



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

**Progress Report to the Minister in accordance with Section 62O (6)
of the Garda Síochána Act 2005 on the Garda Síochána response to
the Report of the Fennelly Commission of Investigation**

October 2017

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1. Background

The Tánaiste and Minister for Justice and Equality wrote to the Policing Authority on 12 April 2017, requesting that the Authority oversee the implementation of the recommendations made in the Report of the Fennelly Commission ('the Fennelly Report') and provide progress reports on a quarterly basis, under section 62O(6) of the Garda Síochána Act 2005. The Tánaiste's letter indicated that the Department of Justice and Equality ('the Department') would be addressing Mr Justice Fennelly's recommendations concerning the need to provide statutory underpinning for the recording and retention of calls to Garda Stations (999 and other emergency calls), as well as the law governing interceptions. The Tánaiste further indicated that, insofar as the rest of the recommendations were concerned, these were for implementation by the Garda Síochána (GS) and therefore were to be overseen by the Policing Authority.

As part of this oversight:

- The Authority wrote to the Garda Commissioner on 22 May 2017, seeking information in relation to what steps had been taken to address the recommendations and other matters of concern that had arisen in the Fennelly Report;
- The GS response of 24 July 2017 was analysed. This set out information regarding what calls are currently recorded and what work was underway to implement the recommendations made in the Fennelly Report;
- The Authority has been in contact with the Department to understand what work is currently underway to implement those recommendations in the Fennelly Report that relate to the Department and particularly the outstanding legislative matters, which impact on the GS' ability to make progress; and
- A further update on progress was received from the GS on 13 October 2017, which is included for reference as Appendix A.

The Assistant Secretary, Policing Division, was informed on 15 August 2017 that work was underway within the GS to implement the recommendations but that it was not possible to provide a comprehensive report on the matter to the Minister at that time due to the late receipt of the material from the GS.

2. Main recommendations / areas of concern identified from the Fennelly Report

The Authority's letter to the Garda Commissioner on 22 May 2017 sought information about the current process for recording and retaining telephone calls and also set out a number of specific areas of concern that arose from the Fennelly Report. The Authority requested details of what steps were being taken by the GS to address those areas of concern.

A list of the questions, followed by the specific areas of concern are set out below:

1. What calls are currently being recorded by the GS?
2. What steps have been taken to ensure that any calls currently recorded by the GS are being lawfully recorded and retained?
3. What policy is now in place relating to the recording of calls including details of how the

recordings are being stored and accessed and how the privacy and data protection rights of individuals are safeguarded?

4. The need for proper policies and procedures in relation to call recording;
5. The use of technology to address some of the legitimate concerns regarding telephone recording;
6. The destruction of the recordings of calls still held by the GS;
7. The apparent lack of understanding of the need for a clear legal basis for the recording of telecommunications;
8. Unclear and/or poorly communicated systems for policy development and ownership; and
9. Problems with internal communication, such that both internal and external prompts relating to the need for a policy and the possible need for legislation were ignored.

The latest response of the GS on each of these questions / concerns, which was provided on 13 October 2017, is set out in Appendix A.

A summary of the main outstanding areas of concern and next steps are set out in section 3 below. In summary, the Authority is requesting that the GS provide it with a further update on specific issues by 12 January 2018. This will enable the Authority to provide a further report on these matters to the Minister at the end of January 2018. In the meantime, the Authority will continue to follow up with the Department with regard to progress in relation to the outstanding legislative issues.

3. Summary of the main outstanding areas of concern

1. Destruction of non-999 calls

The primary finding of the Fennelly Commission was that from 1973 to 2013 there was recording of non-999 calls and storage of those calls for various lengths of time. From 1995 the GS had the capacity to record multiple telephone lines into divisional stations outside the Dublin Metropolitan Area and this resulted in the “systemic” recording of telephone calls from members of the public to these divisional stations that were not 999 or emergency calls. The Commission found a total of 4 Divisional stations where non-999 lines other than the main station line were recorded and in three of these stations (Waterford, Bandon and Wexford) this enabled the recording of solicitor –client phone calls. On 26 November 2013, the Garda Commissioner Martin Callinan gave instructions that the recording of non-999 calls was to stop. The Fennelly Commission concluded that the operation of these systems to record, store and allow access to non-999 calls was unlawful.

