

# **TRIBUNAL OF INQUIRY**

**INTO**

## **COMPLAINTS CONCERNING SOME GARDAI IN THE DONEGAL DIVISION**

**Appointed by Instrument made by the Minister for Justice, Equality and Law Reform upon the 24<sup>th</sup> day of April, 2002 entitled Tribunals of Inquiry (Evidence) Act, 1921 (Establishment of Tribunal), 2002**

### **DETERMINATION**

The issue which now comes before the Tribunal for determination arises in the following circumstances.

The Tribunal is, pursuant to paragraph (h) of its Terms of Reference, directed to “enquire urgently” into

**“Allegations contained in documents received by Deputy Jim Higgins on 25<sup>th</sup> June, 2000 and in information received by Deputy Brendan Howlin on 25<sup>th</sup> June, 2000 that two senior members of An Garda Síochána may have acted with impropriety.”**

## **Background**

The events to which paragraph (h) relates concern the receipt by the then Dáil Deputy, Jim Higgins, of a telephone call made to his home on Sunday, 25<sup>th</sup> June, 2000 from an individual who informed him that he would be receiving a facsimile message which had been drawn up by a former Garda and which contained very serious allegations. Senator Higgins has confirmed that he knows the identity of the person who phoned him and the retired member of An Garda Síochána to whom reference is made. A short time after the receipt of this call a facsimile message was received at the same telephone number which made a number of allegations. The full text of this facsimile is set out at Appendix “A” to this Ruling.

Mr. Brendan Howlin, T.D., on the same date, received a telephone call from a Parliamentary colleague who supplied him with the telephone number of another person who had been a source of information to him concerning facts relevant to issues concerning the McBrearty family of Donegal. Deputy Howlin telephoned this number, spoke to a person who gave him certain information and made notes of the conversation. Deputy Howlin’s notes indicate that he was informed that there was “evidence coming from a Garda based in Donegal who has provided my informant with most reliable information in the past”. These notes raise similar allegations to those contained in the facsimile which had been received by Senator Higgins.

Senator Higgins and Deputy Howlin attended a meeting with the then Minister for Justice, Equality and Law Reform, Mr. John O’Donoghue, on the 27<sup>th</sup> June,

2000. Senator Higgins produced to the Minister at that meeting a copy of the facsimile which he had received and Deputy Howlin outlined the information which he had received and read the contents of his handwritten notes to the meeting. As a result, Assistant Commissioner Fachtna Murphy was asked to investigate the matter and in the course of that investigation both Senator Higgins and Deputy Howlin made statements but declined to reveal the identity of their informant(s). Senator Higgins outlined the steps which he had taken in order to prevent the identification of his informant. He furnished a copy of the original facsimile to Detective Superintendent Pat Brehony after removing the identity number and facsimile number from it. He destroyed the original of the fax after making a copy. He arranged for his Secretary to transcribe the original and it was a copy of this transcription which he brought to the meeting with the Minister.

Deputy Howlin also knew the identity of his informant but told the investigators that he could not identify his source because it would “seriously compromise the question of whistle blowing to public representatives”. On the 1<sup>st</sup> July, 2000 he again contacted his informant who indicated that he was not willing that his name should be given to the Gardaí and he also noted that the informant “says that Garda in Donegal will give evidence in court”.

On the 9<sup>th</sup> January, 2003, Senator Higgins, at a meeting which took place between him and investigators retained by the Tribunal, produced two pages of a further document which had, apparently, been faxed to him on the 15<sup>th</sup> July, 2000. At that time, he was only able to produce pages one and

three of the document as he did not have page two in his possession. By letter, dated the 21<sup>st</sup> January, 2003, the middle page of this facsimile document was sent to Mr. Brian Garvie, one of the investigators retained by the Tribunal. The letter indicates that these three pages were received from a source with instructions that Senator Higgins was not to disclose the identity of the source. This facsimile makes certain allegations in respect of the suspension and reinstatement of Detective Sergeant White by the Garda authorities and reiterates what is said to be the widespread concern among serving Gardaí that the Carty investigation has been frustrated. It also complains about alleged perjury said to have been committed by a number of named Gardaí instructed by a Garda Superintendent. It, again, calls for a “full sworn public inquiry”. Though no signature appears on the document, it is signed off “Yours faithfully, - a serving member of An Garda Síochána”.

