the source of the leak of information concerning the [security sweep/investigation] I believe that I have carried out a thorough examination of the evidence, within the limits of the type of investigation undertaken and that I have received full co-operation. It is difficult to identify what additional information could usefully advance matters, short of obtaining the co-operation of the journalist. He has made his position clear“.

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