

Recent Parliamentary Questions in relation to Sgt. Maurice McCabe

Response of Department of Justice and Equality

Parliamentary Questions (PQs) are put by members of the Dáil to Ministers of the Government in respect of matters coming under their responsibility. It is of course the case that a Minister cannot be expected to have detailed knowledge of all the matters dealt with by their Departments and so day to day procedures provide that responsibility to ensure that the information contained in replies is accurate is delegated to officials and political advisors, with reference onto the Minister if necessary.

In the Dáil on 28 November 2017 the Taoiseach stated:

The Minister and Secretary General of the Department for Justice & Equality will ensure that all future PQs are replied to as fully and openly as possible, subject to Dáil Standing Orders and the law. All recent PQs asked by any Deputy relating to Maurice McCabe will be reviewed and it will be ensured that they have been answered as fully and openly as possible. Any additional relevant additional information will be provided to Deputies as quickly as possible.

During the same session Minister Flanagan stated:

Secondly, on the matter of replies to Parliamentary Questions on matters relating to the treatment of Sgt. Maurice McCabe. Deputy Kelly put down a series of detailed questions over the last number of weeks primarily about the activities of officials of my Department, primarily in the period prior to my appointment. I was consistently advised in my Department that to engage in issues that are under the remit of a sitting Tribunal and accommodated within its Terms of Reference would breach the Standing Orders of the Dáil; would improperly encroach on the workings of the Tribunal; and would amount to a parallel process thereby undermining the Tribunal. I accepted that advice at the time in good faith and, indeed, I note the Tribunal's Public Notice last Friday.

It is only right to acknowledge that Deputy Kelly's parliamentary questions should have been better handled by me and I am respectfully now asking the Ceann Comhairle to assist in providing guidance in terms of how to respond to issues that fall within the terms of reference of sitting Tribunals.

The Minister wrote to the Ceann Comhairle on 29 November and a reply was received in the Department on 8 December. The Ceann Comhairle's letter acknowledges the delicate balance between allowing discussion of public policy and encroaching on the work of a judicial body. In relation specifically to PQs on the Disclosures Tribunal, it states that the subjudice rule must be informed not only by the Tribunal's Terms of Reference but also by the recent public notice issued by the Sole Member of his intention to commence work on various matters on 8 January, and in that context points out there is an onus on all parties to ensure that this work can be completed in accordance with due process.

Notwithstanding Dáil Standing Order 59(3) and the guidance that has been received from the Ceann Comhairle, this document seeks, in accordance with the commitment given by the Taoiseach, to revisit all relevant Parliamentary Questions that have been put down since the end of the summer recess with a view to putting any further information that is available into the public domain or explaining in greater detail the limitations on the Department's knowledge and the rationale behind the approach taken to individual PQ responses. As this statement is not subject to Standing Orders, the Department may be less restricted in the information it can make available, and further information is being provided that has emerged since the original PQ responses were prepared. Nonetheless, it remains the view of the Department that the Tribunal of Inquiry established on the basis of Resolutions of the Houses of the Oireachtas is the best and most appropriate forum to get to the truth of the matters encompassed by its Terms of Reference. It is particularly difficult to address Questions that assert as facts matters that the Department does not have the knowledge to confirm or deny the truth of, and that are clearly and directly covered by the terms of reference of the Disclosures Tribunal.

In his statement, the Minister made the following comment:

The fact is, that in recent days it has been clear that information in the possession of journalists and members of the Opposition has not been forthcoming to me as Minister.

A consistent difficulty for the Department in seeking to answer recent Parliamentary Questions is that a great many implied knowledge on the part of the Deputy putting the Question of specific information (e.g. in relation to meetings, phone calls, etc. having taken place) of which the Department was and is unaware. While wishing to impart as much information as possible, it was incumbent on the Department to ensure to the best of its ability that the Minister not inadvertently mislead the House. To be clear what is meant by this, the following is given by way of example: if a Deputy had knowledge of a telephone call having taken place of which the Department has no record; and the Department were then to state definitively that no such telephone call took place on the basis of having no record of it and no official having knowledge/recollection of it; and the Deputy were then to reveal evidence of such a phone call in fact having taken place; then the Minister would have inadvertently misled the House. In preparing draft replies to these PQs for the Minister's approval, the Department, therefore, sought to achieve a balance between giving as much information as possible and ensuring that the House not be misled inadvertently, while also continuing to respect Standing Orders and the ongoing work of a judicial Tribunal of Inquiry. The alternative is for the Department either to risk the Minister misleading the House, or to conduct inquiries in order to garner the information necessary to answer the question with certainty, a task already entrusted to the Tribunal.

A number of Questions ask whether the Minister or Department involved themselves in the case or evidence to be presented to the O'Higgins Commission by the former Garda Commissioner. A Commission of Investigation is a formal legal process established following resolutions of both Houses of the Oireachtas to investigate certain matters of concern. It is entirely independent. The purpose of such a Commission is to investigate matters and establish facts as specified in its terms of reference. All parties appearing before a Commission of Investigation have exactly the same rights. It would be unsustainable for the Minister of the day to suggest that the defences or arguments which those parties could offer to the Commission should be changed or circumscribed. If a Commission became aware that a Minister was seeking to interfere in the

approach of other parties this could have very serious consequences. It is a matter for a Commission to reach its judgment on the evidence and cases made to it. Furthermore, if a Minister sought to influence a case which might be made at a Commission, their ability to take action in relation to any findings where wrongdoing was established would be severely compromised.

