

# **COMMISSION OF INVESTIGATION**

**into**

**The Dublin and Monaghan bombings of 1974**

**Third Interim Report**

**February 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 13<sup>th</sup> May 2005 edition of *Iris Oifigiuil*.

The terms of reference of the commission were also published in the 13<sup>th</sup> May 2005 edition of *Iris Oifigiuil*. A copy of the terms of reference of the commission is set out in Appendix A of this third 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 third interim report is submitted to the Taoiseach pursuant to section 33(3) of the Commissions of Investigation Act 2004.

## **2. Recent progress**

The commission has had, during the month of February 2006 a variety of contacts, and a meeting, with certain entities whose assistance has been sought by the commission for some time.

This aspect of the investigative work of the commission depends in significant part on the voluntary co-operation of the said entities.

The commission has requested in these contacts and during the said meeting with these entities specific information and documentation that it considers material to this statutory investigation.

The commission has been assured that searches and inquiries have been commenced for information and documentation sought by the commission.

The commission has been informed that the information and documentation sought by the commission may lie in records that are more than thirty one years old and that, in consequence, the necessary searches and inquiries will take a substantial period of time to complete.

As a direct result of these contacts and the meeting the commission has already received certain security and intelligence documentation, portion of which, the commission considers material to its investigation. This information and documentation has been sought by the commission since the month of August 2005.

The commission has been assured that in relation to one specific area of investigation these entities intend to provide a response to the commission by the end of February 2006.

In relation to an additional, and particularly important, area of investigation it has been indicated to the commission that there is hope that there will be a substantial response to the commission by the end of March 2006.

The commission is satisfied that its decision to pursue the offer of co-operation from these entities is the correct decision. The specific areas of investigation being currently pursued with these entities can, in the event of appropriate voluntary disclosure by them, be reasonably furthered.

The commission has, as a result of these particular lines of investigation, also met with a person it had sought to identify, and meet with, for a considerable period of time. This person, who had not previously been identified, has met with the commission and provided material assistance.

The commission is actively seeking to identify, and meet with, a further person. The commission considers that the likelihood of properly identifying, and meeting with, that person depends to a high degree on the voluntary co-operation of the entities it has recently met.

The commission is, also, actively seeking specific information on a third person that may be of particular importance to this investigation. Again, the likelihood of furthering this area of investigation depends in large part on the voluntary co-operation of the entities the commission has met.

### **3. The final report**

The investigative work of the commission is, with the exception of the current areas of investigation, largely concluded.

The commission is in the process of preparing its final report.

The information and documentation that the commission has obtained to date from the entities it is engaged with may have to be disclosed, in whole or part, to particular persons who may have an appropriate interest in, considering and making submissions on certain aspects of that material.

The commission also considers it likely that further information and evidence may be voluntarily provided to the commission by the entities mentioned above in specific areas currently under investigation. In that event it is also likely that all, or some, of any information or documentation so obtained may have to be disclosed, in whole or part, to particular persons

who may have an appropriate interest in considering and making submissions on certain aspects of that material.

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.

Where a person receives a draft of the final report, or the relevant part thereof, that person must be invited by the commission, where such person believes that fair procedures have not already been observed in relation to the protection of the interests of such person, to submit a written submission setting out the reasons for such belief and requesting the commission to review its draft report in the light of the written statement of request so furnished to the commission.

That person may also apply to the High Court under section 35(1)(b) of the Commissions of Investigation Act 2004 for an Order directing an amendment of the draft report before submission of the final report.



Where the commission decides to amend the draft final report it must, under section 35 of the Commissions of Investigation Act 2004, notify any person thereby affected of any such amendment prior to the submission of the final report.

The commission repeats that it has had to exercise very considerable care in relation to the manner in which security and intelligence documentation and information, usually privileged from disclosure, is described and set out in the draft final report. The potential damage associated with the inappropriate disclosure of this category of material is a matter that has had to be carefully reviewed by the commission and has taken, and may in the future take further time.

The current active areas of investigation involve, to a significant extent, security and intelligence information and documentation relevant to the terms of reference 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 28<sup>th</sup> February 2006. This was a target date for the commission dependent upon whether or not the entities mentioned above intended to meet with, and co-operate with, this investigation.

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 documentation and information that it considers are likely to be in the possession, power or procurement of the entities mentioned above.

The commission has had an opportunity in private to explain its request for co-operation and assistance. The entities concerned have indicated a time scale to the commission for the co-operation intended to be given by them.

The commission has, in the interim, obtained further information and documentation relevant to these particular lines of investigation.

The commission considers that the agreement by the entities concerned to provide further information and documentation within the time frame of the end of February 2006 and the end of March 2006 are important opportunities to advance this investigation that might otherwise be lost.

If the commission succeeds in obtaining further documentation or information from these entities it is likely that certain persons who have already given evidence to the commission will have to be notified of that material, or portion of it, under the requirements of the Commissions of Investigation Act 2006.

The commission considers that a revised date of the 31<sup>st</sup> May 2006 is now the appropriate date for the submission of the final report of the commission.

If the commission, having attempted to pursue these lines of investigation, arrives at the conclusion that the documentation and information requested will not be forthcoming the commission will not hesitate to conclude its investigation in a shorter time frame.

## **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.

The commission considers 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, on the basis of the present applications received, be relatively small in amount.

## **6. Court proceedings**

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.

## **7. Conclusion**

In these circumstances I am of opinion that in the discharge of my statutory function I am bound to 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 27<sup>th</sup> February, 2006.

Patrick MacEntee, SC, QC

Sole Member

# **APPENDIX A**

**[Terms of Reference]**