### **The Allegations Made**

For the purposes of this application, it is necessary to outline the allegations made to Senator Higgins and Deputy Howlin, by or through their informants. The first facsimile received by Senator Higgins states that “confidential information has come to hand from a serving Detective Inspector of An Garda Síochána attached to a station in the D.M.A. concerning the Garda investigation in the Donegal Division”. The investigation referred to is that which was and continues to be conducted by Assistant Commissioner Kevin Carty and a team of Detectives into allegations of wrongdoing by members of An Garda Síochána in the Donegal Division including a Detective Sergeant John White. A suggestion is made that the investigation was not being

conducted in accordance with the instructions of the Garda Commissioner. Allegations are made that Assistant Commissioners Kevin Carty and Tony Hickey worked with Detective Sergeant John White during the latter's service in Dublin. It is suggested that Detective Sergeant White provided evidence by unlawful means whilst working with the Assistant Commissioners "whenever evidence had to be got to prove a case beyond doubt". It is also alleged that both the Assistant Commissioners were aware that "a large number of convictions were achieved by "planting" evidence" and that Detective Sergeant White was "the source of "trumped up" evidence".

The facsimile also suggests that there was a fear "amongst members of the investigation team" that, if fully investigated, Detective Sergeant White would somehow use these matters to defend himself in some way and that "in doing so a number of persons convicted, which involved lengthy prison sentences, will prove to have been unsafe"... It also contains the allegation that Detective Sergeant White had a store of stolen property which he had planted on suspects and that this was known to the Garda authorities and ordinary members of An Garda Síochána. It also states that "taking all this reliable information" into account it was felt, presumably by either the author of the facsimile or the unnamed Garda Inspector, that the Carty investigation would be unsuccessful in establishing the true facts and declares that "the only other alternative is a full and open public inquiry". The final paragraph of the document claims that Detective Sergeant White is in regular contact with Assistant Commissioner Hickey and "has an eighteen page document" which

“... is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation”.

Mr. Brendan Howlin, T.D. as already noted, on the same date, received information from his source. He made notes of the conversation which he had and was given to understand that there was “evidence coming from Garda based in Donegal who has provided my informant with most reliable information in the past”. The notes which Deputy Howlin made raise similar allegations against the two Assistant Commissioners and Detective Sergeant White and he was further informed that “every case Sergeant White was involved in needs rechecking”. Deputy Howlin’s notes also indicate that the Donegal based Garda who was furnishing information to the informant with whom Deputy Howlin spoke “was approached by a senior Detective from Dublin who told him that Sergeant White “was being looked after”. The informant’s real concern was said to be “that the Carty investigation is compromised”.

I have already outlined the allegations contained in the further facsimile received by Senator Higgins on the 15<sup>th</sup> of July, 2000 (Appendix B to this Ruling).

I make the following observation about the allegations raised with Senator Higgins and Deputy Howlin by their informant(s):

1. Senator Higgins' information is said to have been composed by a retired Garda and is based on information received from a serving Detective Inspector in the Dublin Metropolitan Area.
2. Deputy Howlin's informant conveys that there was evidence coming from a Garda based in Donegal in relation to the allegations.
3. The allegations made, if correct, mean that a number of persons have been wrongfully imprisoned because of convictions which were unlawfully obtained by means of "planted" evidence and perhaps perjury.
4. The allegations purport to implicate the two Assistant Commissioners and a Detective Sergeant in the commission of a series of serious criminal offences, including multiple conspiracies to pervert the course of justice.
5. If the allegations are substantiated a number of persons wrongfully convicted may be afforded the opportunity to have miscarriages of justice acknowledged and, if still imprisoned, will be afforded an opportunity of release.

I propose to return to these observations later in this Ruling.