Below can be found the list of relevant Parliamentary Questions, taken in chronological order. In a number of cases, one or more Questions were originally answered together with a single reply. In this exercise all Questions have been answered separately, though in some cases the answer is the same to more than one Question. In some cases, nothing can be added to the original answer. In others, the original answer stands, but is being augmented with additional information or commentary. In doing so, the Department has frequently chosen to use the formulation “The Department has no record or knowledge of...”. As set out above, it is not possible to make definitive statements of fact where it is possible that information or documentation exists to which the Department is not party or otherwise does not have knowledge. The language used should, however, be read in context. It is intended to convey clearly that the Department has no awareness of the matters enquired about and, therefore, in relation to matters that centrally concern the Department, that it is unlikely that these events took place. In the case of Questions relating to matters of which it would not be reasonable to expect the Department to have knowledge, this language should be interpreted as a simple statement of no knowledge.

Dáil Question No: 536

To ask the Minister for Justice and Equality the extent of consultation that a person (details supplied) had with his department prior to giving instructions to their legal team representing them at the O'Higgins Commission.

Details Supplied: *Former Garda Commissioner Nóirín O'Sullivan*

- Alan Kelly.

* For Written answer on 07/11/2017

Ref No: 46678/17

Original answer

As the Deputy will be aware, some aspects of the O'Higgins Commission of Investigation form part of the remit of the Disclosures Tribunal and therefore I am limited in what I can say.

However, it would of course have been entirely inappropriate for anyone to have sought to interfere in any way with the work of the Commission of Investigation. The Deputy will appreciate that it was solely a matter for the parties to the Commission to decide what legal approach to take to the work of the Commission, taking into account the legal advice available to them.

In the circumstances, the Department would have had no role in determining the approach to be taken by the Garda Commissioner to the Commission in question.

Accordingly, there was no question of the Department seeking to interfere in any way with, or to have any say in determining, that approach by the Garda Commissioner.

Further information/comment

Notwithstanding the information the Department has already put into the public domain relating to it having been made aware of a dispute having arisen at the opening hearings of the O'Higgins Commission, the Department has no record or knowledge of any consultation having taken place with the former Garda Commissioner in relation to her legal instructions at the O'Higgins Commission prior to her giving those instructions to her legal counsel.

Dáil Question No: 537

To ask the Minister for Justice and Equality the extent of meetings and communications that a person (details supplied) had with his department prior to them giving instructions to their legal team representing them at the O'Higgins Commission; the dates and times of meetings; the communication type; and the attendance and agendas.

Details Supplied: *Nóirín O'Sullivan*

- Alan Kelly.

* For Written answer on 07/11/2017

Ref No: 46679/17

Original answer

As the Deputy will be aware, some aspects of the O'Higgins Commission of Investigation form part of the remit of the Disclosures Tribunal and therefore I am limited in what I can say.

However, it would of course have been entirely inappropriate for anyone to have sought to interfere in any way with the work of the Commission of Investigation. The Deputy will appreciate that it was solely a matter for the parties to the Commission to decide what legal approach to take to the work of the Commission, taking into account the legal advice available to them.

In the circumstances, the Department would have had no role in determining the approach to be taken by the Garda Commissioner to the Commission in question.

Accordingly, there was no question of the Department seeking to interfere in any way with, or to have any say in determining, that approach by the Garda Commissioner.

Further information/comment

Notwithstanding the information the Department has already put into the public domain relating to it having been made aware of a dispute having arisen at the opening hearings of the O'Higgins Commission, the Department has no record or knowledge of any meetings or communications having taken place with the former Garda Commissioner prior to her giving instructions to her legal counsel at the O'Higgins Commission in relation to the content of those instructions.

Dáil Question No: 538

To ask the Minister for Justice and Equality if persons in An Garda Síochána made a complaint to his department regarding the manner in which a person (details supplied) gave instructions to their legal team representing them at the O'Higgins Commission; and if so, the way in which this is being dealt with by his department.

Details Supplied: *Nóirín O'Sullivan*

- Alan Kelly.

* For Written answer on 07/11/2017

Ref No: 46680/17

Original answer

As the Deputy will be aware, some aspects of the O'Higgins Commission of Investigation form part of the remit of the Disclosures Tribunal and therefore I am limited in what I can say.

However, it would of course have been entirely inappropriate for anyone to have sought to interfere in any way with the work of the Commission of Investigation. The Deputy will appreciate that it was solely a matter for the parties to the Commission to decide what legal approach to take to the work of the Commission, taking into account the legal advice available to them.

In the circumstances, the Department would have had no role in determining the approach to be taken by the Garda Commissioner to the Commission in question.

Accordingly, there was no question of the Department seeking to interfere in any way with, or to have any say in determining, that approach by the Garda Commissioner.

Further information/comment

Notwithstanding the information the Department has already put into the public domain relating to it having been made aware of a dispute having arisen at the opening hearings of the O'Higgins Commission, the Department has no record or knowledge of any persons in An Garda Síochána having made a specific complaint to it regarding the manner in which the former Garda Commissioner gave instructions to her legal team representing them at the O'Higgins Commission.

Dáil Question No: 539

To ask the Minister for Justice and Equality the contact, meetings, correspondence a person (details supplied) or their senior officials had with another person (details supplied) or their senior staff or advisers prior to them giving instructions to the legal team representing them at the O'Higgins Commission; and the dates and times of meetings, communications type, attendance and agendas.

Details Supplied: 1 Mr. Noel Waters - 2 Nóirín O'Sullivan

- Alan Kelly.

* For Written answer on 07/11/2017

Ref No: 46681/17

Original answer

As the Deputy will be aware, some aspects of the O'Higgins Commission of Investigation form part of the remit of the Disclosures Tribunal and therefore I am limited in what I can say.

