

COMMISSION OF INVESTIGATION

into

The Dublin and Monaghan bombings of 1974

Second Interim Report

January 2006

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[Terms of Reference]

1. Introduction

The commission of investigation into the Dublin and Monaghan bombings of 1974 (hereinafter referred to as “the commission”) was established by Order of the Government made under section 3 of the Commissions of Investigation Act 2004.

Notice of the Order of the Government was published in the 13th May 2005 edition of *Iris Oifigiuil*.

The terms of reference of the commission were also published in the 13th May 2005 edition of *Iris Oifigiuil*. A copy of the terms of reference of the commission is set out in Appendix A of this second interim report.

The commission has decided pursuant to section 6(6) of the Commissions of Investigation Act 2004 to request the Taoiseach, as specified Minister under the section 3(3)(b) of the Commissions of Investigation Act 2004, to consider a revision of the time-frame for the submission of the final report of this statutory investigation.

This second interim report is submitted to the Taoiseach pursuant to section 33(3) of the Commissions of Investigation Act 2004.

2. Work done

The investigative work of the commission is at an advanced stage and nearing its conclusion.

The commission has heard evidence from a significant number of persons within the jurisdiction. These persons have also disclosed a variety of relevant documentation and information. In a number of instances portions of the disclosed documentation contain sensitive information that in ordinary court proceedings, would be privileged from disclosure generally. Where this situation arose the commission has generally succeeded in obtaining access to such documentation for the purposes of inspection, and use for the purposes of this investigation of all relevant portions of that information and documentation, whilst at the same time taking into account the serious and continuing duties of confidentiality attaching to such documentation and its content.

The commission has assembled a significant archive of documentation and information concerning the Dublin and Monaghan bombings of 1974. This documentation will be deposited with the Taoiseach, as specified Minister under section 3(3)(b) of the Commissions of Investigation Act 2004, at the dissolution of the commission pursuant to section 43(2) of the Commissions of Investigation Act 2004.

The commission had commenced the process of preparing its draft final report.

The commission is required under section 34(1) of the Commissions of Investigation Act 2004 to send a draft of the final report, or the relevant part of the draft final report to any person who is identified in or identifiable from the draft report. When any person is sent a draft of the final report or the relevant part of the draft final report that person will be invited, where he or she believes that the commission has not observed fair procedures in relation to that person, to submit a written statement to the commission setting out the reasons for such belief and requesting the commission to review the draft in the light of the written statement so furnished to the

commission. Such person may also apply to the High Court under section 35(1)(b) of the Commissions of Investigation Act 2004 for an Order directing that the draft be amended before submission of the final report. In the event that the commission amends its draft final report under section 35 of the Commissions of Investigation Act 2004 the commission is required to notify any person affected of such amendment made prior to the submission of the final report.

The commission has had to exercise considerable care in relation to the manner in which the documentation that is generally privileged is described and set out in the draft final report. The damage and real dangers associated with the inappropriate disclosure of such material is a matter that has had to be carefully considered by the commission. The commission, in its investigative work, has had to exercise appropriate care, as far as is practicable and consistent with the statutory purpose of this investigation, so as to ensure that such material is dealt with in a manner which respects its sensitivity.

3. New development

The commission has, for some considerable time, sought the voluntary co-operation and assistance of certain entities and persons who the commission is satisfied are in a position to materially assist this investigation.

On the 11th January 2006 a number of those entities indicated a willingness to meet with the commission to discuss certain matters relevant to the terms of reference of this investigation.

This development is, in the commission's view, important to the requirement in the commission's terms of reference that the commission should thoroughly investigate the specific matters set out in its statutory remit. The commission is satisfied that, were it to decline to accept this offer of co-operation a significant opportunity to advance this investigation would be lost. The commission is also satisfied that if the opportunity to pursue this offer of co-operation is not taken up by the commission the potential fruits of this possible line of investigation may not be available in the future.

The commission is satisfied that the importance of the co-operation indicated by the entities concerned requires the commission to notify the Taoiseach of this development and to request a revision of the time frame for the completion of the final report of this investigation.