## **The Investigation**

The Tribunal is at present in its investigative stage of the allegations set out at paragraph (h). In the course of the investigation, notice was given by letter dated the 17<sup>th</sup> of December, 2002, to Senator Higgins and Deputy Howlin that, subject to submissions or representations to the contrary as might be made, the Tribunal intended to make an Order for Discovery and Production of Documents against them and also against Éircom Limited in relation to their telephone and facsimile records. The reasons why these Orders were contemplated were set out in detail in these letters. Senator Higgins and Deputy Howlin both indicated through their solicitors that they objected to the making of the Orders proposed. Notices of Motion, together with grounding Affidavits, were served on each of them and replying Affidavits were delivered. Legal submissions were also exchanged. The 10<sup>th</sup> February, 2003 was set as the date for hearing in respect of the matter. On the 7<sup>th</sup> February, 2003, counsel on behalf of the Committees of Procedure and Privileges of both Dáil Éireann and Seanad Éireann applied for and was given representation for the purpose of making legal submissions at the hearing of these Motions. No Affidavit was filed on behalf of the Committees and no evidence was adduced on their behalf. On the application for legal representation, it was submitted by Mr. Brian Murray, S.C. that it was a matter for the Tribunal to determine the nature, extent or scope of any privilege which might arise before it in connection with the applications for Discovery. Counsel sought representation in order to assist the Tribunal in resolving legal issues concerning any question of Parliamentary privilege. It was recognised that

each of these Committees had a genuine and real concern in the matter in issue inasmuch as it affected every member of each House of the Oireachtas.

Whilst the issue of privilege is one which more usually arises after the filing of an Affidavit of Discovery, the nature of the claim made by Senator Higgins and Deputy Howlin in respect of the documents, the subject matter of the proposed Orders, was such that I considered the present procedure of determining the issue of privilege before the making of any Order for Discovery to be appropriate and more expeditious. Accordingly, I directed that the procedures in the present form be adopted.

### **The Facts**

In addition to the facts set out above I am satisfied of the following facts:

1. The information that came into the possession of each of the respondents was passed to them on the basis of confidentiality and in their respective capacities as members of Dáil Éireann.
2. The information or evidence which is alleged to be in the possession of the informant(s) or the person(s) who supplied them with the information or evidence if true, is of critical importance to the work of the Tribunal and if untrue, it should, if possible, be shown to be untrue as part of the work of the Tribunal.

3. Insofar as it has been possible to enquire into any of the facts contained in the allegations imparted to Senator Higgins or Deputy Howlin, these enquiries have not established any factual basis for the allegations. However, these enquiries are not sufficiently exhaustive to satisfy the Tribunal that it is in possession of all relevant information or evidence concerning these allegations. It is necessary, in order to complete the investigative stage of the Tribunal's work in this regard, to discover such information or evidence (if any) as is in the possession of the informants or those who conveyed information to the informants that could or would substantiate or tend to substantiate the allegations made or not as the case may be.
4. Despite comprehensive efforts including a number of false trails, it has proved impossible for the Tribunal to trace the identity of either respondents' informant or informants or the identity of the person who sent the fax or made the telephone call to either of the respondents.
5. The work of the Tribunal has been gravely hampered by reason of the inability of the Tribunal to establish the identity of the informants and those supplying the informants with the relevant information or evidence.

6. At no stage did either of the respondents disclose the information contained in the facsimile or given to Deputy Howlin over the telephone to any third party (other than the Minister, the Minister's Secretary and Senator Higgins' Secretary) nor did they use this information or rely upon it for the purposes of any utterances in either of the Houses of the Oireachtas nor is there any evidence of any intention on their part ever to do so.
7. I am satisfied that Discovery is necessary in order to carry out the work of the Tribunal.
8. I am satisfied that this information is available to the Tribunal from Éircom Limited and that this Body consents to the making of the Orders proposed.

### **The Law**

It was submitted to the Tribunal by counsel on behalf of the respondents that Article 15.13 of Bunreacht na hÉireann prevented the Tribunal from making an Order of Discovery and/or Production of Documents relating to the source of the information supplied by members of Dáil Éireann to the Minister on the grounds that the Tribunal's jurisdiction was ousted by reason of these provisions. The relevant element of Article 15.13 provides:

**“The members of each House of the Oireachtas ... shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.”**

It is clear that no member of Dáil Éireann could be made amenable for any utterance made by him in Dáil Éireann before this Tribunal. It is well settled that a member of Dáil Éireann cannot be required to furnish to a Tribunal of Inquiry the identity of the source of information who made it possible for the member to make an utterance in the House if this were an attempt to make the member amenable in respect of his or her utterances in the House. In *Attorney General –v- Hamilton (No. 2)* [1993] 3 I.R.227, three Dáil Deputies made allegations which resulted in the establishment of a Tribunal of Inquiry into the Beef Industry. The Chairman of that Tribunal determined that the Deputies could not be compelled to furnish to the Tribunal the identity of the source of allegations which had been made by them within the Dáil Chamber. These allegations were “utterances” within the meaning of Article 15.13 of *Bunreacht na hÉireann*. The Chairman considered that the repetition by the Deputies of these allegations in statements of evidence made to the Tribunal did not constitute a waiver of the privilege conferred on the Deputies in respect of their utterances within the House. In the course of judicial review proceedings instituted by the Attorney General, the Supreme Court held that the immunity attaching to the statements made within the Dáil was not lost by the repetition of the same allegations outside the House to the Tribunal. In the course of his judgement, Finlay C.J. stated that the Deputies concerned