However, it would of course have been entirely inappropriate for anyone to have sought to interfere in any way with the work of the Commission of Investigation. The Deputy will appreciate that it was solely a matter for the parties to the Commission to decide what legal approach to take to the work of the Commission, taking into account the legal advice available to them.

In the circumstances, the Department would have had no role in determining the approach to be taken by the Garda Commissioner to the Commission in question.

Accordingly, there was no question of the Department seeking to interfere in any way with, or to have any say in determining, that approach by the Garda Commissioner.

Further information/comment

Notwithstanding the information the Department has already put into the public domain relating to it having been made aware of a dispute having arisen at the opening hearings of the O'Higgins Commission, the Department has no record or knowledge of any contacts, meetings or correspondence in relation to the legal instructions given to the former Garda Commissioner's legal team at the O'Higgins Commission having taken place between the former Secretary General or other senior officials of the Department and the former Garda Commissioner or her senior staff or advisers prior to the giving of those instructions by the former Garda Commissioner to her legal team at the O'Higgins Commission.

Dáil Question No: 134

To ask the Minister for Justice and Equality if his department's officials ever dined in a restaurant (details supplied) with a member of An Garda Síochána senior management; if so, the amount it cost; the purpose of the dinner; the person or body that paid for it; the departmental or Garda budget line from which the expenditure came; his views on whether it was acceptable expenditure; and if he will make a statement on the matter.

Details Supplied: *the Chapter One Restaurant in Dublin*

- Alan Kelly.

* For Written answer on 08/11/2017
Ref No: 47222/17

Original answer

I can inform the Deputy that no payment in respect of such an event has been identified in the records available (i.e., from 2010 to date).

Further information/comment

It is presumed that this PQ relates to the other Questions Deputy Kelly has asked that centre on implied knowledge of matters relating to the O'Higgins Commission. Notwithstanding the difficulties of being definitive in responding to a question in which no details of the persons concerned nor the timeframe are provided, the Department has no record, including financial records, or knowledge of the dinner referred to. The Department can, however, say with certainty that no current member of the Management Board has attended such a dinner, nor did the former Secretary General or the former Deputy Secretary.

Dáil Question No: 206

To ask the Minister for Justice and Equality when the Secretary General of his department met with a person (details supplied); the dates and purpose of those meetings; the other persons that attended; if his attention and that of his predecessor were drawn to these meetings; if so, the date on which their attention was drawn to the meetings; the times and dates of same; and if he will make a statement on the matter.

Details Supplied: *Sergeant Maurice McCabe*

- Alan Kelly.

* For Written answer on 14/11/2017
Ref No: 47844/17

Original answer

I understand that one such meeting was held with the persons concerned, on 13 October 2014. The meeting was held in the private office of the Tánaiste and then Minister for Justice and Equality Frances Fitzgerald and was attended by her and the Secretary General of my Department. An official from the Office of the Secretary General was also in attendance.

The meeting was arranged following a request from the person concerned which was sent to the Department on 1 October 2014. I understand that the request indicated that the individual in question wanted to raise concerns about his working environment and conditions.

Further information/comment

There is no additional information available in this regard.

Dáil Question No: 207

To ask the Minister for Justice and Equality when the Secretary General of his department met with persons (details supplied); the dates and purpose of those meetings; and if he will make a statement on the matter.

Details Supplied: *Sergeant Maurice McCabe and his wife Lorraine*

- Alan Kelly.

* For Written answer on 14/11/2017

Ref No: 47845/17

Original answer

I understand that one such meeting was held with the persons concerned, on 13 October 2014. The meeting was held in the private office of the Tánaiste and then Minister for Justice and Equality Frances Fitzgerald and was attended by her and the Secretary General of my Department. An official from the Office of the Secretary General was also in attendance.

The meeting was arranged following a request from the person concerned which was sent to the Department on 1 October 2014. I understand that the request indicated that the individual in question wanted to raise concerns about his working environment and conditions.

Further information/comment

There is no additional information available in this regard.

Dáil Question No: 208

To ask the Minister for Justice and Equality when the Secretary General of his department met with a person (details supplied); the dates and purpose of those meetings; the other persons that attended; and if he will make a statement on the matter.

Details Supplied: *Sergeant Maurice McCabe*

- Alan Kelly.

* For Written answer on 14/11/2017
Ref No: 47846/17

Original answer

I understand that one such meeting was held with the persons concerned, on 13 October 2014. The meeting was held in the private office of the Tánaiste and then Minister for Justice and Equality Frances Fitzgerald and was attended by her and the Secretary General of my Department. An official from the Office of the Secretary General was also in attendance.

The meeting was arranged following a request from the person concerned which was sent to the Department on 1 October 2014. I understand that the request indicated that the individual in question wanted to raise concerns about his working environment and conditions.

Further information/comment

There is no additional information available in this regard.

Dáil Question No: 211

To ask the Minister for Justice and Equality if counsel for the Garda Commissioner and colleagues met in the Garda press office with the director of communications of an Garda Síochána to discuss the findings of the O'Higgins Commission Final Report prior to the publication of the final report; if so, the nature of the meeting; his views on whether this meeting was appropriate; if the attention of his department was drawn to this meeting; if members of his department were present at the meeting; if there was verbal, written or electronic communication with his department regarding this meeting afterwards; and if he will make a statement on the matter.

- Alan Kelly.

