



Law Society of Ireland

4 April 2014

Media Statement: Forty-one questions that must be answered

At its meeting today the Law Society's Council, comprised of the elected representatives of solicitors in Ireland, expressed its grave concern about the shocking revelations of recent days that telephone conversations to and from a large number of Garda stations were secretly and illegally recorded over a period of decades. These include conversations between detained clients and their solicitors in breach of legal privilege which protects the right to a fair trial of every citizen under both the Irish Constitution and the European Convention on Human Rights.

The Council unanimously agreed to write to the Taoiseach today to express its desire that these revelations be examined thoroughly within the statutory Commission of Investigation. The Law Society believes that it must, in the interest of upholding the rule of law, be afforded the opportunity to contribute to the terms of reference of that enquiry and has developed a list of 41 issues which the terms of reference should be wide enough to cover (see below).

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Items for inclusion in the Terms of Reference of an Inquiry into Recording of Telephone Conversations in Prisons and Places of Detention

Primary concerns of the Law Society of Ireland

The Law Society believes that the Terms of Reference of the Commission of Investigation must establish the following in the interests of justice:

Extent of recording of telephone conversations and use of material recorded

- 1 The extent of any interception/eavesdropping, whether recorded electronically or otherwise, and the extent to which notes of conversations may have been made.
- 2 The extent to which any other covert listening devices/recording devices/interceptions/monitoring other than telephones may be in place in any garda stations/places of detention.
- 3 The extent to which the recording system was ever used for investigative purposes/evidence gathering.
- 4 Identify all instances where solicitor-client confidentiality was breached by the very recording/interception.
- 5 Identify any instances where conversations between solicitor-client were covertly monitored and/or were used in subsequent investigations.
- 6 Identify instances where a Chief Superintendent (or any other individual with this authority) sanctioned the release of recordings of solicitor-client conversations for any use by other Garda.
- 7 Was there a designated phone for detained persons to use when making calls when in detention and the extent to which such phones used by detainees were recorded/intercepted?
- 8 Were the contents of any such eavesdropping/interceptions briefed in any form, by any person, directly or indirectly, to any State witness who subsequently gave opinion evidence in any Offences Against the State trial?
- 9 Did recordings ever form the basis for the forming of an opinion to apply for a search warrant?
- 10 Are there recordings of/notes of conversations with potential witnesses conducted over the phone which might be/have been beneficial/relevant to the defence?
- 11 Was the existence of tape recordings made known to those (including the High Court Judge) responsible for overseeing the confidential informant database and is there a relationship between the recordings and the handling of informants?
- 12 What decisions or efforts were made and by whom to destroy the tapes and recordings or any information or details arising out of them?

Establishment process and systems

- 13 Who authorised the making of the recordings?
- 14 When and where was a recording system first authorised and installed?
- 15 Was the authority for such a system ever renewed or extended by any person, if so by whom?

- 16 Was an application to approve the recording system ever made to the Department of Justice or the Attorney General, before, after or at the time of its inception?
- 17 What was the purported legal basis for the authorisation, by whom was it made and ever extended?
- 18 What system was in place for replacing the tapes pre-electronification in 2008?
- 19 Who replaced tapes in each station; was there a procedure for assigning this work?
- 20 What directions were issued to the people responsible for changing tapes?
- 21 What was done by the persons in control of the tapes as regards filing, archiving, indexing and access?
- 22 Where were tapes stored?
- 23 Where were digital electronic recordings and any transcripts stored?
- 24 What was the filing system, for example, were the recordings, whether electronic or tape stored by date, stored by case number etc.?
- 25 Was there an index of the contents of each tape given reports that each tape can accommodate 640 hours of recordings?
- 26 Was there ever legal advice sought by An Garda Siochana in respect of any aspects of recordings including the retention of recordings?
- 27 Who approved the expenditure and sanctioned any payments outside standard wages?
- 28 Was any other work/maintenance outsourced?
- 29 Were annual reports/audits kept as regards recordings?
- 30 What systems were in place in terms of monitoring the recordings?

The extent of access

- 31 What powers of access were permitted?
- 32 Who had the power to grant access?
- 33 Were any directions for powers of access in writing?
- 34 Is there a log of who had access and when?
- 35 Is there any log of instances of non-permitted access?
- 36 How many people in each station had authority to access?

Destruction and retention

- 37 Has there been any destruction of recordings?
- 38 Is there an inventory against which existing recordings can be cross-referenced?

Nationwide application of the systems

- 39 Why was the system not installed in Dublin Garda Stations and only in selected non-Dublin stations?
- 40 Were there any stations in Dublin that were the subject of recordings/covert interceptions specifically both pre-electronification and post-electronification?
- 41 Were calls in Dublin stations diverted to a central recording facility inside or outside of Dublin?

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