**“have been put in the position, as a result of the proceedings at the Tribunal, of an attempt being made to compel them under the sanctions provided .. to answer questions in order to disclose the identity of informants who gave them the information upon which they based the allegations they made in speeches in Dáil Éireann. As such, there can be no doubt in my mind that they are persons who, as members of the Dáil, have made utterances in respect of which the attempt to compel them to answer questions before the Tribunal is an attempt to make them amenable to an authority other than the Dáil ... and the jurisdiction of the Tribunal to compel answers to those questions is, accordingly, ousted (at pp.272-3).”**

The fundamental difference between the facts of that case and the present case is that neither Deputy Howlin nor Senator Higgins made any utterances in Dáil Éireann. While reference was made by counsel on behalf of Deputy Howlin to certain statements made by the Deputy in Dáil Éireann, these utterances related to the fact that the Deputy held meetings with the Minister and provided him with information which the Deputy felt should have caused the Minister to react. The documents or records of which discovery and production is sought are not referable to any utterance made within Dáil Éireann to which the provisions of Article 15.13, as interpreted in the Hamilton (No.2) decision or any other authorities cited in argument before me, apply. It should also be noted that at no stage has the Tribunal sought to make either member of the Dáil amenable in respect of any utterance made by them in Dáil Éireann.

I now turn to the further argument made by counsel for the respondents and counsel on behalf of Dáil Éireann and Seanad Éireann to the effect that documents and records now held by Éircom Limited, which are capable of identifying the sender or recipient of communications with the respondent with which this application is concerned and relating to the respondents' telephone and facsimile records, should be considered to be the private papers of members of Dáil Éireann and that these papers are privileged by reason of the provisions of Article 15.10 of Bunreacht na hÉireann.

Article 15.10 provides, in its relevant part, that :

**“Each House ... shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members ...”**

It is submitted that the privilege arises in the following way. Firstly, it is submitted that the documents referred to are private within the meaning contemplated by Article 15.10. I have no difficulty in accepting this submission.

Secondly, it is contended that on the 6<sup>th</sup> July, 2001, each House of the Oireachtas approved the following Resolution:

**“That whereas Article 15.10 of the Constitution provides that each House of the Oireachtas shall have power to protect its official documents and the private papers of its members, Dáil Éireann (Seanad Éireann) resolves that the said power is hereby conferred upon the Committee on Procedure and Privileges and may be exercised by that Committee on behalf of Dáil Éireann (Seanad Éireann) accordingly.”**

Subsequently, it is submitted that on the 6<sup>th</sup> February, 2003, each of the Committees on Procedure and Privileges passed a Motion in the following terms:

**“That the Committee on Procedure and Privileges of Dáil Éireann (Seanad Éireann):**

- **Noting Article 15 of the Constitution,**
- **Noting the privilege enjoyed by members of Dáil Éireann (Seanad Éireann) in respect of information received from members of the public,**
- **Noting the assertion of privilege being made by Deputy Howlin (Senator Higgins) before the Tribunal known as the Tribunal of Inquiry into Complaints concerning some Gardaí of the Donegal Division,**

**hereby authorises the Parliamentary Legal Adviser to instruct on behalf of Dáil Éireann (Seanad Éireann) counsel to apply for representation at the Tribunal, and if granted representation, to make submissions to the Tribunal concerning the powers and privileges of Dáil Éireann and its members.”**

It should be noted that the Dáil Resolution is in respect of Deputy Howlin and the Seanad Resolution is in respect of Senator Higgins. In this regard, it should be recalled that Deputy Howlin and Senator Higgins were both members of Dáil Éireann in June, 2000.