* For Written answer on 14/11/2017
Ref No: 47890/17

Original answer

In response to previous questions from the Deputy regarding the Garda Commissioner's approach to the O'Higgins Commission of Investigation I have stated clearly that this was a matter solely for the Garda Commissioner and that there was no question of my Department seeking to interfere in any way with or have any say in determining the approach of the Garda Commissioner to the Commission of Investigation. I can assure the Deputy that there is no question of my Department having prior knowledge of the legal strategy to be adopted by the former Garda Commissioner.

I have also previously stated that we should be careful to avoid saying anything here which could interfere in any way with the work of the Disclosures Tribunal, the terms of reference of which cover all matters relevant to the Commissioner's engagement with the O'Higgins Commission of Investigation, including matters of the nature referred to by the Deputy in his question.

Furthermore, in accordance with the Dáil Standing Orders (paragraph 59(3)), nothing should be raised in the House which could appear to encroach on or prejudice matters which are before a Tribunal.

In the circumstances, it would not be appropriate for me to comment on matters within the remit of the Tribunal.

However, if the Deputy or indeed anyone else either in this House or outside, has information which is relevant to the terms of reference of the Tribunal they should bring that to the attention of Mr Justice Charleton.

Further information/comment

On reflection the Department could have answered this Question in a different manner. To be clear, the Department has no record or knowledge of a meeting in the Garda press office with the director of communications of an Garda Síochána to discuss the findings of the O'Higgins Commission Final Report prior to the publication of the final report; by extension, the Department also has no record or knowledge of any of its officials having been present at any such meeting, including no record or knowledge of any verbal, written or electronic communication with the Department regarding any such meeting. However, the Department could have sought information from An Garda Síochána on the matter referred to, which does not at face value appear to encroach on the matters before the Disclosures Tribunal, with a view to providing further information to the Deputy. That information has now been sought.

Dáil Question No: 213

To ask the Minister for Justice and Equality further to parliamentary question numbers 536, 537, 538 and 539 of 7 November 2017, if representatives of the State Solicitors Office attended some or all of these meetings; the number of meetings that took place; the persons that attended; when the meetings were held; if minutes or notes were taken; and if he will make a statement on the matter.

- Alan Kelly.

* For Written answer on 14/11/2017
Ref No: 47941/17

Original answer

In response to previous questions from the Deputy regarding the Garda Commissioner's approach to the O'Higgins Commission of Investigation I have stated clearly that this was a matter solely for the Garda Commissioner and that there was no question of my Department seeking to interfere in any way with or have any say in determining the approach of the Garda Commissioner to the Commission of Investigation. This includes any interaction between the Commissioner and her legal advisers. I can assure the Deputy that there is no question of my Department having prior knowledge of the legal strategy to be adopted by the former Garda Commissioner.

I have also previously stated that we should be careful to avoid saying anything here which could interfere in any way with the work of the Disclosures Tribunal, the terms of reference of which cover all matters relevant to the Commissioner's engagement with the O'Higgins Commission of Investigation.

Furthermore, in accordance with the Dáil Standing Orders (paragraph 59(3)), nothing should be raised in the House which could appear to encroach on or prejudice matters which are before a Tribunal.

In the circumstances, it would not be appropriate for me to comment on matters within the remit of the Tribunal.

However, if the Deputy or indeed anyone else either in this House or outside, has information which is relevant to the terms of reference of the Tribunal they should bring that to the attention of Mr Justice Charleton.

Further information/comment

In line with the responses given above to the previous Questions referred to in this Question, the Department has no record or knowledge of any such meetings.

Dáil Question No: 225

To ask the Minister for Justice and Equality if an official or officials from his department dined at a restaurant (details supplied) with a member or members of An Garda Síochána senior management; and if he will make a statement on the matter.

Details Supplied: Chapter 1

- Alan Kelly.

* For Written answer on 14/11/2017

Ref No: 48138/17

Original answer

Officials of my Department meet with members of the Garda Síochána on a regular basis, including occasionally in a social setting. While I am not aware of any such occasion, it is entirely possible that such an encounter took place in the establishment named by the Deputy over the years. As I indicated to the Deputy last week, however, a search of our financial records has shown that the Department has not paid for dining in the said establishment since at least 2010.

Further information/comment

It is presumed that this PQ relates to the other Questions Deputy Kelly has asked that centre on implied knowledge of matters relating to the O'Higgins Commission. In line with the response given above to Question 134 of 8/11/17, notwithstanding the difficulties of being definitive in responding to a question in which no details of the persons concerned nor the timeframe are provided, the Department has no record, including financial records, or knowledge of the dinner referred to. The Department can, however, say with certainty that no current member of the Management Board has attended such a dinner, nor did the former Secretary General or the former Deputy Secretary.

Dáil Question No: 226

To ask the Minister for Justice and Equality the purpose of the telephone call from the then Garda Commissioner to the Secretary General of his department on 15 May 2016; and if he will make a statement on the matter.

- Alan Kelly.

* For Written answer on 14/11/2017

Ref No: 48139/17

Original answer

Insofar as the subject matter of these questions appears to refer to issues which are specifically within the terms of reference of the Disclosures Tribunal under Mr Justice Charleton, we must be careful not to say anything which would interfere with the Tribunal's work.

I have previously indicated that it would not have been appropriate for my Department to interfere in any way with the approach of the Garda Commissioner to the O'Higgins Commission of Investigation. I can assure the Deputy that there is no question of my Department having prior knowledge of the legal strategy to be adopted by the former Garda Commissioner.

