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TELEPHONE TAPPING

3 Statements issued on behalf of the Government

STATEMENT No. 1 of 3 STATEMENTS

Thursday 20th January 1983

The Commissioner, Garda Siochana, Mr. Patrick McLaughlin, and the Deputy Commissioner in charge of the Security Section, Mr. Joseph Ainsworth, have, separately, notified the Minister for Justice of their intention to retire from the Force with effect from 1st February, and this has been accepted by the Government.

Each of them separately has made it clear to the Minister that he has felt that this is the right course to take in the aftermath of certain recent controversies, especially in relation to telephone tapping.

The Government, for their part, while recognising the seriousness of certain matters that have come to light and that are being dealt with in other statements, think it necessary to say publicly that they greatly regret that two officers who have given long and dedicated service to the State should have been caught up in these matters.

STATEMENT No. 2 of THREE STATEMENTS

According to information supplied by Mr. T.J. Ainsworth, Deputy Commissioner in charge of the Security Section in the Garda Siochana, he, Mr. Ainsworth, received, towards the end of October, 1982, a telephone call from Mr. Sean Doherty, then Minister for Justice. Mr. Doherty asked that a tape recorder be taken by Mr. Ainsworth to the then Minister for Finance, Mr. Ray McSharry, at his office in Upper Merrion Street. After some discussion about the type of recorder required, Mr. Ainsworth went to Mr. McSharry's office and handed over to him a small recorder, together with a sensitive microphone which is an accessory supplied with the recorder in question, and a cassette tape and batteries were handed to Mr. McSharry there. Mr. Ainsworth showed him how to use it. The cassette was capable of running for one hour on each side.

On the following day or the day after that, Mr. Sean Doherty again telephoned Mr. Ainsworth and asked him to have a tape transcribed quickly as he wanted it at Government. A cassette tape was sent by Mr. Doherty to Mr. Ainsworth's office and was similar to the one given to Mr. McSharry. (This tape cassette is not one of a kind in general use.) The tape was transcribed in Garda Headquarters by a member of the Garda Siochana.

When the transcript was completed Mr. Ainsworth telephoned Mr. Doherty's office in St. Stephen's Green to say that he had a

dispatch ready for the Minister. He was telephoned back later and asked to take the transcript to Mr. Doherty at Government Buildings. Mr. Ainsworth brought two copies of the transcript to Government Buildings. The two copies of the transcript were handed by Mr. Ainsworth to Mr. Doherty, who returned the recorder, the microphone and the batteries which had previously been given to Mr. McSharry.

The transcript, a copy of which had been retained by Mr. Ainsworth and is now in the possession of the Minister for Justice, has today been identified by Dr. Martin O'Donoghue as being one made of a conversation between him and the then Minister for Finance, Mr. McSharry, and that he had not authorised the taping nor been aware that the conversation was being recorded. The conversation transcribed related solely to party political issues concerning Fianna Fail and included nothing which could be thought to relate to matters of concern to the Garda Síochána.

The transcript of the tape has been read only by the Minister for Justice, the Attorney General and officials of their Departments as a necessary part of the enquiry. The Taoiseach has directed that the contents of the tape be neither shown to nor disclosed to himself or any other person (other than Dr. O'Donoghue in the circumstances outlined above) but that it be retained in safe custody by the Department of Justice.

20th January 1983

Statement Number 3 of three Statements

INTRODUCTION

Except where otherwise indicated, references in this statement to the "tapping" of telephones are intended to refer to such "tapping" pursuant to a warrant issued by the Minister for Justice.

The statement includes references to two different Deputy Commissioners of the Garda Síochána but mainly to one of them, viz., the Deputy Commissioner in charge of the Security Section who, through most of the relevant period, was Assistant Commissioner in charge of that Section. Except where otherwise indicated, all references to "the Deputy Commissioner" are intended to refer to him.

Allegations have been widely publicised in recent weeks that the telephones of two journalists, Mr Bruce Arnold and Miss Geraldine Kennedy, have been "tapped". There is nothing new in allegations that the telephones of journalists, whether named or not, have

been "tapped" and, while there have been indications in one form or another at various times by Ministers for Justice that such "tapping" did not occur on any significant scale, there has not to my knowledge been any suggestion by any Minister for Justice that either journalists or any other group in the community were or could be guaranteed immunity from the possibility of some of their members having a "tap" put on their telephones for sufficient reason.

What distinguishes the recent allegations from most others is the fact that neither of the two journalists concerned could be thought likely either to be engaged in serious criminal activity or activities affecting security or to be in touch with persons who might be so engaged, and that this has given rise to suggestions that those two telephones were tapped for improper reasons (unconnected with serious crime or subversive activity). That was the context in which I undertook to have an investigation carried out.