The GS continue to retain the recordings of the pre 2013 non-999 calls. It has advised that this is “*due to the instruction of the Attorney General not to dispose of any material, the advice from the Data Protection Commission with regard to data Disclosure Requests and to ensure the destruction of the material is compliant with the National Archives Act.*”

The Fennelly Commission recommended that, “*subject to any Court Order or other lawful authority or legal obligation, including the obligation to make discovery, that early consideration be given to the destruction of all unlawfully recorded information derived from the Garda telephone recording*

systems...". The Commission also suggested, however, that legislation may be required in order to authorise the destruction of the telephone recordings.

The Authority has sought information from the Department on what progress has been made in relation to this matter and we do not yet have clarity. Ultimately, it will not be possible for the GS to destroy the relevant recordings until it is clarified whether or not legislation is needed and what the up-to-date advice of the Attorney General's office is with regard to the disposal of this material. In the meantime, the GS have advised that the material is securely stored and access to the recorded material is controlled by a Superintendent Telecommunications.

The Authority will follow up again with the Department of Justice and Equality to seek an update regarding the outstanding legislative issue.

2. Lawfulness of calls now recorded by the Garda Síochána

In Appendix A, the GS has set out the types of calls that are still recorded by the GS and whether the persons being recorded are informed of this. Persons who call the 999 number are recorded but are not informed of this. The Fennelly Commission noted this and recommended that careful consideration be given to the enactment of legislation to regulate the recording of 999 and other emergency-related calls to and from Garda stations in a manner that will safeguard the rights of individuals, whilst also preserving the clear public benefits that accrue from the recording of such calls. In her letter to the Authority in April 2017, the Tánaiste indicated that the Department of Justice and Equality would be considering those recommendations concerning the need to provide a statutory underpinning for the recording and retention of calls to Garda stations.

The Authority has sought information on what progress has been made in relation to this matter. Ultimately, it will not be possible for the GS to ensure that its system for recording 999 calls is lawful until the question of whether legislation is needed is resolved.

The Authority will follow up again with the Department of Justice and Equality to get an update regarding the outstanding legislative issue.

3. New Policy on telecommunications

The GS have explained that at present there are three potentially relevant policy documents:

- Chapter 7 of the *"National Digital Radio Service (NDRS) Policy and Procedures"*, published in November 2009;
- *"NICE INFORM Voice Recorder – Policy Document Telecommunications Technicians"*, published in 2010 (and rolled out again to technicians in April 2014)
- *"The Emergency Call Handling Interim Policy and Procedures Module"*, which is thought to have been published in 2012 and is available on the Garda Portal.

The GS have advised that it is currently developing one comprehensive policy document, that will explicitly describe the role and responsibility relevant to District Officers and set out the criteria to be

considered in deciding whether to authorise access to a recording (i.e. principles of legality, proportionality and necessity). In addition, it is intended that this document would set out the retention policy and the relevant controls and procedures.

The GS has explained that it has put in place additional controls pending the publication of this new policy, specifically:

- a process to be followed when accessing any non-999 calls made prior to November 2013 (which can only be done by a systems administrator in Garda HQ on foot of an authorisation from the Superintendent Telecommunications); and
- a process to be followed before any new extension could be added (which includes a requirement for authorisation by the Superintendent Telecommunications).

The GS advised that it intends to publish this policy in Q1 of 2018, once it has complied with the requirements of the new policy framework and that it has been reviewed by the Head of Legal for human rights and ethics compliance.

The Authority acknowledges that important controls have been put in place in light of the findings in the Fennelly Report but recommends that the development of the comprehensive policy document specifying all of the relevant controls and procedures be expedited and finalised in early January.

The Authority is recommending that the GS finalise its new telecommunications policy in early January with a view that when they report to the Authority on **12 January 2018** with the next update on these matters that they will be in a position to confirm to the Authority that this has been done. We will also be requesting that they:

- provide details of how it is intended to roll out the policy and to provide training; and
- ensure that the new policy meets the requirements of data protection legislation and in particular considers the possible impact of the General Data Protection Regulation, due to come into force in May 2018.

4. Use of Technology to address concerns regarding telephone recording

The Fennelly Commission suggested that advances in recording and communications technology may allow future recording systems to be more discriminatory and may also allow for certain recordings to be deleted after a defined period. The GS have pointed out that any future system should also be designed to prohibit and monitor unauthorised recordings.