I would point out to the House that the approach of the Garda Commissioner to the O'Higgins Commission of Investigation is covered by the following terms of reference of the Disclosures Tribunal:

Paragraph (e): to investigate whether false allegations of sexual abuse or any other unjustified grounds were inappropriately relied on to discredit Sgt McCabe at the O'Higgins Commission of investigation;

Paragraph (h): to investigate contacts between members of the Garda Síochána and, inter alia, members of the Government, other state entities, which would include my Department, or any relevant person.

I would also point out that in accordance with the Dáil Standing Orders (paragraph 59(3)), nothing should be raised in the House which could appear to encroach on or prejudice matters which are before a Tribunal.

Therefore, it would not be appropriate for me to comment on matters within the remit of the Tribunal.

However, if the Deputy or indeed anyone else either in this House or outside, has information which is relevant to the terms of reference of the Tribunal, they should bring that to the attention of Mr Justice Charleton.

Further information/comment

The Department had no record or knowledge of any such telephone call having taken place on 15 May 2015, which it is presumed is the date to which the Deputy intended to refer. In light of the assertion contained in the Question and subsequent media speculation, on 4 December 2017 the Department wrote to An Garda Síochána using its statutory powers under section 40 of the Garda Síochána Act 2005 requesting any records of such a phone call that body held to be forwarded to it. An Garda Síochána has now confirmed, by letter of 21 December 2017, that telephone records show that a call was made from the landline in the former Garda Commissioner's office to the mobile telephone of the former Secretary General on that date. There is no record of the contents of the call. The former Secretary General does not recall a phone call on that date, but he points out that he spoke with the former Garda Commissioner frequently.

In the context of this Question and related Questions, an official checked email records for 15 May 2015. This revealed the email record of a phone conversation between a senior official in the Attorney General's Office and a senior official in the Department, which the Department published on 27 November 2017.

Dáil Question No: 227

To ask the Minister for Justice and Equality if the logs, notes and diary entries in his department regarding the phone call between the then Garda Commissioner and the Secretary General of his department on 15 May 2016 will be published; and if he will make a statement on the matter.

- Alan Kelly.

* For Written answer on 14/11/2017
Ref No: 48140/17

Original answer

Insofar as the subject matter of these questions appears to refer to issues which are specifically within the terms of reference of the Disclosures Tribunal under Mr Justice Charleton, we must be careful not to say anything which would interfere with the Tribunal's work.

I have previously indicated that it would not have been appropriate for my Department to interfere in any way with the approach of the Garda Commissioner to the O'Higgins Commission of Investigation. I can assure the Deputy that there is no question of my Department having prior knowledge of the legal strategy to be adopted by the former Garda Commissioner.

I would point out to the House that the approach of the Garda Commissioner to the O'Higgins Commission of Investigation is covered by the following terms of reference of the Disclosures Tribunal:

Paragraph (e): to investigate whether false allegations of sexual abuse or any other unjustified grounds were inappropriately relied on to discredit Sgt McCabe at the O'Higgins Commission of investigation;

Paragraph (h): to investigate contacts between members of the Garda Síochána and, inter alia, members of the Government, other state entities, which would include my Department, or any relevant person.

I would also point out that in accordance with the Dáil Standing Orders (paragraph 59(3)), nothing should be raised in the House which could appear to encroach on or prejudice matters which are before a Tribunal.

Therefore, it would not be appropriate for me to comment on matters within the remit of the Tribunal.

However, if the Deputy or indeed anyone else either in this House or outside, has information which is relevant to the terms of reference of the Tribunal, they should bring that to the attention of Mr Justice Charleton.

Further information/comment

The Department had no record or knowledge of any such telephone call having taken place on 15 May 2015, which it is presumed is the date to which the Deputy intended to refer. In light of the assertion contained in the Question and subsequent media speculation, on 4 December 2017 the Department wrote to An Garda Síochána using its statutory powers under section 40 of the Garda Síochána Act 2005 requesting any records of such a phone call that body held to be forwarded to it. An Garda Síochána has now confirmed, by letter of 21 December 2017, that telephone records show that a call was made from the landline in the former Garda Commissioner's office to the mobile telephone of the former Secretary General on that date. There is no record of the contents of the call. The former Secretary General does not recall a phone call on that date, but he points out that he spoke with the former Garda Commissioner frequently.

In the context of this Question and related Questions, an official checked email records for 15 May 2015. This revealed the email record of a phone conversation between a senior official in the Attorney General's Office and a senior official in the Department, which the Department published on 27 November 2017.

Dáil Question No: 228

To ask the Minister for Justice and Equality when the former Minister for Justice and Equality was informed of the phone call and or details of the phone call between the then Garda Commissioner and the secretary general of his department on 15 May 2016

- Alan Kelly.

* For Written answer on 14/11/2017
Ref No: 48141/17

Original answer

Insofar as the subject matter of these questions appears to refer to issues which are specifically within the terms of reference of the Disclosures Tribunal under Mr Justice Charleton, we must be careful not to say anything which would interfere with the Tribunal's work.

I have previously indicated that it would not have been appropriate for my Department to interfere in any way with the approach of the Garda Commissioner to the O'Higgins Commission of Investigation. I can assure the Deputy that there is no question of my Department having prior knowledge of the legal strategy to be adopted by the former Garda Commissioner.

I would point out to the House that the approach of the Garda Commissioner to the O'Higgins Commission of Investigation is covered by the following terms of reference of the Disclosures Tribunal:

Paragraph (e): to investigate whether false allegations of sexual abuse or any other unjustified grounds were inappropriately relied on to discredit Sgt McCabe at the O'Higgins Commission of investigation;

Paragraph (h): to investigate contacts between members of the Garda Síochána and, inter alia, members of the Government, other state entities, which would include my Department, or any relevant person.