Result of investigation

Because of the exceptional circumstances of this case I propose to disclose the material facts relating to it and I am doing so at this stage because it would be manifestly unfair to prolong the impact on the two journalists concerned of the publicity already given to the matter, a prolongation which could be very extended indeed if the whole matter were to be left over for the proposed Judicial Enquiry. I am doing so despite the fact that it has not been the practice in the past either to confirm or deny allegations that the telephones of identifiable people were "tapped". I am satisfied that there are very cogent reasons for that general practice and I intend to maintain it as a norm to be

departed from only in the most exceptional circumstances. In fact the practice has, in the past, been departed from in at least one particular context for what were deemed to be sufficiently exceptional reasons and I am satisfied that sufficiently exceptional reasons also obtain now.

My general conclusions may be summed up as follows:

First, I confirm that both telephones were in fact "tapped".

Secondly, the facts show that the system of safeguards which successive Ministers for Justice had publicly declared in Dail Eireann to be an integral part of the system was either disregarded in the two cases in question or, what amounts to the same thing, was operated in such a way as to be rendered meaningless.

Thirdly, the facts show that there was no justification for the "tapping" of either of the two telephones and that what occurred went beyond what could be explained as just an error of judgment.

For an understanding of the facts some background information must first be given.

System of controls on "tapping"

Details about the system have been given at various times in the Dail and persons interested in the details will, on request, be given the references to the various Official Debates. Briefly, the system, in so far as Garda matters are concerned, is that an application for a warrant in respect of a particular telephone is made by the Commissioner (or, in the Commissioner's absence, by

the Deputy Commissioner appointed to act on his behalf). Since the early 'Seventies, when the formalities governing the matter were tightened up, each application has been made in a format that incorporates a formal certificate that the warrant is required for the detection of serious crime or for security purposes information as to which can be got in no other way. The written application (with its certificate) is forwarded to the Department of Justice and it includes the name and address of the subscriber but not any details in support of the application. Details sufficient to show at least the general purpose and need for the application are then given orally to a nominated officer of the Department and, in turn, are given by him to the Minister. If the warrant is granted it is sent to the Department of Posts and Telegraphs. When the need to maintain the warrant ceases, the approved procedure is that an application for its withdrawal is made but, in order to guard against any oversights in this respect, an additional requirement is that a positive review must be carried out at quarterly intervals and, if the warrant is to remain in force after such review, a certificate has to be furnished by the Commissioner that it is in fact yielding results.

Details of the methods of operating the "tap" are confidential but they involve the use of a recorder and the taking of excerpts of such (if any) of the recorded material as might be thought relevant by persons experienced in recognising what would be likely to be relevant. Except where there is a special reason - an example would be a need to make a voice identification - the recording itself is then erased and only the excerpts (if there are any) would be retained by the Garda Síochána.

Tapping of telephones of Mr Bruce Arnold and Miss Geraldine Kennedy

An application for a warrant in respect of Mr. Arnold's telephone was made on 10 May, 1982 it being stated both in relation to this and other warrants sought in this application that "the warrants are required for security purposes and it is hoped through their operation to secure useful information concerning subversive activity which could not be obtained in any other way." The warrant was granted. An application to have the warrant withdrawn was made on 12 July and as is the invariable practice on receipt of such an application, the warrant was in fact withdrawn.

An application for a warrant in respect of Miss Kennedy's telephone was made on 28 July, 1982 and was granted. The certificate in support of the application departed in certain respects from standard - a point to which I shall return later. On 27 October, arising from the usual quarterly review, a certificate was received that the "tap" on her telephone was yielding results. On 16 November, an application was received to have the warrant withdrawn and that was done.

One point of difference arose in relation to Miss Kennedy's telephone. At the time when the initial application was being prepared, an officer in the Department of Posts and Telegraphs, who in the normal way was asked by one of the Gardai concerned in such matters for the name of the registered subscriber in respect of the particular number, apparently consulted a record that was not fully up to date. The result was that, although Miss Kennedy was in fact already at that time the registered subscriber, the name supplied as the registered subscriber was

the person who had been the subscriber before her. I should make it clear that I accept that this was a bona fide mistake and also that it made no practical difference to the operation of the "tap" since the "tap" relates to the particular telephone as identified by its number. It is not in dispute that the "tap" was intended to relate to Miss Kennedy, who was named in the documentation within the Security Section in Garda Headquarters. The mistake did, however, have the result that Miss Kennedy's name did not appear on the application forwarded to my Department or in the subsequent certificate forwarded in October and my Department did not know that the application for the warrant in fact related to her.