The GS acknowledge that the current recording system, “NICE INFORM”, is now dated technology and that it does not have the capability for a dashboard type interface to monitor activity. It has put in place a manual inspection process to ensure that no unauthorised extensions are recorded. The Authority is recommending that the Commissioner assure himself in 2018 as to the effectiveness of this manual control through either his Internal Audit Service or his Professional Standards Unit.

In addition the Authority is requesting that in the next update from the GS, it should clarify what level of priority is being given to replacing or updating the NICE INFORM system. The Authority wishes to make clear that it is not offering a view as to whether or not such a project should be given high, medium or low priority, having regard to the many other competing projects currently underway in the Modernisation and Renewal Programme. However, the Authority is requesting that the matter

be formally considered and that it be informed of the outcome of those considerations by 12 January 2018.

- The Authority is recommending that the Commissioner assure himself in 2018 as to the effectiveness of this manual control through either his Internal Audit Service or his Professional Standards Unit.
- The Authority is requesting an update from the GS regarding what priority is being afforded to replacing or updating the NICE INFORM system and what next steps (if any) are being considered in this regard.

5. Governance issues that arose in the Fennelly Report

The Authority notes the Commission's finding that it did not identify a deliberate abuse of power on the part of the GS. It also notes the finding that the users of the system for recording 999 calls and non-999 calls were telecommunications technicians who, reasonably believing that their superiors would have attended to such matters, were unaware of any unlawfulness and that overall they acted reasonably and conscientiously.

Notwithstanding this, the Report gives rise to serious concerns in relation to a number of broad governance issues within the GS. The Report expresses surprise that there was almost total ignorance at the highest level of the force of the existence of any systems which recorded non-999 lines. The Commission was also unable to identify anyone in senior Garda management who knew the policy reason behind expanding the recording of non-999 lines. Because senior management simply did not seem to know that these new systems were being purchased, no rules or directives were adopted governing elementary matters such as:

- which lines were to be recorded;
- who, if anyone, could authorise the recording of additional lines;
- notices to the public or others of the fact of recording;
- the periods for which recorded material should be retained and under what conditions;
- whether recordings should then be destroyed; and
- who could authorise access to or copying of recordings.

In its response to the governance concerns raised in the Authority's letter in May 2017, the GS referred to the new policy framework that is being developed as part of the Modernisation and Renewal Programme. An aspect of this new framework is the establishment of a dedicated Policy Unit, which will be responsible for overseeing the management of policy across the organisation. It is intended that the Policy Unit will maintain a policy issues log, which will store triggers for the creation of a new policy. It is intended that this will ensure that highlighted risks, issues and lessons learnt (including lessons learnt from court cases) will be recorded and addressed.

The development of the policy framework is one of the projects in the Modernisation and Renewal Programme and as such its implementation is being monitored by the Authority. The latest update on this indicates that the first part of this initiative ('Policy Governance and Structure') is being progressed and has been presented to the Garda Executive for approval.

The Authority welcomes the development of the new policy framework initiative. If it is properly resourced and embedded, it should make a good contribution to improving the governance around the development and roll out of policies and procedures. However, the issues identified in the Fennelly Report go deeper and will not be addressed by a new policy framework alone. The findings of the Commission point to serious and systemic management and governance failures over decades as well as cultural issues. There was an apparent failure on the part of management or indeed anyone who worked in the GS to understand or ask questions about the recording system in place, to question the legal basis for recording calls or to speak up and address problems identified. There was also an underlying disregard for the privacy and data protection rights of members of the public. As the Fennelly Commission observed, *“the Garda Síochána must necessarily record and retain a great deal of confidential and sensitive information. It is essential that such information be protected from improper use and exploitation through appropriate legal, technological and procedural safeguards.”*

These management and cultural failures are not confined to the issues arising in the Fennelly report. They go to the heart of why there must be a sustained focus on improving management processes, increasing organisational capacity, embedding the Code of Ethics and reforming the culture in the GS. These are and will remain central tenets of the Authority’s oversight during the coming years.

4. Proposed next steps

The Authority will seek a further progress update on this matter by 12 January 2018 and will report to the Minister after its January 2018 meeting. In the interim, the Executive will continue to follow up with the Department of Justice and Equality to seek an update regarding the outstanding legislative issues.