I would also point out that in accordance with the Dáil Standing Orders (paragraph 59(3)), nothing should be raised in the House which could appear to encroach on or prejudice matters which are before a Tribunal.

Therefore, it would not be appropriate for me to comment on matters within the remit of the Tribunal.

However, if the Deputy or indeed anyone else either in this House or outside, has information which is relevant to the terms of reference of the Tribunal, they should bring that to the attention of Mr Justice Charleton.

Further information/comment

The Department had no record or knowledge of any such telephone call having taken place on 15 May 2015, which it is presumed is the date to which the Deputy intended to refer. In light of the assertion contained in the Question and subsequent media speculation, on 4 December 2017 the Department wrote to An Garda Síochána using its statutory powers under section 40 of the Garda Síochána Act 2005 requesting any records of such a phone call that body held to be forwarded to it. An Garda Síochána has now confirmed, by letter of 21 December 2017, that telephone records show that a call was made from the landline in the former Garda Commissioner's office to the mobile telephone of the former Secretary General on that date. There is no record of the contents of the call. The former Secretary General does not recall a phone call on that date, but he points out that he spoke with the former Garda Commissioner frequently.

In the context of this Question and related Questions, an official checked email records for 15 May 2015. This revealed the email record of a phone conversation between a senior official in the Attorney General's Office and a senior official in the Department, which the Department published on 27 November 2017.

Dáil Question No: 229

To ask the Minister for Justice and Equality when the attention was drawn to persons in his department of the decisions taken at the meeting of senior Garda management in Garda headquarters on 15 May 2016; and if he will make a statement on the matter.

- Alan Kelly.

* For Written answer on 14/11/2017

Ref No: 48142/17

Original answer

Insofar as the subject matter of these questions appears to refer to issues which are specifically within the terms of reference of the Disclosures Tribunal under Mr Justice Charleton, we must be careful not to say anything which would interfere with the Tribunal's work.

I have previously indicated that it would not have been appropriate for my Department to interfere in any way with the approach of the Garda Commissioner to the O'Higgins Commission of Investigation. I can assure the Deputy that there is no question of my Department having prior knowledge of the legal strategy to be adopted by the former Garda Commissioner.

I would point out to the House that the approach of the Garda Commissioner to the O'Higgins Commission of Investigation is covered by the following terms of reference of the Disclosures Tribunal:

Paragraph (e): to investigate whether false allegations of sexual abuse or any other unjustified grounds were inappropriately relied on to discredit Sgt McCabe at the O'Higgins Commission of investigation;

Paragraph (h): to investigate contacts between members of the Garda Síochána and, inter alia, members of the Government, other state entities, which would include my Department, or any relevant person.

I would also point out that in accordance with the Dáil Standing Orders (paragraph 59(3)), nothing should be raised in the House which could appear to encroach on or prejudice matters which are before a Tribunal.

Therefore, it would not be appropriate for me to comment on matters within the remit of the Tribunal.

However, if the Deputy or indeed anyone else either in this House or outside, has information which is relevant to the terms of reference of the Tribunal, they should bring that to the attention of Mr Justice Charleton.

Further information/comment

On reflection the Department could have answered this Question in a different manner. To be clear, the Department has no record or knowledge of any such meeting having taken place on 15 May 2015, which it is presumed is the date to which the Deputy intended to refer, nor of any decisions taken at such a meeting. However, and notwithstanding possible confusion around the date that is of interest to the Deputy, the Department could have sought information from An Garda Síochána on the matter referred to, which does not at face value appear to encroach on the matters before the Disclosures Tribunal, with a view to providing further information to the Deputy. That information has now been sought.

In the context of this Question and related Questions, an official checked email records for 15 May 2015. This revealed the email record of a phone conversation between a senior official in the Attorney General's Office and a senior official in the Department, which the Department published on 27 November 2017.

Dáil Question No: 135

To ask the Minister for Justice and Equality if the Secretary General of his department and or any of the officials in his department have provided information to the Tribunal or engaged with it in any way following on from the request for information from Judge Charleton as part of the Disclosures Tribunal; if not, the reason therefor; and if he will make a statement on the matter.

- Alan Kelly.

* For Written answer on 15/11/2017
Ref No: 48424/17

Original answer

My Department has cooperated fully with the Disclosures Tribunal since its establishment. In that regard, I can confirm to the Deputy that my Department has provided documents to the Tribunal in connection with its work.

Further information/comment

The Department has complied with various orders from the Disclosures Tribunal. Following a request on 6 December 2017 from the Oireachtas Joint Committee on Justice and Equality, the Department has written to the Tribunal seeking to publish the orders, which in general terms relate to transcripts and other records of the O'Higgins Commission, a number of files of cases which had been referred to the Independent Review Mechanism together with correspondence to the Minister and a copy of a GSOC report, and records concerning Garda Keith Harrison and the HSE/TUSLA. The Department has also made voluntary disclosure of other matters including three protected disclosures, reports from the Garda Commissioner under section 41 of the Garda Síochána Act, and the email chain which began on 15 May 2015 and that of 4 July 2015 (published by the Department on its website on 27 November).

The two email threads referenced above were located in the course of a search and retrieval process involving a trawl of thousands of documents. It is, of course, for the Tribunal to determine the significance or otherwise of the emails to its inquiries, given that it has already been provided with the full transcripts of the O'Higgins Commission.