The investigation

My initial enquiries were made within my own Department which I found had some, but only limited, information. I shall deal later with my Department's role. Then, having made those initial enquiries and having confirmed from the Department of Posts and Telegraphs that the telephone number to which I have already referred was in fact that of Miss Geraldine Kennedy, I had preliminary enquiries made of the Commissioner, Garda Siochana, personally. From those preliminary enquiries, it emerged that the Commissioner was wholly unaware that a telephone in respect of which he had applied for a warrant was that of Miss Kennedy. I have already explained how her name did not appear on the documentation and the Commissioner has stated that he is satisfied that he would recall it if he had been told that a journalist as well known as she is was in fact the person whose telephone was the subject of the application.

I then asked for an investigation to be carried out within the relevant section of the Garda Siochana by the senior Deputy Commissioner, who was the most senior officer who had no involvement with the matter. As a result, that officer sought formal reports or statements from all members who had any involvement - as might be expected, the number was quite small.

The most significant report was from the Deputy Commissioner in charge of the Security Section (to whom all further references to "the Deputy Commissioner" refers). According to his report -- what is said here is a summary of the relevant part - he had a discussion in April, 1982, with my predecessor, Deputy Doherty, about security matters in general and Deputy Doherty spoke, apparently at some length, about what he regarded as a serious problem of "leaks" to the media from Government Departments and possibly from the Cabinet. Some time later, the then Minister had a further discussion with him on the same general theme of "leaks" to the media. Deputy Doherty is said by the Deputy Commissioner to have referred to political correspondents in general but in particular to Mr Bruce Arnold and to have enquired if Mr Arnold was known to have any links with the foreign press or foreign press organisations. He is said to have spoken further about the problem of "leaks" to newspapers and to have indicated that they should be investigated and stopped and that he considered that a "tap" should be put on Mr Arnold's telephone. Subsequent to that conversation, the Deputy Commissioner discussed the matter with the Commissioner and an application was made for a warrant, with the result I have already indicated.

The explanation offered in the Garda report in respect of the tap on Miss Kennedy's telephone is in all material respects similar,

i.e. the application followed a discussion between the then Minister and the Deputy Commissioner and there appears to have been even more emphasis on "leaks" from within the Cabinet itself and on the need to have them stopped.

As will have been seen, what this amounts to is that the "taps" were put on at the behest of my predecessor on the basis that he wanted to detect and put an end to "leaks" to the media from "Government" sources including in particular "leaks" suspected of having come from members of the Cabinet. Although it would seem reasonable to assume that in those circumstances the Garda authorities would have been told what particular "leaks" the Garda Security Section was supposed to investigate and put a stop to, how many of those "leaks" had in fact been published by Mr Arnold or Miss Kennedy and whether they were the only, or principal, journalists involved in publishing the alleged "leaks", the Deputy Commissioner has indicated that the Minister had mentioned no particular "leaks" and had given no indication that either of the two journalists mentioned had actually published any "leaks".

The role of the Department of Justice

As explained earlier, applications for warrants are channelled through the Department to the Minister. I am informed however that, unless the reasons given for an application appear "unreasonable" on their face, the Department does not seek to question the professional evaluation of Garda officers in relation to the need for "security" surveillance or in relation to the detection of serious crime. Nevertheless, despite the general practice or policy I have mentioned, the records show that the Department did in fact enter "caveats" in relation to the two warrants in question.

Department of Justice records indicate that, in relation to the application concerning Mr. Arnold's telephone, the appropriate officer in the Department made the usual enquiry from Garda Headquarters as to the reasons for the application. I understand that he probably first spoke to a more junior officer who was unable to assist him but it is not in dispute that he eventually discussed the matter with the Deputy Commissioner.

The Departmental record indicates that the reason given was that Mr Arnold was anti-national in his outlook and that he might be obtaining information from sources of a similar disposition.

(On being informed of this record, the Deputy Commissioner states that, while he cannot recall the incident, he would wish it to be known, in fairness to Mr Arnold and to himself, that any comment on those lines would have been intended as a reference to a view that some might hold about some of Mr Arnold's published opinions and intended also as confirmation that there was no suggestion of any kind that Mr Arnold had any association or contacts with para-military organisations).

The officer wrote a note to the Minister setting out the reason for the application as conveyed to him by the Deputy Commissioner and expressing the view that the warrant should not be granted.

In relation to Miss Kennedy, the application, for reasons already stated, did not have her name on it. The relevant officer of my Department made the usual enquiry as to the reasons for the application and, as on the previous occasion, spoke to the Deputy Commissioner. The officer of my Department states that the Deputy Commissioner did not indicate that the warrant related to Miss Kennedy and I should make it clear that the Gardai have not

suggested otherwise. The Deputy Commissioner stated to the officer in my Department that the Minister was aware of the detailed reasons for the application. The Departmental record shows that the officer indicated in a note to the Minister that, as he had no details, he was not in a position to make any recommendation regarding the signing of the warrant but that he understood the Minister had the details. In the context, this reference to his not making a recommendation related to the sufficiency or insufficiency of the reasons for the application but a separate (negative) recommendation was made about the format of the supporting certificate, as explained below.