Appendix A – Garda Síochána update regarding the implementation of Fennelly Report recommendations

No.	Recommendation	October 2017 - Status from the GS
1	What calls are currently being recorded by the GS?	<p>Calls originating from the BT ECAS (Emergency Call Answering Service) 999/111 call centres, alarm calls to the Communications Centre, Harcourt Square and the Confidential "Tiger" line, used in the event of a so called Tiger Kidnapping are being recorded.</p> <p>Recording at the Garda Information Services Centre in Castlebar and the Fixed Charge Penalty Notice office in Thurles are also recorded but the caller is alerted through an automated announcement to the fact that the phone call is being recorded.</p> <p>Recording is also enabled on the line used for members of the public to report historical sexual abuse as recommended by the Garda Inspectorate in Report 7 and the caller is similarly alerted to this fact, again through an automated announcement.</p>
2	What steps have been taken to ensure calls currently recorded by the GS are lawfully recorded and retained?	<p>The connection of an extension to the NICE recorder to enable recording has two distinct parts. The first the Divisional Telecommunications Technician has to connect the extension to be recorded to the NICE recorder using a wired connection. The second part requires the extension to be enabled on the NICE recorder. This can only be carried out in Garda Headquarters by an authorised Technician who will only do so if authorised by Superintendent Telecommunications.</p> <p>Access to the system is restricted to personnel issued with a username and password. Since the Fennelly Commission commenced the following controls were put in place:</p> <ul style="list-style-type: none"> -A user will only be authorised to access the system if approved by Superintendent Telecommunications -All access to the system and the activities of the user while logged on is retained in a system audit log. -The addition of a new extension can only be authorised by Superintendent Telecommunications. -All ancillary wiring associated with the non 999 extensions that were recorded prior to 2013 have been removed and so only authorised extensions are connected to the recorder. -Access to recordings will only be provided on the written application of the District Officer. -Access to all non 999 recordings made prior to 2013 is restricted to the system administrator in Garda Headquarters. These recordings are stored in a disabled mode and if they have to be searched they have to be re-enabled on the system which can only be carried out if authorised by Superintendent Telecommunications.

No.	Recommendation	October 2017 - Status from the GS
3.	What policy is now in place relating to the recording of calls including details of how the recordings are being stored and accessed and how the privacy and data protection rights of individuals are safeguarded?	<p>The Garda Emergency Call Handling Policy and Procedures Manual states that all calls received in the DMR and Divisional Communications Centres are recorded by means of the NICE system. It also states that recordings can be obtained from the local Technician on request from the District Officer.</p> <p>In 2010 a policy was completed within the Telecommunications Section of An Garda Síochána. As an interim measure during the term of the Fennelly Commission further restricted were implemented to strengthen the existing controls for recording and access to recorded material on the NICE system. These controls remain in operation pending the completion and approval of a new comprehensive policy. The development of this new policy is at an advanced stage.</p> <p>Call recordings are stored on an archive server in Garda Headquarters with access only being provided to authorised users. Access is only provided on receipt of a written application from a District Officer who must decide on the legality, proportionality and necessity to download the recording. They are also required to provide detail as to whether the matter is a criminal or disciplinary investigation, a description of the nature of the offence being investigated and as much detail as is available at that time to identify the recording.</p> <p>In addition, the fault resolution and re-commissioning of recorders is now managed using a detailed authorisation process to avoid unauthorised recordings and all extensions enabled for</p>
4	Putting proper policies and procedures in place in relation to call recording.	<p>In 2010, a policy was completed within the Telecommunications Section of An Garda Síochána which stated that requests for playback or recording should only be granted on receipt of official written application from the local District Officer. As an interim measure during the term of the Fennelly Commission further restrictions were implemented to strengthen the existing controls for recording and access to recorded material on the NICE system.</p> <p>These controls remain in operation pending the completion and approval of a new comprehensive policy.</p> <p>In addition advice has been sought on:</p> <ol style="list-style-type: none"> 1. The retention period for recordings 2. The destruction of recorded material and whether legislation is required to underpin this process 3. Whether legislation is required to underpin the 999 system <p>The final publication of the policy is dependent on the responses to these queries. In the interim the draft policy was completed, however in order to comply with the policy framework the document is now being divided into two distinct parts, one a high level policy document and secondly a</p>