There is no question whatsoever of the Department deliberately withholding records, or being less than fully cooperative with the Tribunal. The Taoiseach has directed that an independent review be undertaken to examine the way in which the Department complied with its obligations to the Tribunal. Obviously, if the review finds that the Department needs to

do anything further than that will be done. In addition, in writing to the Tribunal seeking its permission to publish the orders that have been made, the Department has also sought any guidance the Tribunal may wish to provide in relation to further discovery.

Dáil Question No: 119

To ask the Minister for Justice and Equality if the previous Minister for Justice and Equality gave information or documentation to an enquiry (details supplied); and if he will make a statement on the matter.

Details Supplied: the O'Neill enquiry

- Alan Kelly.

* For Written answer on 16/11/2017

Ref No: 48591/17

Original answer

As the Deputy is aware, following consultation with the Attorney General, my predecessor as Minister for Justice and Equality, Frances Fitzgerald TD, appointed Mr Justice Iarfhlaith O'Neill to undertake a review of certain protected disclosures which had been made to her. The terms of reference of the Review were primarily to review the allegations of wrongdoing contained in the two disclosures made to her, to make any inquiries that he considered appropriate in relation to the review and to report on the conclusion of the review, including any recommendations in relation to any further action which may be appropriate and warranted to address the allegations.

On appointment, Mr Justice O'Neill was provided with all relevant documentation necessary to undertake his Review.

As the Deputy is aware, the report which was submitted by Mr Justice O'Neill led to the establishment of the Disclosures Tribunal, the work of which continues.

Further information/comment

The relevant documentation included the two protected disclosures and a number of reports from the Garda Commissioner.

Dáil Question No: 131

To ask the Minister for Justice and Equality if persons in his department gave information or documentation to an enquiry (details supplied); and if he will make a statement on the matter.

Details Supplied: the O'Neill enquiry

- Alan Kelly.

* For Written answer on 16/11/2017

Ref No: 48592/17

Original answer

As the Deputy is aware, following consultation with the Attorney General, my predecessor as Minister for Justice and Equality, Frances Fitzgerald TD appointed Mr Justice Iarfhlaith O'Neill to undertake a review of certain protected disclosures which had been made to her. The terms of reference of the Review were primarily to review the allegations of wrongdoing contained in the two disclosures made to her, to make any inquiries that he considered appropriate in relation to the review and to report on the conclusion of the review, including any recommendations in relation to any further action which may be appropriate and warranted to address the allegations.

On appointment, Mr Justice O'Neill was provided with all relevant documentation necessary to undertake his Review.

As the Deputy is aware, the report which was submitted by Mr Justice O'Neill led to the establishment of the Disclosures Tribunal, the work of which continues.

Further information/comment

The relevant documentation included the two protected disclosures and a number of reports from the Garda Commissioner.

Dáil Question No: 256

To ask the Minister for Justice and Equality if officials within his department were contacted in relation to the cross examination of a person (details supplied) at the O'Higgins Commission; and if he will make a statement on the matter.

Details Supplied: *Sergeant Maurice McCabe*

- Jim O'Callaghan.

* For Written answer on 21/11/2017

Ref No: 48762/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

The Department has no record or knowledge of any officials of the Department being contacted in relation to the cross-examination of Sgt. McCabe at the O'Higgins Commission. It should be noted that in the Dáil on 14 November the Taoiseach stated that the Department and the then Minister had only become aware of the approach taken by the Commissioner's legal counsel after the "cross-examination" had taken place. A Leaders' Questions briefing note was prepared on this matter, which focused on addressing the central issue, i.e. the allegation then being made that the Department had had advance knowledge of the former Garda Commissioner's instructions to her legal team at the O'Higgins Commission. This briefing stated: "The Department of Justice was told about the approach taken by the Commissioner's Senior Counsel after the cross-examination had taken place". The briefing note was informed by the email of 15 May 2015 which had been located a few days beforehand; the email referred to this having taken place at the "hearings" rather than during "cross examination" and the note should have used the same language; this was an error that should have been picked up before the note was forwarded.

Dáil Question No: 253

To ask the Minister for Justice and Equality if officials in his department were asked for or gave permission to the legal team for their legal strategy for the former Garda Commissioner at the O'Higgins Commission of Inquiry

- Micheál Martin.

* For Written answer on 21/11/2017

Ref No: 48889/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

There is no additional information available in this regard.

Dáil Question No: 257

To ask the Minister for Justice and Equality when his department first became aware that the former Garda Commissioner had instructed their legal team in the O'Higgins Commission to call evidence from two senior Garda officers with a view to establishing that a person (details supplied) was motivated by malice; and if he will make a statement on the matter.

Details Supplied: *Nóirín O'Sullivan, Sergeant McCabe*

- Jim O'Callaghan.

* For Written answer on 21/11/2017

Ref No: 48763/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda

Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

The Department has no record or knowledge of the former Garda Commissioner instructing her legal team at the O'Higgins Commission to call evidence from two senior Garda officers with a view to establishing that Sgt. McCabe was motivated by malice.

Following allegations made in the media following the publication of the O'Higgins Commission report in May 2016, that two Garda officers were prepared to give misleading evidence to the O'Higgins Commission, the then Minister referred the matter to the Garda Síochána Ombudsman Commission and that body's investigation into the matter is continuing.

The Disclosures Tribunal is specifically examining the matter of the former Garda Commissioner's approach to the O'Higgins Commission.

Dáil Question No: 258

To ask the Minister for Justice and Equality when his department first learned that the former Garda Commissioner's legal team were not going to call evidence in the O'Higgins Commission from two senior Garda officers in relation to a meeting they had with a person (details supplied) in 2008; and if he will make a statement on the matter.

Details Supplied: *Sergeant McCabe*

- Jim O'Callaghan.