Change in format of the certificate in the application
affecting Miss Kennedy's telephone

As briefly indicated already, the certificate in this case departed in certain respects from the established format. In particular, the standard reference to "security" purposes had been changed to a reference to "national security". My Department was not satisfied that departures from the approved format should be accepted and, in the note already mentioned, recommended to the Minister that the particular certificate should not be accepted. It was, however, accepted.

The Commissioner states that he was unaware of the fact that the document presented for his signature involved any change. The Deputy Commissioner states that he had not appreciated that there was an "approved" (as distinct from a "usual") format for an application and that he used the words "national security" on this occasion because he had reflected on the position in relation to Mr Arnold and Miss Kennedy and because, to his mind, the word "security" alone tended to be interpreted - in this context - as

having subversive connotations and he thought that "national security" would be more appropriate to the matter of Cabinet "leaks".

Material obtained from the "tap"

I am informed that no instructions or guidance was issued to those examining the recordings from the two telephones as to what they should look out for, and that this is normal. On this occasion, however, the result was that the people assigned to the task of listening to the tapes took it for granted from the identity of the two journalists concerned that what they in the Garda Síochána were expected to look out for was material of party-political interest. Apart from the fact that some of them have said so explicitly, the proof is in the fact that the excerpts that were transcribed by them were for all practical purposes exclusively concerned with party-political matters. One or two of the excerpts did contain some references to matters of marginal Garda interest, such as actual or possible transfers, but even they were only in the context of suggested links with party-political issues.

All the excerpts were submitted as a matter of course to the Deputy Commissioner and additional copies of some of the material were given to him at his request on more than one occasion. In addition a complete new set of photostats of the material was sought by and given to him on 5 October. The Deputy Commissioner states that he cannot remember why on that particular date he should seek a copy of the full set of excerpts but that his recollection is that he wished to assemble evidence to assist him in convincing my predecessor that the warrants were producing no evidence related to "leaks".

The Deputy Commissioner states that, towards the end of October, at a further meeting with my predecessor, the latter again referred to media "leaks" and raised the question of a restoration of a "tap" on Mr Arnold's telephone and also referred to Miss Kennedy. He - the Deputy Commissioner - states that he indicated to the Minister that such "taps" were of no value in this context and, in support of that view, offered him the entire set of transcripts to date relating to the two journalists, which the Minister took and returned at some later date. (The "tap" was still on Miss Kennedy's telephone at that stage).

Before leaving this aspect of the matter, I think it necessary to mention one further incident. At the beginning of July, the Deputy Commissioner, who had been given a transcript of a conversation on political matters between Mr Arnold and a well-known Deputy - not then a Minister - in the Party then in Government, asked for and was given the tape (as distinct from the transcript) containing the conversation. He states that he did so to confirm his belief that the "tap" on Mr Arnold's telephone was producing nothing worthwhile and that he erased the tape. (From the context, this would have been within a week or so).

Further Action

On the most benign possible interpretation of the facts, what has now occurred is such that it is impossible to expect the public to continue to have any confidence in a system which must depend for its acceptable operation on a respect for commitments solemnly given to Dail Eireann by successive Ministers for Justice.

In speaking on this matter in the Dail both of the last two Fianna Fail Ministers for Justice before my immediate predecessor, namely Deputy Gerry Collins and Deputy Desmond O'Malley, when dealing with the safeguards that existed in relation to possible abuses, put some emphasis on the fact that it was the Commissioner - and not the Minister - who initiated the applications. In this case, the procedure was effectively reversed. Action was taken at the behest of the Minister and it is clear from the re-action now of the two senior officers (the Commissioner and Deputy Commissioner) that they felt that in circumstances of this kind they had no real option but to comply with the Minister's wishes.

In the short-term - and by that I mean the shortest time within which, consistent with other pressures on my Department, I can introduce formal changes - I give a public pledge, firstly, that I will not operate the system except fully in accord with the commitments given to Dail Eireann and, secondly, that I have now ordered a special positive review of all warrants in existence by reference to the principle that, in applying the well-recognised criteria, the inherent seriousness of eavesdropping on what is supposed to be a private conversation is to be fully taken into account.

This, however, can only be a stop-gap arrangement. New and substantial safeguards - safeguards that are proof against the kind of occurrence described above - must be introduced.

20th January, 1983.