No.	Recommendation	October 2017 - Status from the GS
		<p>procedures document.</p> <p>The high level policy statement will be published on the Garda Portal after it is tested for Ethics and Human Rights compliance.</p> <p>The procedures document will be published on the Garda Portal after it is tested for Ethics and Human Rights compliance and will be a comprehensive and practical guide the relevant parties on usage and maintenance of the NICE system (a series of standard operating procedures/step by step guides).</p>
5	Use of technology to address some of the legitimate concerns regarding telephone recording.	The 'NICE Inform' system was procured by An Garda Síochána in 2008. This is now dated technology. The system does not have the capability for a dashboard type interface to monitor activity. However, any future replacement system will be required to ensure that the system is designed to prohibit and monitor for unauthorised recordings. Manual weekly inspections of the system are carried out at Garda Headquarters to ensure no unauthorised extensions are recorded.
6	The destruction of the recording of calls still held by the GS.	Advice has been sought as legislation may be required to authorise the destruction of the material due to the instruction of the Attorney General not to dispose of any material, the advice from the Data Protection Commissioner with regard to Data Disclosure Requests and to ensure the material is securely stored and access to the recorded material is controlled by a Superintendent Telecommunications.
7	Address the apparent lack of understanding of the need for a clear legal basis for the recording of telecommunications.	<p>The findings of the Fennelly Commission have made recommendations in relation to the recording of Telephone calls In Garda control rooms. Advice has also been sought as to whether legislation is required to underpin the operation of the 999 system and the recording of calls as this affects BT the Emergency Call Answering Service (ECAS) operator and Fire, Ambulance and Coast Guard control rooms.</p> <p>In the case of D.P.P. v A. Kissane, M. McEnery, J. Burke and D. Hickey, Ms. Justice Reynolds made a judgement as to the admissibility of telephone recordings from the Control Room in Waterford. It is An Garda Síochána's understanding that Ms. Justice Reynolds found that the recording facility on incoming lines in the control room was in technical breach of Section 98 of the Postal and Telecommunications Services Act 1983 as she was not satisfied that all of the members using the system may have been aware that the recording facility was in place.</p> <p>On the 28th February 2012, the Executive Director of ICT, issued a HQ Directive, titled "Use and Monitoring of CCTV and Recording of emergency Telephone lines within Garda Control Rooms. Under the section Audio Recordings this Circular stated "All members of staff must be informed that calls within control rooms are recorded. Each District Officer will ensure that signage is in control rooms indicating what lines are recorded and that staff members are made aware of that.</p>
8	Address the unclear and/or poorly communicated	An Garda Síochána has recognised the need for a dedicated framework for the management of policy across the organisation. This deficit is being

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	systems for policy development and ownership.	addressed by Garda management through the delivery of the Policy Framework initiative under the auspices of An Garda Síochána's Modernisation and Renewal Program.
9	Address the problems with internal communication, such that both internal and external prompts relating to the need for policy/legislation were ignored.	The delivery of the aforementioned Policy Framework will provide an approach to ensure consistency in the development, implementation, monitoring and review of policy in An Garda Síochána, and also address a number of important recommendations and concerns of key external stakeholders
10	Address the apparently ineffective process for ensuring that changes take place on foot of learning from legal cases.	<p>The core tenet of this new framework will be the establishment of a dedicated Policy Unit, which will be responsible for overseeing the management of policy across the organisation. This will ensure a sensible, transparent and co-ordinated approach throughout the life cycle of policy from development through to review. The Policy Unit will amongst other functions, provide a quality control role ensuring consistency and standardisation of policy across the organisation and ensuring that only the most up to date versions are accessible.</p> <p>The policy unit will maintain a policy Issues log, which will store triggers for the creation of new policy and review of existing policy in the organisation, entries to which will be triggered from a variety of key sources throughout the organisation. Key sections in the organisation, including Risk Management Unit, Garda Professional Standards Unit, Strategic Transformation Office, and Legal Services will have established links and be engaged with on a regular basis by the Policy unit. This will ensure that highlighted risks, issues and lessons learned in the organisation by those sections concerning a particular policy area are recorded and addressed. A facility will also be provided whereby each section in the organisation will be required to also feed in all lessons learned into the policy issues log so that can also be likewise addressed.</p>