4. Time frame

The commission is required by section 32(4) of the Commissions of Investigation Act 2004 to endeavour to submit its final report to the Taoiseach by the 31st January 2006.

The commission is satisfied that, consistent with its duties under the Commissions of Investigation Act 2004, the time frame for submission of the final report of the investigation is no longer appropriate.

The commission requests the Taoiseach, as specified Minister, to give consideration, under section 6(6) of the Commissions of Investigation Act 2004, to revising the time frame for the submission of the final report of the investigation.

The commission considers that it has a duty to attempt to obtain the evidence, documentation and information that it considers may be in the possession, power or procurement of the entities that have indicated their agreement to meet with the commission as referred to hereinbefore.

If the commission has success or even a measure of success in obtaining such evidence, documentation or information it is likely that certain persons who have already given evidence to the commission will have to be notified of that evidence, documentation or information, or portion of it, under the requirements of the Commissions of Investigation Act 2006.

The commission considers that a revised date of the 28th February 2006 may be a realistic target date for the submission of the final report of the commission.

If the commission, having attempted to pursue this newly opened line of investigation, arrives at the considered opinion that it is unlikely that the evidence, documentation and information requested will be forthcoming the commission intends to conclude its investigation in a shorter time frame.

The commission is anxious to complete its investigation as soon as possible. At the same time the commission accepts that the recent offer of co-operation from certain entities may materially assist this specific investigation, and that this opportunity may not be otherwise available.

5. Legal costs

The commission has written to certain persons and entities that have been involved with this investigation inviting them, should they wish to do so, to make any appropriate application for legal costs or other expenses. In other instances certain persons have themselves submitted applications for expenses.

It is likely that the amount of legal costs payable under the 'General Guidelines on Payment of Legal Costs and Other Expenses to Persons Who Become Involved with the Commission of Investigation' issued by the Taoiseach will not be significant.

A significant number of the persons who were involved with the investigative work of the commission are retired from their former occupations and have submitted applications for payment of their expenses under the general guidelines. In most instances these expenses were necessarily incurred and the amounts claimed reasonable. These are not likely to be a significant addition to the costs of the investigation.

To date neither the commission, nor any person or entity concerned in the work of this investigation, has made an application to the High Court for relief under the Commissions of Investigation Act 2004 or otherwise.

6. Conclusion

In these circumstances I, as sole member of the commission am of the considered opinion that it is in the public interest that I request the Taoiseach, as specified Minister under section 6(6) of the Commissions of Investigation Act 2004, to consider a revision of the time frame for the submission of the final report of this investigation and hereby do so.

Dated this 16th day of January 2006.

Patrick MacEntee, SC, QC

Sole Member

Appendix A

Scanned Extract from Iris Oifigiuil 13 May 2005

COMMISSION OF INVESTIGATION,
DUBLIN AND MONAGHAN BOMBINGS OF 1974.

TERMS OF REFERENCE

To undertake a thorough investigation and make a report on the following specific matters considered by the Government to be of significant public concern.

- (1) Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?
- (2) Why the Gardaí did not follow-up on the following leads:
 - (i) information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;
 - (ii) information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;
 - (iii) information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings;

and

- (3) In relation to the missing documentation:
 - (i) the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;
 - (ii) the reasons explaining why the documentation went missing;
 - (iii) whether the missing documentation can now be located; and

- (iv) whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing.

To take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation.

To provide a final report to An Taoiseach not later than six months from the date of establishment of the Commission.

STATEMENT OF COSTS AND TIMEFRAME FOR INVESTIGATION

The Commission of Investigation will be established for a period of six months. It will be required to make a final report to the Taoiseach, as the specified Minister, not later than the end of six months from the date of its establishment.

The Commission will comprise a Sole Member. Staffing of the Commission will comprise a Senior Counsel and three support staff.

The estimated legal fees, salaries and other administrative costs for the Commission total €604,880 for a six month period. This does not include any third party costs that may be awarded by the Commission.

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