

REPORT OF THE DESIGNATED JUDGE
PURSUANT TO SECTION 8(2) OF THE INTERCEPTION OF POSTAL
PACKETS AND TELECOMMUNICATIONS MESSAGES (REGULATION)
ACT 1993
AND
SECTION 12(1)(C) OF THE COMMUNICATIONS
(RETENTION OF DATA) ACT 2011

I am the 'Designated Judge' under the above mentioned Acts.

On 14th November, 2011, I attended at the headquarters of An Garda Síochána at 'The Depot', Phoenix Park, Dublin, and later on the same day, at the Offices of the Revenue Commissioners at Block D, Ashtown Gate, Dublin 15, and at the Office of the Department of Justice and Equality, St. Stephen's Green, Dublin 2.

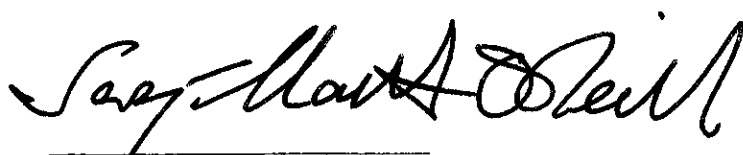
On 18th November, 2011, I attended at the Headquarters of the Army in McKee Barracks, Blackhorse Avenue, Dublin. In each of those locations, such documents and records pertaining to the operation of the above Acts, as were requested by me, were made available and were examined by me. I also spoke to the persons with responsibility for the operation of the above Acts, in each location, and all of my queries were answered to my satisfaction.

I wish to draw attention to an anomaly which appears to me to arise by virtue of the fact that Minister Alan Shatter holds the offices of Minister for Justice and Equality and Minister for Defence. Pursuant to section 6(1)(c), an application by the Chief of Staff of the Defence Forces for an authorisation for an interception must be accompanied by a recommendation in writing of the Minister for Defence supporting

the application. Pursuant to section 2(1) of the Act of 1993, the power to grant an authorisation rests solely in the Minister for Justice and Equality, subject to the provisions of the Act. Thus, where the same person holds the offices of Minister for Justice and Equality and Minister for Defence, an essential ingredient for obtaining an authorisation in compliance with the Act *i.e.* the recommendation of the Minister for Defence, is supplied by the same person who then must decide whether to grant the authorisation sought by the Chief of Staff of the Defence Forces.

Whilst I am quite satisfied that no impropriety of any kind whatsoever has arisen from this anomalous situation, it does lead to a decision making process which, under the norms of public law affecting public administration of this kind, would be considered to be unacceptable, notwithstanding technical compliance with section 6(1)(c) of the Act.

Subject to the foregoing, I am satisfied that as of the date of this report, the relevant state of authorities are in compliance with the provisions of the above Acts.



Mr. Justice Iarfhlaith O'Neill
22nd November, 2011