As already indicated, I am satisfied that the material in question constitutes “private papers” for the purposes of Article 15.10 because they directly relate to communications made by members of the public to members of Dáil Éireann in connection with their work as members of Dáil Éireann. A question may arise as to whether the power conferred on Dáil Éireann and Seanad Éireann and delegated to their respective Committees merely extends to safeguarding the private papers of members within the confines of the Houses of the Oireachtas or alternatively, is an enabling power whereby the Committees may render the private papers of members immune from discovery and production by declaring them to be so (see *Goodman –v- Hamilton* (No. 1) [1992] I.R.542).

Counsel for the Committees submits that the enabling power to protect the private papers of its members conferred on Dáil Éireann and Seanad Éireann,

which has been delegated to their respective committees, may be exercised by them by an assertion of that power. He submits that by instructing him to attend before the Tribunal and to make submissions to the Tribunal, the Committees have validly exercised that power and that each Committee, and accordingly the Oireachtas, has exercised the constitutional power given to it to extend privilege to the material sought to be discovered in this application.

I am satisfied that the material in question, namely, the documentation which would be generated by the machinery of Éircom Limited, would disclose the number of the caller/recipient who were in contact with the Respondents on the 25<sup>th</sup> June, 2000 and subsequently, constitute “private papers” for the purposes of Article 15 of the Constitution on the grounds that they directly relate to communications made by members of the public to members of Dáil Éireann in connection with their work as members of Dáil Éireann. Assuming that this material could by the proper exercise of a power conferred on the Oireachtas by Article 15(10) of the Constitution be designated privileged and rendered immune from an Order for Discovery, the issue remains, in my opinion, whether the power has in fact been exercised.

I am satisfied that there was a lawful delegation of this power by Dáil Éireann and Seanad Éireann to their respective Committees on Procedure and Privileges by the Resolution of the 6<sup>th</sup> July, 2001. However, in my view the exercise of such a power by the Committee on Procedure and Privileges requires the passage of a motion by the Committee to that express intent. No such motion was ever passed. The only relevant motion was that to

which reference has already been made. This does not contain a purported exercise of the power and merely authorises counsel to seek representation and to “make submission” to the Tribunal concerning the powers and privileges.

Accordingly, I am satisfied that while the power may be vested in the respective Committees to extend privilege to the “private papers” of members this power has not been exercised.

Accordingly, I am of the view that no case has been made out that privilege has been extended to the documents, which are the subject matter of this application.

Even if I am wrong in this determination, there is a further and, in my view, a more compelling reason why the respondents should not be permitted to exercise any such privilege as may exist in this case. That reason is based upon the principle of the “innocence at stake exception”.

In *D.P.P. –v- Special Criminal Court* [1999] 1 I.R.60 O’Flaherty J., delivering the judgment to the Supreme Court, adopted the words of Esher M.R. in *Marks –v- Beyfus* (1890) 25Q.B.D.494 at 498 when he said:

**“If upon the trial of a prisoner the judge should be of opinion that the disclosure of the name of the informant is necessary or right in order to show the prisoner’s innocence, then one public policy**

**is in conflict with another public policy, and that which says that an innocent man is not to be condemned when his innocence can be proved is the policy that must prevail.”**

This important exception was also recognised in *Breathnach –v- Ireland* (No. 3) [1993] 2 I.R. 458, *The Director of Consumer Affairs and Fair Trade –v- Sugar Distributors Limited* [1991] 1 I.R. 225 and by the Supreme Court in *Skeffington –v- Rooney & Others* [1997] 1 I.R. 22. I have already made certain observations in relation to the allegations which are the subject matter of this Term of Reference earlier in this Ruling. In the present case, it is clear that the respondents have been informed by their informant(s) that a number of people have been convicted by “planting” evidence and “trumped up” evidence and, moreover, that the evidence that was planted was “stolen property”. The author of the fax indicates that “reliable information” was available in respect of these matters. Deputy Howlin’s notes refer to “evidence” emanating from a Garda based in Donegal. If innocent people have been prosecuted and convicted on the basis of unlawfully obtained evidence and perjury and have served or are serving sentences of imprisonment imposed as a result, it is imperative that all such information or evidence, from whatever source, be made available to the Tribunal on the principle of the “innocence at stake exception”. Such privileges as may exist should yield to the opportunity which now arises in the course of this Tribunal to demonstrate that innocent persons have been improperly convicted and have served or are serving sentences of imprisonment as a result, if that be the fact.