* For Written answer on 21/11/2017

Ref No: 48764/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda

Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

The Department has no record or knowledge of whether or not the former Garda Commissioner's legal team at the O'Higgins Commission intended to call evidence from two senior Garda officers in relation to a meeting they had with Sgt. McCabe, and by extension therefore does not know of any decision not to do so.

Following allegations made in the media following the publication of the O'Higgins Commission report in May 2016, that two Garda officers were prepared to give misleading evidence to the O'Higgins Commission in relation to the meeting referred to in the Question, the then Minister referred the matter to the Garda Síochána Ombudsman Commission and that body's investigation into the matter is continuing.

The Disclosures Tribunal is specifically examining the matter of the former Garda Commissioner's approach to the O'Higgins Commission.

Dáil Question No: 259

To ask the Minister for Justice and Equality the involvement his department had in deciding the witnesses that would be called to give evidence in the O'Higgins Commission by the legal team for the former Garda Commissioner; and if he will make a statement on the matter.

- Jim O'Callaghan.

* For Written answer on 21/11/2017
Ref No: 48765/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

There is no additional information available in this regard.

Dáil Question No: 260

To ask the Minister for Justice and Equality the extent of communication between his department and the legal team for the Gardaí and the Garda Commissioner in the O'Higgins Commission; and if he will make a statement on the matter.

- Jim O'Callaghan.

* For Written answer on 21/11/2017
Ref No: 48766/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

There is no additional information available in this regard.

Dáil Question No: 261

To ask the Minister for Justice and Equality when his attention was drawn to the fact that the former Garda Commissioner had instructed their legal team to attack the motivation and integrity of a person (details supplied) at the O'Higgins Commission; and if he will make a statement on the matter.

Details Supplied: *Nóirín O'Sullivan, Sergeant Maurice McCabe*

- Jim O'Callaghan.

* For Written answer on 21/11/2017

Ref No: 48767/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda

Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

The Department has put into the public domain the following communications which relate to the ways in which the Department was made aware of a legal dispute having arisen at the O'Higgins Commission:

- **the phone call to an Assistant Secretary in the Department from an official in the Attorney General's Office which is described in the email sent to the then Minister's Private Secretary on 15 May 2015, published by the Department on 27 November 2017;**
- **the phone call during which the former Deputy Secretary has stated he recalls the former Garda Commissioner stating to him at the time that a legal dispute had arisen between counsel at the Tribunal;**
- **the email thread relating to a press query sent by RTÉ's This Week programme to the Garda Press Office on 4 July 2015 and forwarded to the Department in the context of the then Minister's appearance on the programme the following day, published by the Department on 27 November 2017, includes reference to the programme's understanding that counsel for the Garda Commissioner had raised questions in relation to Sgt. McCabe's motivation. The thread also makes reference to a phone call from the former Garda Commissioner to former Deputy Secretary informing him of the press query.**

The Disclosures Tribunal is specifically examining the matter of the former Garda Commissioner's approach to the O'Higgins Commission.

Dáil Question No: 262

To ask the Minister for Justice and Equality if officials within his department, took issue with or disapproved of the instruction of the former Garda Commissioner to their legal team to attack the motivation and integrity of a person (details supplied) at the O'Higgins Commission; and if he will make a statement on the matter.

Details Supplied: Nóirín O'Sullivan, Sergeant Maurice McCabe

- Jim O'Callaghan.

* For Written answer on 21/11/2017

Ref No: 48768/17

Original answer

I have clearly stated in response to previous Parliamentary Questions on this matter that my Department did not have any input into the instructions provided by the Garda Commissioner to her legal team at the O'Higgins Commission of Investigation. It should be obvious to the House that it would have been wholly inappropriate for my predecessor or my Department to seek to influence in any way the Garda Commissioner's instructions or to have direct contact with her legal team.

In particular there is no question of my Department having any say in what witnesses would be called before the Commission of Investigation. Consequently there can be no question of my Department being asked to, or offering, advice or approval for the Commissioner's approach to the Commission of Investigation.

I can assure Deputies, that there is no question of my Department having had prior knowledge of any legal strategy adopted by the Garda Commissioner at the Commission of Investigation.

My Department has clarified that my predecessor was made aware in May 2015, after the event, of an issue having been raised at the Commission of Investigation. However, as also previously stated, neither my predecessor nor my Department was aware of certain issues which arose at the Commission of Investigation until the matter entered the public domain almost a year later.

I should mention that in May 2016 the Garda Commissioner wrote to the Department referring to the public concerns arising from the media reports in question. The Commissioner requested that matters arising from the O'Higgins Commission of Investigation pertaining to a 2008 meeting in Mullingar be referred to the Garda Síochána Ombudsman Commission (GSOC) for investigation. On 16 June 2016 the former Minister referred the matter to GSOC for investigation under Section 102(5) of the Garda

Síochána Act (as amended). GSOC's investigation into this matter is on-going.

My Department has, today, written to the Disclosures Tribunal in relation to the manner in which, in May 2015, my Department was made aware that an issue had been raised at the O'Higgins Commission of Investigation. It will be for the Tribunal to decide on what action, if any, it should take in relation to the matter and, as a result, I do not propose to comment further on it.

Further information/comment

Notwithstanding the limits on the Department's knowledge of the instructions given by the former Garda Commissioner to her legal team at the O'Higgins Commission, the Department has no record or knowledge of officials within the Department taking issue with or disapproving of the instructions given by the former Garda Commissioner to her legal team at the O'Higgins Commission.

The Disclosures Tribunal is specifically examining the matter of the former Garda Commissioner's approach to the O'Higgins Commission.