Finally, my view is that the correct approach to the resolution of this issue is that adopted by Geoghegan J. in *Goodman International –v- Hamilton* [1993] 3 I.R.320. In that case, Geoghegan J. considered a claim of privilege similar to the one made in this case; that is that there is a legitimate public interest within our democracy whereby citizens can contact their elected representatives and pass on information in confidence knowing that this confidence will be respected and that, consequently, members of Dáil Éireann have a privilege from disclosing the identity of an informant who passes on such information in confidence. In the case before him, Geoghegan J. assumed that the informants of the Deputies were acting bona fide and that they fully expected that, having been promised by the members of the Oireachtas in question that their identity would not be disclosed, that that promise would be honoured. In this regard, he noted:

**“Most Irish people would regard it as important that matters of actual or potential public concern may be confidentially brought to the attention of elected national public representatives without fear of the confidence being broken. But I do not believe that most people would expect an absolute rule of non-disclosure that broke no exceptions. If disclosure of the source was relevant to the guilt or innocence of an accused in a trial for a serious criminal offence, then justice in the public interest might require disclosure.”**

Geoghegan J., set out a number of principles relating to permitted non-disclosure of information which were contained in the speech of Lord Edmund Davies in *D. -v- N.S.P.C.C.* [1978] A.C. 171 at page 245. In particular, he noted two of these principles which he considered to be applicable in the case before him:

**“(ii) but where**

**(i) a confidential relationship exists (other than that of lawyer and client) and**

**(ii) disclosure would be a breach of some ethical or social value involving the public interest, the court has a discretion to uphold a refusal to disclose relevant evidence provided it considers that, on balance, the public interest would be better served by excluding such evidence ...**

**(vi) the disclosure of all evidence relevant to the trial of an issue being at all times a matter of considerable public interest, the question to be determined is whether it is clearly demonstrated that in the particular case the public interest would nevertheless be better served by excluding evidence despite its relevance. If, on balance, the matter is left in doubt, disclosure should be ordered.”**

Consequently, there was a discretion vested in the Tribunal Chairman in that case as to whether he would insist on disclosure or not. I am of the view that

the same power and obligation to exercise this discretion is vested in me in relation to the issue which now falls to be considered.

In the exercise of this discretion, I have no doubt whatever that it is preferable, that information which is available to two responsible members of the Oireachtas from individuals believed by them to be reliable, and which indicates gross misconduct amounting to criminal misconduct on the part of two Assistant Commissioners of An Garda Síochána and one Detective Sergeant, should be made available for scrutiny and examination by the Tribunal, rather than that Deputy Howlin and Senator Higgins be allowed to maintain the confidentiality of their informant(s). It has already been noted that the information or evidence made available to the informant(s) who conveyed it to Deputy Howlin and Senator Higgins may prove or tend to prove the innocence of individuals who have been wrongfully convicted. Furthermore, at various stages it has been indicated by Deputy Howlin and Senator Higgins that information conveyed through their informants to them emanated from retired or serving members of An Garda Síochána. In my view, if there is any truth whatever in these allegations, fundamental questions arise as to the integrity of members of An Garda Síochána. In justice and fairness to the members of the Garda Síochána concerned, it should be noted that comprehensive enquiries made to date have yielded no evidence to substantiate the allegations. However, if evidence or information exists in the hands of any former member or serving members of An Garda Síochána showing or tending to show the innocence of persons wrongfully convicted on the basis of alleged wrongdoing by members of An Garda Síochána, it would

be entirely wrong if such information or evidence could be withheld from the Tribunal and that its truth would not be enquired into by me in carrying out my duties under paragraph (h) of the Terms of Reference.

Accordingly, I propose to make the appropriate Orders.

An Order in respect of Senator Higgins will be in the terms of the draft which has already been furnished but will be limited to a period between the 25<sup>th</sup> June, 2000 and the 15<sup>th</sup> July, 2000 (both dates inclusive), having regard to the fact that a further communication was received from the informant on the 15<sup>th</sup> July, 2000 of which the Tribunal was unaware until this was disclosed to its investigators on the 9<sup>th</sup> January, 2003. The Order in respect of Deputy Howlin will apply in respect of a period from the 25<sup>th</sup> June, 2000 until July 4<sup>th</sup>, 2000 as there is information available to the Tribunal from Deputy Howlin that he was in further contact with his informant in the early days of July, 2000. As a consequence of the Ruling and noting the consent of Éircom Limited to the making of the proposed Orders of Discovery and Production against them in the terms of which notice has been given, I also propose to make Orders in those terms against Éircom Limited.

